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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

47 CFR Part 400

[Docket No. 170420407-8048-02]

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911 Grant Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce (DOC); and National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action revises the implementing regulations for the 911 Grant Program, as a result of the enactment of the Next Generation 911 (NG911) Advancement Act of 2012. The 911 Grant Program provides grants to improve 911 services, E-911 services, and NG911 services and applications.

DATES: This final rule becomes effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background

- II. Statutory Requirements
- III. Comments
 - A. General Comments
 - B. Definitions (400.2)
 - C. Who May Apply (400.3)
 - 1. Tribal Organizations
 - 2. Local Applicants
 - D. Application Requirements (400.4)
 - 1. One versus Two Step Application Process
 - 2. Other Application Issues
 - E. Approval and Award (400.5)
 - F. Distribution of Grant Funds (400.6)
 - 1. Formula
 - 2. Tribal Organizations
 - G. Eligible Uses for Grant Funds (400.7)
 - 1. NG911 Services
 - 2. Training
 - 3. Planning and Administration
 - 4. Operation of 911 System
 - H. Continuing Compliance (400.8)
 - I. Waiver Authority (400.11)
- IV. Regulatory Analyses and Notices
 - I. **Background**

In 2009, NTIA and NHTSA issued regulations implementing the E-911 Grant Program enacted in the Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004 (Pub. L. 108-494, codified at 47 U.S.C. 942) (74 FR 26965, June 5, 2009). Accordingly, in 2009, NTIA and NHTSA made more than \$40 million in grants available to 30 States and Territories to help 911 call centers nationwide upgrade equipment and operations through the E-911 Grant Program.

In 2012, the NG911 Advancement Act of 2012 (Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, Title VI, Subtitle E (codified at 47 U.S.C. 942)) enacted changes to the program. The NG911 Advancement Act provides new funding for grants to be used for the implementation and operation of 911 services, E-911 services, migration to an IP-enabled emergency network, and adoption and operation of NG911 services and applications; the implementation of IP-enabled emergency services and applications enabled by Next Generation 911 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services. In 2016, about \$115 million from spectrum auction proceeds were deposited into the Public Safety Trust Fund and made available to NTIA and NHTSA for the 911 Grant Program.¹

¹ The Public Safety Trust Fund (TAS 13-12/22-8233) is an account established in the Treasury and managed by NTIA. From this account, NTIA makes available funds for a number of public safety related programs, including the 911 Grant Program. *See* 47 U.S.C. 1457(b)(6).

On September 21, 2017, the Agencies published a Notice of Proposed Rulemaking (NPRM) seeking public comment on proposed regulations for the 911 Grant Program.²

For more than 40 years, local and state 911 call centers, also known as Public Safety Answering Points (PSAPs), have served the public in emergencies. PSAPs receive incoming 911 calls from the public and dispatch the appropriate emergency responders, such as police, fire, and emergency medical services, to the scene of emergencies. The purpose of the 911 Grant Program is to provide federal funding to support the transition of PSAPs and their interconnecting 911 network and core services, to facilitate migration to an IP-enabled emergency network, and adoption and operation of NG911 services and applications.

There are approximately 6,000 PSAPs nationwide that are responsible for answering and processing 911 calls requiring a response from police, fire, and emergency medical services agencies.³ PSAPs collectively handle more than an estimated 240 million 911 calls each year.⁴ About 70 percent of all 911 calls annually are placed from wireless phones.⁵ Besides the public, PSAPs communicate with third-party call centers, other PSAPs, emergency service providers (e.g., dispatch agencies, first responders, and other public safety entities), and State emergency

² See NTIA and NHTSA, 911 Grant Program, Notice of Proposed Rulemaking, 82 FR 44131 (Sept. 21, 2017), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2017-09-21/pdf/2017-19944.pdf> (NPRM).

³ Federal Communications Commission (FCC), Final Report of the Task Force on Optimal PSAP Architecture (TFOPA) at 15 (Jan. 29, 2016), *available at* https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_FINALReport_012916.pdf (TFOPA Final Report). The National Emergency Number Association (NENA) estimates that there are 5,874 primary and secondary PSAPs as of January 2017. NENA 9-1-1 Statistics, *available at* <http://www.nena.org/?page=911Statistics>.

⁴ TFOPA Final Report at 15. *See also*, NENA 9-1-1 Statistics.

