

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

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

NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

RECEIVED

M RCO

DEC 27 2017

TO: All Concerned Persons

Ravalli County Commissioners

1. On January 12, 2018, at 11:00 a.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 January 5, 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 DEFINITIONS (1) "Certified PSAP" means a local government entity that hosts a public safety answering point certified by the department as provided in [NEW RULE II].

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

(3) "Local government" means the same as defined in 7-11-1002(2), MCA.

(4) "PSAP" means a public safety answering point as defined in 10-4-101, MCA.

(5) "PSAP certification requirements" means the requirements of Title 10, chapter 4, MCA, and ARM Title 2, chapter 13, subchapter 3.

(6) "Tribal government" means any one of the seven federally recognized tribal governments of Montana and the Little Shell Tribe of Chippewa Indians.

AUTH: 10-4-108, MCA

IMP: 10-4-305, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department is proposing to adopt NEW RULES I through VIII 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 November 16, 2017. The rules describe the criteria that must

be met for a local government entity that hosts a public safety answering point to receive quarterly distributions from the 9-1-1 systems account. The rules detail the process for becoming certified to receive funds; the department's authority to decertify or reduce funding provided to a local government; the method that will be used to determine the amount the department will distribute to a local government entity; the allowable uses that may be reimbursed by payments from the 9-1-1 systems account; and the department's duty to monitor compliance with the requirements of Title 10, chapter 4, MCA.

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 9-1-1 systems and services.

NEW RULE II PSAP CERTIFICATION (1) A local government entity that hosts a PSAP qualifies as a certified PSAP when it:

- (a) operates a 9-1-1 system meeting the minimum requirements under 10-4-103, MCA;
- (b) first receives all emergency wireline and wireless voice calls from persons requesting emergency services in the PSAP's service area; and
- (c) verifies it meets the PSAP certification requirements by applying with and being approved by the department.

(2) A local government entity must host a certified PSAP to receive payments under 10-4-305, MCA.

AUTH: 10-4-108, MCA

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

STATEMENT OF REASONABLE NECESSITY: Under this rule, a local government entity that hosts a PSAP must be certified by the department to receive payments from the 9-1-1 systems account. The rule also provides an overview of the certification process and describes the certification criteria.

By requiring PSAP certification, the department can ensure that a local government entity that hosts a certified PSAP meets statutory requirements to receive payments. In addition, certification of the local government entity allows that government entity to serve as the department's primary point of contact and representative of other entities participating in the 9-1-1 system. Historically, where multiple local government entities have participated in a 9-1-1 system, one of the local government entities hosted the primary PSAP, and the other local government entities have received payments from the 9-1-1 account through the primary PSAP.

NEW RULE III APPLICATION FOR CERTIFICATION (1) An applicant for certification shall submit an application on a form prescribed by the department. Applications may be found on the department's website at sitsd.mt.gov/PublicSafetyCommunications.

(2) The application must be complete and must include the following:

(a) a declaration signed by an official authorized to act on behalf of the local government entity submitting the application that the applicant meets the requirements of [NEW RULE II(1)] and will operate in accordance with the PSAP certification requirements; and

(b) a copy of any agreement required under (3) or (4).

(3) If more than one local government entity is participating in an application:

(a) the local government entities must have entered into an interlocal agreement under 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.

(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 payments made under 10-4-305, MCA:

(a) the local government entity that hosts a PSAP must have an agreement with the tribal government defining the terms of the parties' participation in the 9-1-1 system and PSAP; and

(b) the declaration required in (2)(a) must be signed by an official who is authorized to act on behalf of the tribal government.

(5) The applicant must be prepared to provide verification of statements made in its application and declaration if requested by the department.

(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.

AUTH: 10-4-108, MCA

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

STATEMENT OF REASONABLE NECESSITY: This rule describes the requirements to apply for certification. To simplify the application process, the department will allow a local government entity applying for certification to review the requirements and declare it is in compliance. If more than one local government entity will be participating in the 9-1-1 system, the department must receive a declaration from all participating entities.

In addition, the local government entity that hosts the PSAP must have an interlocal agreement with other local government entities participating in the 9-1-1 system to describe how payments from the 9-1-1 systems account will be shared between the local government entity that hosts the PSAP and the other participating entities. To foster decision making at the local level, the department believes it is best for the participating local government entities to describe their relationship with one another in an interlocal agreement, rather than defining the relationships in rule.

