**9-1-1 ARM/Rule Making Subcommittee Meeting**

**Wednesday, Oct. 18, 2017**

**Minutes**

**Present:**

Adriene Beck, Missoula Co. ☎

Liz Brooks, Flathead Co.

Kimberly Burdick, Chouteau Co., MT APCO

Geoff Feiss, MTA, Subcommittee Chair

Steve Haddon, Jefferson Co.

Don Harris, SITSD

Chris Lounsbury, Missoula ☎

Quinn Ness, PSCB

Bill Nyby, Sheridan Co. Commissioner ☎

Jennie Stapp, MSL

Rhonda Sullivan, PSCB

**Absent:**

Denis Pitman, Yellowstone Co.

Wing Spooner, PSCB

**Call to Order:** Geoff Feiss called the meeting to order.

**Introductions and Welcome**: Members introduced themselves.

**Minutes**:

Motion: Kimberly Burdick moved to approve the Sept. 21 minutes. The motion was seconded and passed.

**NEW RULE I – DEFINITIONS.**

Geoff Feiss expressed concern about the online MCA 10‑4-101 definition of a PSAP, noting that it still refers to a “9-1-1 service” rather than “emergency communications.” **Action Item: Verify that the online code has not been updated.**

NEW RULE I – DEFINITIONS. (5) "Tribal government" means any one of the seven federally recognized tribal governments of Montana and the Little Shell band of Chippewa Indians. This definition was borrowed from various references in the MCA. **Action Item: Research whether or not the Federal government has recognized the Little Shell band of Chippewa Indians.**

The question was posed about defining the term “local government” in this section. The definition is addressed in Rule II under the Certification Process. Don Harris noted that the definition comes from statute: MCA 7-11-1002. The subcommittee has added the word “incorporated” to describe cities and towns for purposes of simplicity and making the process straightforward.

Don Harris also added that he does not anticipate that this will be the final definitions section. The definitions included in this draft are needed for these specific rules. Geoff noted that there might be terms used throughout the rules that need to be added to the definitions section.

A question was posed about whether the term “certified PSAP,” should also be defined in the Definitions section. Adding it as a definition could end up being too circular.

**NEW RULE II – CERTIFICATION REQUIREMENTS.**

Geoff asked if the terms “emergency communications” and “emergency services” Should be included in definitions. Don Harris clarified that in “emergency services” was already defined in current statute and “emergency communications” was added in HB 61 (Section 16, (5).) PSAP is already defined in the statute as well. Don indicated that he added the definition to the rules so the abbreviation “PSAP” could be used rather than “Public Safety Answering Point.”