⁵ *Id.*

operations centers.⁶ Most PSAPs rely on decades-old, narrowband, circuit-switched networks capable of carrying only voice calls and very limited amounts of data.⁷ Advances in consumer technology offering capabilities such as text messaging and video communications have quickly outpaced those of PSAPs, which often cannot support callers who wish to send text messages, images, video, and other communications that utilize large amounts of data (*e.g.*, telematics, sensor information).⁸

While there are still an estimated 50 counties that are using “Basic” 911 infrastructure, the majority of State and local jurisdictions have completed the process of updating their 911 network’s infrastructure since the ENHANCE 911 Act was passed in 2004.⁹ As of January 2017, data collected by the National Emergency Number Association (NENA) show that 98.6 percent of PSAPs are capable of receiving Phase II E-911¹⁰ calls, providing E-911 service to 98.6 percent of the U.S. population and 96.5 percent of our country’s counties.¹¹ With the transition to E-911 essentially completed, State and local jurisdictions are now focused on migrating to NG911 infrastructure.

NG911 is an initiative to modernize today’s 911 services so that citizens, first responders, and 911 call-takers can use IP-based, broadband-enabled technologies to coordinate emergency

⁶ TFOPA Final Report at 15.

⁷ *Id.*

⁸ *Id.*

⁹ NENA 9-1-1 Statistics.

¹⁰ *See* 47 CFR § 20.18(e), (h) (defining Phase II enhanced 911 service).

¹¹ NENA 9-1-1 Statistics.

responses.¹² Using multiple formats, such as voice, text messages, photos, and video, NG911 enables 911 calls to contain real-time caller location and emergency information, improve coordination among the nation's PSAPs, dynamically re-route calls based on location and PSAP congestion, and connect first responders to key health and government services in the event of an emergency.¹³

Data collected by the National 911 Profile Database in 2016 show that 20 of the 46 States submitting data have adopted a statewide NG911 plan, 17 of 46 States are installing and testing basic components of the NG911 infrastructure, 10 of 45 States have 100 percent of their PSAPs connected to an Emergency Services IP Network, and 9 of 45 States are using NG911 infrastructure to receive and process 911 voice calls.¹⁴ These data suggest that most State and local jurisdictions have already invested in and completed implementation of both basic 911 services and E-911 services and are focused on migration to NG911. The 911 Grant Program now seeks to provide financial support for investment in the forward-looking technology of NG911 as contemplated by the NG911 Advancement Act.

II. Statutory Requirements

The Agencies' action implements modifications to the E-911 Grant Program as required by the NG911 Advancement Act of 2012 (Pub. L. 112-96, Title VI, Subtitle E, codified at 47 U.S.C.

¹² National 911 Program, Next Generation 911 for Leaders in Law Enforcement Educational Supplement at 3 (2013), *available at* https://www.911.gov/pdf/National_911_Program_NG911_Publication_Leaders_Law_Enforcement_2013.pdf.

¹³ *Id.* at 4-5.

¹⁴ National 911 Program, 2016 National 911 Progress Report at 3, 85, 89 (Dec. 2016), *available at* https://www.911.gov/pdf/National_911_Program_Profile_Database_Progress_Report_2016.pdf.

942). The NG911 Advancement Act modifies the 911 Grant Program to incorporate NG911 services while preserving the basic structure of the program, which provided matching grants to eligible State and local governments and Tribal Organizations for the implementation and operation of Phase II services, E-911 services, or migration to an IP-enabled emergency network.

The NG911 Advancement Act, however, broadens the eligible uses of funds from the 911 Grant Program to include: adoption and operation of NG911 services and applications; the implementation of IP-enabled emergency services and applications enabled by NG911 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services. The NG911 Advancement Act also increases the maximum Federal share of the cost of a project eligible for a grant from 50 percent to 60 percent.

States or other taxing jurisdictions that have diverted fees collected for 911 services remain ineligible for grants under the program and a State or jurisdiction that diverts fees during the term of the grant must repay all grant funds awarded. The NG911 Advancement Act further clarifies that prohibited diversion of 911 fees includes elimination of fees as well as redesignation of fees for purposes other than implementation or operation of 911 services, E-911 services, or NG911 services during the term of the grant.