Tribes can receive 9-1-1 payments by participating in a 9-1-1 system with a local government entity that hosts a certified PSAP. For the reasons stated in the preceding paragraph, a local government entity hosting a certified PSAP with a

participating tribe must include with the application a declaration from an authorized tribal official and an agreement describing the relationship between the tribe and local government entity.

The department set a May 1, 2018, application date to give the department enough time to process applications in advance of the July 1, 2018, date when the initial distributions of funds under HB 61 are made. The application date in 2018 was set as late as possible to give local government entities more time to prepare applications and ensure they will meet requirements. In future years, after local government entities have adjusted to the requirements, applications for certification will be due by April 1 to give the department sufficient time to process applications.

Because the department is required to monitor expenditures of program funds for 9-1-1 purposes under 10-4-107, MCA, the department's authority to request supporting documents is included in this rule.

Because the department will receive annual financial information from local government entities hosting a certified PSAP, and because local government entities do not frequently make substantial changes that would affect eligibility for certification, the department believes biennial certification will be sufficient to effectively monitor and enforce the certification requirements.

NEW RULE IV CERTIFICATION PROCESS (1) The department shall review applications for certification to determine whether the applicant has met the PSAP certification requirements.

(2) If an applicant meets the PSAP certification requirements, the department shall issue a written determination, and the certified PSAP may begin receiving payments under 10-4-305, MCA.

(3) If an application for PSAP certification is not approved, the department shall send the applicant written notice of any application deficiencies and PSAP certification requirements that were not met.

(4) The applicant shall have 90 days from the date of the notice to correct deficiencies and demonstrate compliance. Except as provided in (5) or (6), if an applicant has not corrected deficiencies and demonstrated compliance with PSAP certification requirements within 90 days, the department shall:

- (a) deny the application; or
- (b) grant conditional PSAP certification; and
- (c) provide the applicant notice and an opportunity for hearing.

(5) An applicant that has received a deficiency notice may request an additional 90 days to correct deficiencies or demonstrate compliance with PSAP certification requirements.

(6) If an applicant wishes to immediately dispute a department determination, the applicant may ask the department to provide formal notice of denial and an opportunity for hearing.

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

(8) The final determination in a contested case regarding PSAP certification is made by the department director.

AUTH: 10-4-108, MCA

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

STATEMENT OF REASONABLE NECESSITY: This rule describes the department's process for making PSAP certification decisions. Under HB 61, a local government entity hosting a PSAP must meet the PSAP certification requirements to receive payments from the 9-1-1 systems account. NEW RULE IV is needed to describe the process the department uses to review applications for certification. If there are deficiencies, the department must give the applicant notice of the problems so they can be corrected. Some official acts must be ratified by the local government's elected governing body. In such cases, weeks or months may be needed for the local government to complete this process. Therefore, the department will give the local government entity 90 days to address deficiencies in an application for certification. In some cases, it may take longer than 90 days to correct a problem; thus, the department should be allowed to grant extensions as provided in (5).

When an application is deficient, under the Montana Administrative Procedure Act (MAPA) and due process, the department must make the applicant aware of the deficiency and provide the applicant an opportunity to address the issue. If problems are not or cannot be corrected, the department must deny the application and provide formal notice and hearing. NEW RULE IV sets forth the notice and hearing process required by MAPA and due process.

NEW RULE V DECERTIFICATION AND FUNDING REDUCTION (1) The department may determine a certified PSAP is not in compliance with PSAP certification requirements if a certified PSAP:

(a) is not in compliance with any of the requirements of Title 10, chapter 4, MCA, or ARM Title 2, chapter 13, subchapter 3;

(b) uses or distributes funds for any purpose other than those identified in [NEW RULE VII];

(c) does not timely comply with department requirements; or

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

(2) If the department determines a certified PSAP is not in compliance with a PSAP certification requirement, the department shall send the certified PSAP a deficiency letter identifying the PSAP certification requirement that is not met and the action needed to correct the deficiency. The certified PSAP shall have 30 days from the date of the deficiency letter to correct all deficiencies and demonstrate compliance.

(3) A certified PSAP that has received a deficiency letter may request an additional 30 days to correct deficiencies or demonstrate compliance with PSAP certification requirements.