**NEW RULE III – APPLICATION FOR CERTIFICATION.**

* It might make sense to spell out some sort of timeline to indicate there is an initial certification process that needs to be completed by a certain date followed by a re-certification process that is required on a regular basis, such as annually.
* Can a PSAP become certified during an interim period and qualify for the next round of funds, or should it be defined in rule that a PSAP can only be certified on an annual basis?
* It would take time and additional staff to be able to accommodate interim certification requests.
* CJIN is the umbrella that emergency 9-1-1 personnel, sheriff’s offices and police departments operate under that provides them with criminal justice information and access to federal databases. Law enforcement has to meet certification requirements.
	+ Dispatchers have to be re-certified in CJIN every two years.
	+ PSAPs are audited for the purpose of CJIN every three years.
* Could re-certifications be tied into CJIN certification somehow to stagger certifications?
* Liz mentioned that secondary PSAPs can still be CJIN certified.
* The State 9-1-1 Program does not track CJIN certifications.
* Theoretically, a primary PSAP could not be CJIN certified.
* Does is make sense to have a one-time initial round of certifications where PSAPs declare that they meet the requirements, and on an annual basis they re-declare that they meet the requirements? In the interim, an entity could prepare to become a primary PSAP, but they don’t actually declare that they meet certification requirements until the annual declaration period is opened up.
* Don Harris clarified that re-certification rules were not addressed because these rules are intended to go out as a stand-alone package just to get PSAPs initially into the system in order to be able to disburse funds to them starting July 1, 2018. The re-certification piece might be part of a larger discussion that may need to be tied to NG911.
* Quinn indicated that rule development continually evolves. There is some urgency to get this particular set of rules moving into the formal rule-making process as a starting point. Work will need to continue to develop the other body of rules. He envisions that the department will grant a certification approval either via an approval letter or some sort of contractual agreement. If a contract is used, the department will be bound by the term of the contract, which could be 3, 5 or 7 years. In addition, the award letter or contract will certify a local government as the primary PSAP and specify when the PSAP will start to receive funds. We could say that PSAPS will have to re-certify every three years, as an example. We could develop the re-certification process and rules to manage the re-certification task in three years.
* Jennie Stapp advocates keeping the process simple. She believes the subcommittee could address the re-certification process in these rules because it is essentially the same process as the certification. The subcommittee has defined the requirements the local government has to meet, and the PSAPs declare that they meet the requirements. If the PSAP declares that it meets the requirements, the department probably doesn’t have a lot of grounds to deny certification. The re-certification process would be performed on a periodic basis whereby the PSAP would once again declare that they meet all of the requirements. A re-certification process doesn’t have to be any different from the initial certification process.
* What criteria would be used to de-certify a PSAP? Perhaps they can’t remain open 24/7 due to funding issues. Rules might be needed to determine if they are eligible for funds during that period when they are not meeting this standard. Do they qualify for a grace period or are they cut off from funding?
* Geoff believes re-certification rules could be incorporated in these rules. He also referenced the minutes from the last meeting, which indicated that an application deadline for certification was desired. July 1, 2018 was mentioned. The group also discussed for how long the certification would last. Members didn’t talk much about how a PSAP would be de-certified. For example, Jennie mentioned a library that left the system, but still had to meet certain standards. The whole “terms and conditions”-“contract agreement” part seems to be missing at this point. What are the minimum standards we are expecting? (i.e. open 24/7, you have an interlocal agreement if you have more than one PSAP that is receiving money as sort of a subsidiary account.) We did talk about minimum standards. What else is expected?
* Don believes we should be careful about proposing rules for re-certification because we don’t fully understand what would be involved with a de-certification process beyond simply not providing services 24/7. What if they are not providing the 9-1-1 Program with information needed to process payments or not responding to information requests from the office? These requirements could be put into a re-certification rule or in standards they must meet. Re‑certification rules will have to be drawn up before June 30, 2018, but at least part of the required rules could be released right away—unless the subcommittee wants to wait until rules surrounding re-certification can be resolved.
* Two issues need to be explored: the question of the process of certification and the process of re-certification, which in Jennie’s opinion, mirrors that of the initial certification process. The standards that PSAPs must meet in order to be re-certified is a separate issue. Ongoing, periodic review of the standards will need to take place, but the process doesn’t have to change when those standards change.
* Quinn noted that the key part of the certification process is the declaration from the local government official. He doesn’t believe that declaration will be that difficult to obtain. The official will have to trust the recommendation and opinion of staff. Re-certification could be an annual process. For the initial certification, we should target April 1, 2018 to ensure that everyone receives their money on schedule. When we make the award of certification, we will notify the local government of the timeline for when they can expect to receive funds. Other minor processes such as bank account numbers for direct deposit will need to be set up. Time also will be needed to change the computer program that SITSD wrote which automates the distribution payments to PSAPs. An actual time limit should not have to be in the rules.
* Members need to decide 1) the initial certification deadline by which eligible entities need to apply for certification, and 2) should there be a duration for the certification (1 to 3 years)?