III. Comments

The Agencies received submissions from 21 commenters in response to the NPRM. Commenters included the following five State and local agencies: the City of Chicago Office of Emergency Management and Communications (Chicago OEMC); the Colorado Public Utilities

Commission (CO PUC); the District of Columbia Office of Unified Communications (DC OUC); the Missouri Department of Public Safety (MO DPS); and the Texas Commission on State Emergency Communications (TX CSEC). Four associations and consortiums provided comments: the Association of Public-Safety Communications Officials– International, Inc. (APCO); the National Association of State 911 Administrators (NASNA); the National Emergency Number Association, Inc. (NENA); and the National States Geographic Information Council (NSGIC). There were two corporate commenters: Carbyne Public Safety Systems (Carbyne) and Motorola Solutions, Inc. (Motorola). Ten individual commenters also provided comments: Annabel Cortez; Daniel Ramirez; John Sage; Jonathan Brock; Lara Wood; Lisa Ondatje; S. Bennett; and three anonymous commenters. Of these comments, three were out of the scope of this rulemaking.¹⁵

A. General Comments

NASNA expressed general agreement with the Agencies' proposal to retain the E911 Grant Program regulations as the basic framework for the 911 Grant Program.¹⁶ We address NASNA's specific recommendations in the sections below.

APCO recommended consistent use of “the National 911 program office” for purposes of administering the grant program in order to provide simplicity and avoid confusion.¹⁷ The regulatory text contains references to the ICO, the Administrator and Assistant Secretary

¹⁵ An anonymous commenter commented broadly on EPA grants. Jonathan Brock and the Missouri Department of Public Safety both commented to encourage inter-agency sharing of dark fiber resources at the State level. However, the 911 Grant Program is an implementation grant and does not opine on the technologies used by grantees to implement NG911.

¹⁶ NASNA at 1, <https://www.regulations.gov/document?D=NTIA-2017-0002-0016>.

¹⁷ APCO at 5, <https://www.regulations.gov/document?D=NTIA-2017-0002-0010>.

(jointly), the Agencies, and to NHTSA. After reviewing these references, the Agencies have determined that, with the exception of one reference, these designations are appropriate to the roles fulfilled in each case. As a result, the Agencies have changed the reference to “Agencies” in 47 CFR § 400.6(a)(2) to “ICO.”

Three commenters, Lisa Ondatje, Annabel Cortez, and S. Bennett, expressed general support for the importance of implementing NG911 technologies.¹⁸ Annabel Cortez further stressed that “[s]tatistics of 911 services are key to accurately measuring current status and implementation across the United States.”¹⁹

Four commenters discussed interoperability as a primary goal of the 911 Grant Program.²⁰ APCO commented that the standards listed in the SAFECOM Guidance are “very broad, in some cases incomplete, and unlikely to ensure interoperability, at least without costly after-the-fact integrations.”²¹ APCO recommended that the Agencies add a definition for “interoperable” and explicitly require that applicants’ State 911 plans commit to ensuring that solutions meet clear interoperability requirements.²² Specifically, APCO suggested that the Agencies replace the word “interconnect” in 47 CFR 400.4(a)(1)(i)(B) with the term “interoperable.”²³ The proposed

¹⁸ *See generally*, Lisa Ondatje, <https://www.regulations.gov/document?D=NTIA-2017-0002-0007>; Annabel Cortez, <https://www.regulations.gov/document?D=NHTSA-2017-0088-0004>; S. Bennett, <https://www.regulations.gov/document?D=NTIA-2017-0002-0003>.

¹⁹ Cortez.

²⁰ *See* APCO at 1-3; Carbyne, <https://www.regulations.gov/document?D=NHTSA-2017-0088-0008>; NENA at 2 (late-filed), <https://www.regulations.gov/document?D=NTIA-2017-0002-0017>; NSGIC at 1, <https://www.regulations.gov/document?D=NTIA-2017-0002-0009>.

²¹ APCO at 2.

²² *Id.* at 3.

²³ *Id.*

regulatory language in Section 400.4(a)(1)(i)(B) is a direct quote from the statute.²⁴ While the Agencies agree that interoperability is an important goal in the implementation of an NG911 system, the Agencies believe that the statutory term “interconnect” sufficiently covers the goal of interoperability, and make no change to the regulation in response to this comment.

B. Definitions (400.2)

The DC OUC suggested that the agencies add a definition for “District” or “territories.”²⁵ The statutory definition for “State,” which the agencies have incorporated into the regulation in its entirety, includes the District of Columbia and all U.S. territories,²⁶ therefore the agencies decline to make this change.