(4) If a certified PSAP disputes a department determination, the certified PSAP may ask the department to provide formal notice of denial and an opportunity for hearing.

(5) Except as provided in (3) or (4), if a certified PSAP has not corrected all deficiencies and demonstrated compliance with PSAP certification requirements

within 30 days of the deficiency letter, the department shall provide the certified PSAP 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 PSAP certification is made by the department director.

(8) When the department makes a final determination that a certified PSAP is not in compliance with PSAP certification requirements, the department may:

(a) reduce or suspend payment to the local government entity or entities involved in the PSAP;

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

(c) decertify the local government entity or entities involved in the PSAP.

AUTH: 10-4-108, MCA

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

STATEMENT OF REASONABLE NECESSITY: This rule describes circumstances that allow the department to suspend or reduce payments in accordance with 10-4-107 and 10-4-109, MCA. The statutory grounds for suspending or reducing payments include failing to use funds as permitted by Title 10, chapter 4, MCA; failing to provide information required by the department; and failing to comply with department requirements.

In its stewardship of the 9-1-1 systems account, the department must act promptly to ensure payments are made only as permitted by the PSAP certification requirements. If a local government entity is mispending funds, failing to provide information, or failing to comply with requirements, the department must provide notice of any problems so they can be corrected. NEW RULE V is needed to allow a local government entity that hosts a PSAP to comply with requirements within 30 days and for the department to promptly stop payments if it does not. If, for good cause, it will take longer than 30 days to correct a problem, the department should be allowed to grant extensions as provided in (3).

Prior to suspending payments, under MAPA and due process, the department must provide formal notice of deficiencies and provide the applicant an opportunity to address or contest the issue. NEW RULE IV sets forth the notice and hearing process required by MAPA and due process.

If, after notice and hearing, the department determines a local government entity is not in compliance with PSAP certification requirements, the department may take any of the actions listed in (8). A local government entity hosting a PSAP should be decertified if it is unable to meet certification requirements and would not be eligible to receive payments. If funds are expended on activities that do not meet eligibility requirements, the department may require the repayment of such funds under 10-4-108, MCA.

NEW RULE VI ALLOCATION OF FUNDS (1) Funds in the account for fees collected for 9-1-1 services under 10-4-201, MCA, must be allocated as provided in 10-4-305, MCA.

(2) Each certified PSAP must receive an allocation of the total quarterly balance of the 9-1-1 systems account equal in proportion to the quarterly share received by the local government entity that hosted the PSAP during state fiscal year 2017.

(3) The department maintains a list of the quarterly share received by local government entities that hosted PSAPs during the state's 2017 fiscal year. The list can be found on the department's website at sitsd.mt.gov/PublicSafetyCommunications.

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

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to explain the basis for allocating payments from the 9-1-1 systems account and to describe where interested persons can find the department's list of the quarterly shares that were distributed in fiscal year 2017. Under 10-4-305, MCA, the department is required to make quarterly distributions of the 9-1-1 systems account based on the quarterly share received by the local government entity that hosted the PSAP during the 2017 fiscal year. By posting the information on the department's website, the department can provide transparency to local government entities who are expecting payments from the 9-1-1 systems account. The information provided will enable local government entities to verify that their distribution is based on the amount distributed in FY 2017. In addition, this information will be beneficial to local government entities as they prepare budgets based on FY 2017 information and 10-4-305, MCA.

NEW RULE VII ALLOWABLE USES OF FUNDS (1) Funds distributed to a certified PSAP from the 9-1-1 systems account established by 10-4-304, MCA, may be used by the certified PSAP for 9-1-1 purposes, including any of the uses set forth in the department's list of allowable uses, adopted by reference in this rule, and effective December 11, 2017. The list is available on the department's website at sitsd.mt.gov/PublicSafetyCommunications.

(2) If an item, a service, or personnel is or will also be used or employed for a purpose other than the 9-1-1 system, the department shall allocate funds based on the cost attributable only to the 9-1-1 system. A certified PSAP shall:

(a) advise the department that the item, service, or personnel is or will also be used or employed for a purpose other than the 9-1-1 system;

(b) calculate the cost of the item, service, or personnel that is attributable to the 9-1-1 system and provide the calculation and cost to the department; and

(c) provide information verifying the use and calculation upon request by the department.