* Don proposed that NEW RULE II have the following added to it: “To continue to receive payments as provided in HB 61 Section 7, a PSAP must re-certify annually.” And, under NEW RULE III, he suggested adding: “A certified PSAP must apply for re-certification on or before April 1.”
* We could just say they need to re-certify annually.
* It would be helpful to say they need to re-certify annually by the end of the third quarter of the fiscal year, which is April 1 or by the end of the first quarter of the calendar year, which also is April 1.
* This eliminates any reference to the need to re-certify because the rule would say they have to certify annually. The declaration must be submitted to the department by April 1 of each year.
* Steve proposed looking at a two-year period because a lot of the criteria is static.
* Quinn said he was comfortable with a two-year period. If there are any changes in the interim, local government needs to notify the department.
* Is a process needed for decertification? Do these need to be written as guidelines or rules? Rules were suggested so as to provide the Program with more leverage to withhold funds.
* At MSL, a library that can’t meet a standard, requests a deferral. That request is accompanied by a plan they will follow to reach a point where they can meet that standard. The MSL rules give libraries a three-year window to correct a deficiency. During that time, they are still eligible to receive funding.
* This is somewhat contemplated in NEW RULE IV, (3). A small change to this wording could make it apply for re-certifying PSAPs. Don indicated a preference to having the decertification process be its own section. But NEW RULE IV provides a good framework, which will end up being NEW RULE V.
* The word “application” should be replaced with “declaration” when possible. Also, the word “documentation that verifies” can be simplified to read “Verification.”
* There should be an expectation that some sort of proof of that which is being declared could be requested at some point.
* The current monitoring process examines expenditure of the funds. Verification in this manner can be continued to ensure they are spending money on allowable uses and we can do some sampling. There will be monitoring and local governments will be notified of monitoring results. If we have any findings, a formal decertification process will follow. **Task Item: Staff will develop Section 5 and flesh out the reporting and monitoring information that is already in statute.**
* Geoff asked for clarification about New Rule III, (2) (a)(iii), which currently reads “will operate in accordance with the PSAP certification requirements.” Don indicated that the intention of the term “PSAP certification requirements” is to describe the ones that are still being developed. The term is defined in New Rule I (4) “’PSAP certification requirements’ means the requirements of Title 10, chapter 4, MCA, and the administrative rules adopted thereunder.”
* Jennie suggested that some kind of timeline be adopted for reviewing standards and any additions or deletions of standards be completed ahead of the re-certification deadline. Standards will continue to evolve. Don agreed that this was a good point and thought it should be added to the outline.
* Geoff asked members to consider implications of NEW RULE III (c) “documentation that verifies that all emergency wireline and wireless voice calls and the majority of all other non-voice emergency communications from persons requesting emergency services in the PSAP’s service area are delivered first to the PSAP.” Somewhere in the standards, (perhaps terms and conditions), he believes that 100 percent of all emergency communications should be accounted for, not just the majority. He recognizes that this criterion relates to how money is allocated to the primary PSAP and defining PSAPs activities. He asked: “what happens to the minority of data?”
* Quinn emphasized that a phased approach is being considered. The first phase is legacy 9-1-1, which is wireline and wireless voice. There may be some unforeseen intent with changing the language to “emergency communications” in the bill. We won’t know what the majority of data communications looks like until the statewide 9-1-1 plan is done and what the 9-1-1 system is going to look like as far as routing future data communications. Plus, implementation will be needed and then we will need to come back to these rules to address those things that do not even exist in the current environment. No one knows what the NG911 environment is going to look like when it’s implemented. The statewide plan creates the roadmap for this implementation.
* NEW RULE III (3)(a) “the local government entities must have entered into a valid interlocal agreement pursuant to 7-11-104, MCA, that describes and defines the terms of the parties' participation in the emergency communications system.” Geoff asked if these terms and conditions should be elaborated upon in terms of minimum standards, but indicated that they will probably end up being somewhat dependent on the statewide plan. Are the rules as proposed right now adequate or is more elaboration needed on standards?
* Quinn believes that this set of rules is adequate for the legacy environment because they cover continuing to fund PSAPs as we have in the past, with primary PSAPs handling voice calls. Once these rules are out then we can start talking about the NG911 environment and the grant program. These draft rules along with new rules V and VI can be sent out for public comment, adoption/recommendation by the Advisory Council and begin the rules process so all of this can be done by July 1, 2018. We will continually work on future standards. Once the statewide plan is adopted, we will need to come back to the rules and have another process to either update them or adopt new rules for the standards.
* Geoff recommends including as much in the rules today so we don’t defer decisions that we might not get back to. He understands that the department wants to get the main body of the rules out so that PSAPs can be funded on time. But he is reluctant to defer opportunities to make decisions pending an uncertain future.
* Quinn doesn’t believe we have much choice. If you wanted a single body of rules, we would need to wait until the statewide plan and GIS assessment were complete and adopted by the Advisory Council. The Council recommends that we get going on the rules and identify want rules are needed now and what could be deferred. Those other requirements for rules and standards are still in statute. After this initial set of rules is adopted, the department will be accountable for developing the other requirements and standards.
* This rulemaking will be an ongoing evolutionary process.