Two commenters requested changes to the definition for “Next Generation 911 services.” NASNA noted that some of the capabilities listed in the definition for Next Generation 911 services do not currently exist, and suggested that the definition be modified to clarify this.²⁷ APCO requested clarification that NG911 services encompass the “operational goal whereby information sent to PSAPs can be received, processed, and acted upon.”²⁸ The agencies decline to make the requested changes because the regulatory definition incorporates the statutory definition.²⁹ However, in the eligible uses section of the NPRM, the agencies specifically stated

²⁴ See 47 U.S.C. 942(b)(1)(B).

²⁵ DC OUC, <https://www.regulations.gov/document?D=NTIA-2017-0002-0005>.

²⁶ See 47 U.S.C. 942(e)(8).

²⁷ NASNA at 1.

²⁸ APCO at 2.

²⁹ See 47 U.S.C. 942(e)(5).

that grant recipients may choose to purchase or contract for services that provide the “hardware and software that perform the necessary functions enabling NG911 calls to be received, processed and dispatched.”³⁰ We reaffirm that here.

C. Who May Apply (400.3)

1. Tribal Organizations

Daniel Ramirez, NASNA, NENA, and an anonymous commenter all expressed general support for the Agencies’ proposal to allow Tribal Organizations to apply directly for 911 Grant Program funding, noting that the prior regulations only allowed Tribal Organizations to receive grant funding through States and thus did not adequately support tribes.³¹ The anonymous commenter further noted that Tribal Organizations may have difficulty meeting program requirements, but did not specify which requirements.

The CO PUC cautioned the Agencies not to create a “one-size fits all” approach for Tribal Organization applications and participation because Tribal Organizations vary widely in “size, resources, and the current sophistication of their 9-1-1 systems.”³² The CO PUC further noted that the ability of Tribal Organizations to meet the non-diversion, 911 Coordinator, or match requirements would likely vary by Tribal Organization.³³ The Agencies agree that the needs and capacities of Tribal Organizations may vary widely. The Agencies believe that providing Tribal

³⁰ NPRM, 82 FR 44131, 44135.

³¹ Daniel Ramirez, <https://www.regulations.gov/document?D=NHTSA-2017-0088-0006>; NASNA at 1-2; NENA at 1; Anonymous Comment One, <https://www.regulations.gov/document?D=NHTSA-2017-0088-0002>.

³² CO PUC at 2, <https://www.regulations.gov/document?D=NTIA-2017-0002-0012>.

³³ *Id.* at 1-2.

Organizations the option to apply for grant funding either directly or through States accommodates this diversity.

The CO PUC cautioned that if Tribal Organizations are allowed to obtain grant funding both directly and through States, it could lead to waste or duplication of efforts.³⁴ The CO PUC recommended that the Agencies require Tribal Organizations to determine whether to apply individually or to be included in a State's application.³⁵ Similarly, NASNA recommended that the Agencies require any applicant Tribal Organizations to inform the relevant State 911 Coordinator of their application in order to avoid duplication of efforts.³⁶ As in the prior iteration of the program, each State applicant must coordinate its application with local governments, Tribal Organizations, and PSAPs within the State.³⁷ In the course of this coordination—and prior to including a Tribal Organization in its application project budget—the State should determine whether a Tribal Organization within its jurisdiction intends to apply directly for grant funding. An applicant Tribal Organization must certify non-diversion by the State(s) in which it is located; to do so, a Tribal Organization should contact the State(s) in which it is located.³⁸ The Agencies believe that the existing coordination inherent in the application process ensures that a State will not unknowingly account for a Tribal Organization in its grant application if that Tribal Organization has applied independently, and therefore, we do not believe any changes to the regulation are required.

³⁴ *Id.* at 1.

³⁵ *Id.*

³⁶ NASNA at 1-2.

³⁷ 47 CFR 400.4(a)(1)(iii)(A).

³⁸ *Id.* at § 400.4(b)(5).

The Agencies specifically asked commenters whether tribal PSAPs collect 911 surcharge fees and/or receive State-provided 911 surcharge funds. The CO PUC responded that 911 surcharges are collected by local 911 governing bodies in Colorado and that one tribe, the Southern Ute Tribe, receives funding from the Emergency Telephone Service Authority of La Plata County. However, the CO PUC stated that it does not have reason to believe that the Southern Ute Tribe will have trouble certifying that it does not divert 911 surcharge fees.³⁹

2. Local applicants

The Chicago OEMC suggested that cities with large 911 systems be allowed to apply directly for grants due to “the expansive scope of their operations as well as their specialized requirements.”⁴⁰ While the Agencies understand this concern, the Agencies continue to believe that limiting the applicant pool to States and Tribal Organizations is necessary in order to minimize administrative costs and to streamline the grant process. However, as in the prior iteration of the program, each applicant State is required to coordinate its application with local governments and PSAPs within the State and to ensure that 90 percent of the grant funds be used for the direct benefit of PSAPs.