(3) The department may approve additional uses of funds on a case-by-case basis upon request by a certified PSAP, provided that the use would clearly support operation, maintenance, or enhancement of the 9-1-1 system.

(4) A certified PSAP may further distribute funds to a local government entity or tribal government participating with the certified PSAP in the 9-1-1 system for any of the uses described in (1).

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

STATEMENT OF REASONABLE NECESSITY: The purpose of this rule is to identify allowable uses of funds paid from the 9-1-1 systems account. Under 10-4-107, MCA, the department is required to monitor the expenditure of funds and ensure payments are used only for 9-1-1 purposes. The department has developed a list of allowable uses of funds based on previous distributions to local government entities for 9-1-1 purposes. Because these allowable uses are already considered to be for 9-1-1 purposes, a local government entity can expend funds received from the 9-1-1 systems account for any of these identified uses. This rule informs interested persons about the list of allowable uses and how they can access the list.

NEW RULE VII implements and enforces the spending limitations in 10-4-107 and 10-4-305, MCA. Section (2) addresses the common situation where an item, a service, or personnel is used by a local government entity for more than one purpose. In such cases, the department believes reimbursement from the 9-1-1 systems account for the full amount of the expenditure is not permitted under Title 10, chapter 4, MCA, because distributions from the 9-1-1 systems account are limited to payments for 9-1-1 purposes under 10-4-107, MCA. Therefore, the proposed rule allows the local government entity to calculate and request a prorated reimbursement for the portion of the expenditure attributable to a 9-1-1 purpose.

Section (3) advises local government entities that they may also request approval for uses of funds for 9-1-1 purposes that are not identified on the list of allowable uses because some uses that have not previously been identified as allowable uses may be permissible under 10-4-107, MCA.

Section (4) clarifies that a local government entity that hosts a certified PSAP may distribute funds to other local government or tribal government entities participating in the 9-1-1 system with the local government entity that hosts the PSAP so long as the funds are ultimately used for an allowable expense. As described above, under 10-4-107, MCA, distributions from the 9-1-1 systems account can only be made for 9-1-1 purposes.

NEW RULE VIII REPORTING, MONITORING, AND RECORDKEEPING

(1) On or before April 1, a certified PSAP shall submit an annual report documenting the status of payments received by the certified PSAP from the 9-1-1 systems account in a form prescribed by the department. The annual report must document all transactions including distributions, expenditures, and the amount of any funds held in reserve directly attributable to payments received from the 9-1-1 systems account during the preceding years.

(2) The department shall monitor transactions to ensure payments received from the 9-1-1 systems account are used as provided in [NEW RULE VII]. The department may determine a certified PSAP is not in compliance with PSAP certification requirements if funds are not used as provided in [NEW RULE VII].

(3) The department may audit transactions involving payments received from the 9-1-1 systems account and may request information and records necessary to

determine whether a certified PSAP is compliant with PSAP certification requirements.

(4) A certified PSAP shall keep and maintain records regarding all transactions involving payments received from the 9-1-1 systems account, including, at minimum, the following:

(a) annual revenue and expenditure report(s);
(b) general ledger report(s) (i.e., detailed ledger queries); and
(c) supporting documentation (i.e., invoices) for each expenditure that verifies that an expenditure is allowable.

(5) A certified PSAP shall maintain the records described in (4) for a period of five years following the date of distribution or expenditure. The department may determine a certified PSAP is not in compliance with PSAP certification requirements if records are not kept and maintained as provided in this rule.

AUTH: 10-4-108, MCA

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

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

To facilitate monitoring, the department has proposed a requirement that certified PSAPs provide annual reports of expenditures and submit to audits. Although the department considered less frequent financial reports, local government entities were providing reports annually under prior law, and that has enabled the department to ensure funds were used for 9-1-1 purposes. The longer it takes for the department to become aware that funds have been misallocated, the more difficult it will be for local government entities to collect and repay the funds. The department does not expect to audit each annual report submitted by a local government entity every year, but the department will audit as needed to verify the information provided in annual reports and ensure local government entities are providing accurate information to the department.

The rule advises local government entities that they must keep records regarding the expenditure of funds received from the 9-1-1 systems account for a period of five years, which parallels existing record retention requirements.

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., January 19, 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 web site at <http://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 web site accessible at all times, concerned persons should be aware that the web site 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 September 1, 2017, 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 VIII 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 December 11, 2017.