NEW RULE III (c), Bill Nyby asked about eliminating the words “and the majority of all.” Members discussed a variety of different scenarios and implications of the wording. This section will be flagged for further discussion. **Task Item: Rhonda will ask Don Harris to look at it.**

**NEW RULE IV CERTIFICATION PROCESS**

* Jennie noted that based on the earlier discussion about the declaration for certification on an annual basis, this section may not be necessary. The need to review the application and go through a process whereby they might be denied doesn’t seem relevant for an annual certification. Much of the content in this section aligns with a de-certification process. One possible solution might be to change the title of NEW RULE III to BI-ANNUAL CERTIFICATION and NEW RULE IV to DECERTIFICATION.
* We’re asking a local government to sign a declaration that says its office meets these requirements. If they meet those requirements, the department would say “that’s good enough.” Then, this section in effect says: “we can come in after we review the application and say that you don’t meet the requirements.” This creates a disconnect.
* It’s through the monitoring where some of these other issues might be raised.
* A monitoring process is needed for the purpose of transparency and accountability, and the legislature expects as much.

**ALLOCATION OF FUNDING**

Section 7. Distribution of 9-1-1 systems account by department says: (1) Beginning July 1, 2018, and for each quarter after that until the first quarter of the 2023 fiscal year, the department shall distribute the total quarterly balance of the account provided for in [section 6(2)(a)] as follows:

     (a) each local government entity that hosts a public safety answering point must receive an allocation of the total quarterly balance of the account equal in proportion to the quarterly share received by the local government entity that hosts the public safety answering point during the 2017 fiscal year;

* Rhonda clarified that the entire 2017 fiscal year will be examined.
* Quinn will develop an analysis of what PSAPs are currently receiving.
* Section 7 (b), (2), and (3) were briefly reviewed and discussed.
* The rules need to be written to reflect HB61. Staff can do this.

**DISTRIBUTION OF FUNDING**

Section 6.  Establishment of 9-1-1 accounts. (1) Beginning July 1, 2018, there is established in the state special revenue fund an account for fees collected for 9-1-1 services pursuant to 10-4-201.

* We probably need to establish in rules that there should be a segregated bank account for 9-1-1 fees.
* This account already exists.
* The mechanism for how the money is sent to local governments may not need to be written into rules. **Task Item: Speak with Don Harris about this issue.**

**ALLOWABLE USES OF FUNDING**

* This is a critical part of the rules. Guidelines are too subjective.
* Operational Expenses are one category and Capital Expenses are another.
* Geoff clarified that the discussion is focused on 9-1-1 funds, where they should go, how they should be best spent, as well as the demarcation between a legitimate 9-1-1-funded expense and what is a local government responsibility.
* Members reviewed the list of Allowable Uses of Funding included in the Sept. 12, 2017 ARM Draft Outline
	+ Telephone Devices for the Deaf (TDDs) will eventually be replaced by text to 9-1-1. It should not be excluded at this time.
	+ The words “for each call-taker position” should be dropped.
		- Discussion ensued about the importance of ensuring access to a TDD even if one is not available at each call-taker position.
	+ Records Management System (RMS) pro-rating was discussed along with the possible need to elaborate on pro-rating.
	+ Currently, the list of allowable use of funding is divided under different categories, such as PSAP Operations, E9-1-1, Training, etc. Some of the items on the list can be combined. **Task Item: Rhonda will go through the list and combine relevant items.**
	+ Discussion took place about repeater sites as an eligible expense. If more than one agency uses the repeater, they are asked to pro-rate the expense.
	+ Expenses eligible for cost recovery likely exceed available funds. What is submitted for cost recovery is decided upon at the local level.
	+ Examples of 9-1-1 public education were given. Outreach efforts are very important.
	+ Rhonda was questioned about whether dispatcher salaries are ever prorated. An entire dispatch staff can be paid with 9-1-1 funds if they strictly dispatch. When monitoring is performed, payroll records are required and reviewed.
	+ An example of a pro-rated employee in Flathead County is an employee who works 75% of the time for the 9-1-1 program and 25% of his time for Office of Emergency Services.
	+ In Sheridan County, 9-1-1 funds are not used for salaries; they are used for major capital outlays.
	+ Since salaries have been an allowable expense for so many years, it would be difficult to change now. In discussions prior to HB 61, smaller PSAPs reported that they would not be able to have the staff they require if salaries were ineligible.
	+ Rhonda indicated that using 9-1-1 funds for salaries is somewhat discouraged because if funds were reduced, staffing would be negatively impacted.
	+ Local government entities will prioritize their 9-1-1 expenses according to what is appropriate for their jurisdiction. They can’t get more than what they are allocated; so, budgets would be prioritized.
	+ Members discussed the use of 9-1-1 funds for brick-and-mortar projects. Yellowstone County is using 9-1-1 funds to build a new facility that it has saved in a reserve fund. A portion of the Flathead County’s funds is put into a capital fund for repeaters, etc.
	+ Geoff mentioned that significant funds held in reserve could be questioned.
	+ Steve indicated that as long as saved funds are utilized for allowable purposes, it shouldn’t be a problem.
	+ Each jurisdiction submits an annual 9-1-1 report that list the total funds received, how much was invested, and how much interest was returned. Jurisdictions have to have a special 9‑1‑1 account. They cannot put 9-1-1 funds in their general fund account.

**Public Comment**: None

**Next Meeting**: The next meeting is Nov. 2, 2017 meeting. Monitoring Expenditure of Funding will be the first topic of the next meeting.

There should be a statement in rule that allowable expenditures are reviewed on a periodic basis. Jennie envisions a date in rule where new allowable expenses might be added and obsolete allowable expenses might be removed. This should be somewhere in the allowable expense section.

It would be helpful to look at current monitoring practices, if written ones exist, prior to the next meeting. It was very helpful to see the list of allowable expenses ahead of time. Rhonda said that at the end of the fiscal year, she requests the annual expenditure reports, detailed ledger queries and any salary information. These requests are done via email. She can print out the standard emails she sends. Rules should ensure accountability and transparency including submission of annual expenditure reports and other documentation requested by the department.

**Adjournment:** The meeting was adjourned.