D. Application Requirements (400.4)

1. One versus Two Step Application Process

The Agencies sought comment on whether to retain the one-step application process from the prior E911 Grant Program, or whether to use a proposed two-step application process. Two commenters, Motorola and the MO DPS, requested that the Agencies retain the one-step

³⁹ CO PUC at 2.

⁴⁰ Chicago OEMC, <https://www.regulations.gov/document?D=NTIA-2017-0002-0013>.

application process from the prior E911 Grant Program.⁴¹ Motorola explained that the one-step application would expedite the grant process and avoid confusion amongst applicants, and argued that the proposed two-step application process is burdensome by requiring 911 authorities to meet two deadlines.⁴² Four commenters—the CO PUC, NASNA, the TX CSEC, and an anonymous commenter—supported a two-step application process as proposed by the Agencies.⁴³ Based on the comments received, including the more detailed comments described below, the Agencies have determined that a two-step application will provide applicants with the most stable initial funding levels upon which they can prepare project budgets and will ensure the most efficient application process.

NASNA expressed support for a two-step process, while noting several issues that may still arise under that process.⁴⁴ NASNA noted that, for example, applicants may make the initial certifications, but later find they are unable to meet the match requirement or certify non-diversion of funds.⁴⁵ Nonetheless, NASNA stated that “there is practical value to states in knowing exactly how much funding they can apply for.”⁴⁶

The CO PUC noted that the two-step application process would be more efficient because it would not require applicants to submit a supplemental project budget after submitting their

⁴¹ See Motorola at 4-5, <https://www.regulations.gov/document?D=NTIA-2017-0002-0015>; MO DPS, <https://www.regulations.gov/document?D=NTIA-2017-0002-0014>.

⁴² See Motorola at 4-5.

⁴³ See CO PUC at 3; NASNA at 2; TX CSEC at 2, <https://www.regulations.gov/document?D=NTIA-2017-0002-0011>; Anonymous Comment One.

⁴⁴ NASNA at 2.

⁴⁵ *Id.*

⁴⁶ *Id.*

original applications.⁴⁷ The Agencies do note, however, that although a supplemental budget is no longer required, applicants are still advised to submit a supplemental budget in the second step of the application process for use if additional funds become available at any point in the grant program.

The TX CSEC requested confirmation on some aspects of the two-step application process.⁴⁸ The TX CSEC asked whether an applicant that does not submit the certifications by the initial application deadline would be precluded from further participation in the grant program.⁴⁹ It further asked whether, in the event a State did not submit the initial certifications, “the portion of 911 grant funds that would otherwise be allocated to it by formula would be included in the preliminary funding allocations for certifying Applicants?”⁵⁰ In order to participate in the grant program, an applicant must submit the initial certifications by the initial application deadline. Failure to do so will remove that State from the funding pool; the preliminary funding levels will be calculated only for those applicants that submitted initial certifications. Finally, TX CSEC sought confirmation that the option to submit a supplemental project budget is meant to “to account for the possibility that, notwithstanding having submitted an acceptable initial certification, an Applicant may (a) ultimately not submit an application, (b) may submit an application with a budget less than its preliminary funding amount; (c) not be able to use all of its preliminary funding during the grant period, or (d) have to return a portion of grant funds as a

⁴⁷ CO PUC at 3.

⁴⁸ TX CSEC at 2-3.

⁴⁹ *Id.*

⁵⁰ *Id.* at 2.

result of being unable to provide a complete annual certification regarding or a previous certification was deemed inaccurate.”⁵¹ The Agencies confirm this statement.

The anonymous commenter recommended that the two-step process “should be implemented and run for a trial period,” and that the Agencies make modifications or return to the one-step process if the trial does not work.⁵² The funds made available from the Public Safety Trust Fund for the 911 Grant Program are available for obligation only until September 30, 2022. The Agencies do not believe that there is sufficient time before that date to undertake a second rulemaking to change the application process.

2. Other Application Issues

The DC OUC requested that the required State 911 Plan be “defined well,” noting that although DC has an NG911 Plan, it does not have a State 911 Plan because DC only has a single PSAP.⁵³ Without specific concerns from commenters, the Agencies do not believe it is necessary to clarify those requirements further because the application requirements laid out in Section 400.4 provide a detailed description of the required components of a State 911 Plan. The Agencies note that in instances like that of DC where there is a single PSAP in an applicant’s jurisdiction, it is not necessary to include multiple PSAPs in the State 911 Plan as described in the regulation.

The MO DPS stated that “the requirement to give priority to communities without 911 from the current E-911 Grant Program should not be eliminated.”⁵⁴ The ENHANCE 911 Act, as

⁵¹ *Id.* at 2-3.

⁵² *See* Anonymous Comment One.

⁵³ *See* DC OUC.

⁵⁴ MO DPS.

amended by Pub. L. 110-53,⁵⁵ directed the Agencies to allow a portion of the E-911 grant funds to be used to give this priority to PSAPs that could not receive 911 calls. The NG911 Advancement Act, however, eliminated that requirement and the Agencies do the same in this regulation.

The TX CSEC commented that the certification requirement “obligates each designated State 911 Coordinator (the Coordinator) to certify as to the non-diversion of designated 911 charges for all grant recipients,” including “taxing jurisdictions and grant recipients over whom the Coordinator may have no direct authority.”⁵⁶ TX CSEC proposed modifications to Section 400.4(a)(5) and Appendices A and C in order “to allow the State 9-1-1 Coordinator to receive and submit certifications directly from each taxing jurisdiction that will be a grant recipient,” so that the 911 Coordinator could “pass-through the certifications of [these] taxing jurisdictions.”⁵⁷ Applicants, through their 911 Coordinator, must certify that neither the State (or Tribal Organization) nor any taxing jurisdiction that directly receives grant funds has diverted or will divert designated 911 charges. The Agencies understand that applicants may not have authority over every taxing jurisdiction which receives grant funds. However, the statutory language and certification requirements are clear that each applicant must sign the certification. Applicants may, if they wish, solicit certifications from grant subrecipients as an internal matter, but the certification submitted to the Agencies must be signed by the 911 Coordinator. The Agencies, therefore, make no modifications to the regulatory language.

⁵⁵ Title XXIII, section 2303, Aug. 3, 2007.

⁵⁶ TX CSEC at 3.

⁵⁷ *Id.* at 3-4.

APCO recommended that the Agencies allow applicants “that have already expended non-federal funds toward NG911 deployments to count such expenses as in-kind contributions” to satisfy the grant program's 40 percent non-Federal match requirement.⁵⁸ To allow applicants to match grant funds based on previous investments in 911 would be contrary to the statutory intent. The NG911 Advancement Act mandates a 60 percent Federal share at the project level.⁵⁹ The Agencies refer all applicants to 2 CFR § 200.306 for more details on what is allowable to meet the match requirement.

E. Approval and Award (400.5)

Lara Wood commented that 47 CFR § 400.5(c) states that the agencies will announce awards by September 30, 2009, and suggested that the date should read September 30, 2019.⁶⁰ September 30, 2009, is the date that appeared in the previously published E-911 Grant Program regulations. The new regulatory language does not include a specific award announcement date. Instead, the Agencies intend to provide the expected award date in the Notice of Funding Opportunity.

F. Distribution of Grant Funds (400.6)

1. Formula

The Agencies requested comment on whether the existing grant distribution formula factors—population and public road mileage—remain appropriate, and if not, what factors they should consider. The Agencies sought specific comment on how to account for remote and rural areas.

⁵⁸ APCO at 4.

⁵⁹ 47 U.S.C. 942(b)(2).

⁶⁰ See Lara Wood, <https://www.regulations.gov/document?D=NTIA-2017-0002-0004>.

APCO commented that the Agencies' proposal to apportion “available grant funds across all of the states and tribal organizations, to serve 911, Enhanced 911 (E911), and NG911 purposes” would lead to only marginal enhancements in any given area.⁶¹ Instead, APCO suggested that the Agencies give grants for “model NG911 deployments for a few areas.”⁶² While the Agencies understand APCO's concerns, the Agencies continue to believe that a formula-based distribution of grant funds to all eligible States is necessary to assist in the implementation of NG911 nationwide, not just in specific locations. The Agencies have set a minimum grant amount in order to ensure that each eligible State and Territory receives a more than de minimis amount of grant funds.

Several commenters—identified in more detail below—recommended additional or substitute factors to use in the funding allocation, including call volume, land area, tourism rates, terrain, cost of needed technological advancements, usage data of call centers, wealth of state/region, access to hospitals/emergency centers, and type of threat experienced by location.

The MO DPS expressed support for retaining the current formula factors: population and public road mileage.⁶³ An anonymous commenter expressed support for using population and public road mileage as factors for distribution of funds, and suggested the following additional potential factors: “data regarding the usage of call centers in those areas, wealth of the state or region and their access to hospitals and emergency centers.”⁶⁴ However, the anonymous commenter did not provide any explanation for those factors. NASNA stated that the currently

⁶¹ APCO at 1.

⁶² *Id.*

⁶³ *See* MO DPS.

⁶⁴ Anonymous Comment One.

proposed formula may not adequately fund rural areas, but cautioned against choosing a factor that advantages rural states with a large land mass over smaller rural states.⁶⁵

The DC OUC and the Chicago OEMC both suggested using call volume as a factor in the funding allocation in order to account for locations that have high tourist and commuter populations.⁶⁶ Funds for the 911 Grant Program are distributed at the State level, rather than at the PSAP level. The Agencies are concerned that call volume, which might provide useful localized data, would be less useful once aggregated across a State with a mix of urban and rural areas.

Similarly, the CO PUC commented that it does not support the currently proposed formula because it is unfair to rural, mountainous states such as Colorado that have large tourist populations.⁶⁷ The CO PUC agreed that cell towers retain an important role in the transmission of 911 calls to PSAPs, but disagreed with the Agencies' use of road miles as a proxy for cell towers because cell towers in Colorado are often built on mountain peaks far from roads.⁶⁸ The CO PUC recommended the following formula: 40 percent population, 40 percent land area, and 20 percent tourism rates.⁶⁹ The CO PUC further recommended that the Agencies consider including terrain as a factor in distributing grant funding.⁷⁰ The Agencies acknowledge the difficulty of accounting for tourism and terrain differences between states. However, the

⁶⁵ NASNA at 2.

⁶⁶ *See* DC OUC, Chicago OEMC.

⁶⁷ CO PUC at 4.

⁶⁸ *Id.*

⁶⁹ CO PUC at 5-6.

⁷⁰ *Id.*

commenter has not identified a reliable source for State-level tourism rates, nor provided any recommendation for translating terrain into a formula variable.

An anonymous commenter supported better accounting for rural areas and advocated a weighted tiered system with individualized factors—including weighted scales to account for the types of threats to safety as well as the cost and type of the technological advancements needed—for determining grant funding amounts in order to provide for more flexibility.⁷¹ The commenter further recommended breaking States into geographic regions “so grants can be distributed to areas justifiably with public input.”⁷² While the Agencies appreciate the importance of directing grant funds where they are needed most, the Agencies recognize that it is necessary to streamline the grant process in order to provide timely awards. In addition, the Agencies do not have the expertise to make this type of localized determination. The Agencies believe that States are best situated to determine the needs of localities within their borders. The Agencies have, therefore, limited applications to States and Tribal Organizations. The Agencies make no change to the rule in response to this comment.

After considering the comments submitted, and consistent with the Agencies’ specific responses above, the Agencies have determined that the existing formula, which equally accounts for population and road miles, is the most reliable method for calculating the distribution of 911 Grant Program funds.

2. Tribal Organizations

⁷¹ See Anonymous Comment Two, <https://www.regulations.gov/document?D=NHTSA-2017-0088-0005>.

⁷² *Id.*

The Agencies specifically sought comment on how to distribute grant funds to Tribal Organizations. Two commenters, the CO PUC and an anonymous commenter, expressed support for applying the same formula to States and Tribal Organizations as proposed by the Agencies.⁷³ The CO PUC further recommended setting a floor level of funding for Tribal Organizations, similar to the minimum grant amounts provided for States and Territories.⁷⁴ The Agencies decline to set a minimum grant amount for Tribal Organizations because the size of Tribal Organizations varies so widely that a minimum funding level could create inequities and inefficiencies. Therefore, the Agencies will retain the proposed maximum funding level applicable to Tribal Organizations.

G. Eligible Uses for Grant Funds (400.7)

The regulatory language of 47 CFR § 400.7 lays out the broad parameters of eligible use of 911 Grant Program funds. The Agencies provided additional clarification on certain specific uses of funds in the preamble to the NPRM. The Agencies received several comments relating to these uses. In order to keep the regulatory language broad, and to provide flexibility to grant recipients, the Agencies make no change to the regulatory language in response to these comments, but will address those comments here to provide further clarification.

1. NG911 Services

APCO and the CO PUC expressed support for the Agencies' proposal to provide grant recipients the flexibility to determine whether to provide NG911 services directly or through a contract.⁷⁵ APCO further suggested that the Agencies encourage applicants to “propose forward-

⁷³ See CO PUC at 5, Anonymous Comment One.

⁷⁴ See CO PUC at 5.

⁷⁵ See APCO at 3, CO PUC at 6-7.

thinking solutions for NG911, even if the proposals deviate from traditional approaches to NG911 network architectures.”⁷⁶ Provided that the hardware, software, and/or services comply with current NG911 standards, the Agencies do not proscribe specific architecture for a grantee's NG911 system.

The DC OUC and the MO DPS requested that the Agencies add consulting services to assist with the NG911 transition and deployment as an eligible cost.⁷⁷ In 47 CFR § 400.9(a), the Agencies identified the requirements of 2 CFR Part 200, including the cost principles in Subpart E, as applicable to the grants awarded under this program. In accordance with those cost principles, consultant costs are allowable provided that certain conditions are met. Commenters are directed to the applicable cost principle, 2 CFR § 200.459 – Professional service costs, for detail.

NENA supports the Agencies' incorporation of the NG911 standards, as listed in the DHS SAFECOM Guidance, Appendix B, which NENA notes incorporates by reference many NENA standards.⁷⁸ NENA specifically urged the Agencies to encourage grant recipients to implement i3-based deployments, relying on the NENA i3 standard laid out in “Detailed Functional and Interface Specifications for the NENA i3 Solution.”⁷⁹ Similarly, NSGIC commented that the Agencies should more explicitly require applicants to follow NENA's i3 standard, instead of the

⁷⁶ APCO at 3.

⁷⁷ *See* DC OUC, MO DPS.

⁷⁸ *See* NENA at 2.

⁷⁹ *Id.*

existing incorporation of the DHS SAFECOM Guidance.⁸⁰ The Agencies would like to clarify that the SAFECOM Guidance contains a list of acceptable standards which is a vital resource for developing an NG911 system that meets the goal of interoperability. The Agencies reaffirm the requirement for grant recipients to specify that hardware, software, and services comply with current NG911 standards; however, individual products only need to meet the relevant standard(s) within the list of standards in the SAFECOM Guidance. As NENA notes in its comment, the DHS SAFECOM Guidance incorporates by reference the 911 Program's "NG911 Standards Identification and Review," which in turn lists NENA's i3 standard.

Conversely, the CO PUC recommended that States be able to apply for waivers of the requirement that hardware, software, and services comply with the current NG911 standards listed in DHS's SAFECOM Guidance in certain instances—for example, when unable to find a product that meets all of the listed standards.⁸¹ The Agencies do not believe that waivers are the most effective means of addressing the problem of vendors that do not meet existing standards. Rather, any vendor that believes it is impossible to meet existing standards is encouraged to work with the relevant Standards Development Organization (SDO) to revise existing standards.

Carbyne expressed support for innovative solutions in NG911 and recommended that "any allocation of grant funds must come with the requirement that software and hardware be able to communicate with different PSAPs based on clearly defined standards that the FCC demands."⁸² The FCC has jurisdiction to regulate the telecommunications service providers that deliver 911 calls from the public to PSAPs, whereas the 911 Grant Program provides funds for the direct

⁸⁰ NSGIC at 1-2.

⁸¹ CO PUC at 7.

⁸² Carbyne.

benefit of PSAPs to improve the 911 system. FCC standards, therefore, are not applicable to hardware and software purchased using 911 Grant Program funds.

NSGIC commented that development and maintenance of geospatial datasets are necessary in order to support the desired NG911 services of call routing and coordinated incident response and management.⁸³ NSGIC provided suggested regulatory language modifications to the definition of Next Generation 911 services (Section 400.2), to the Application requirements section (Section 400.4(a)(1)(i)(B)), and to the Eligible uses section (Section 400.7(b)) to incorporate geographic information system (GIS) data.⁸⁴ The Agencies agree that GIS data is an integral component of the NG911 system. However, GIS data is already included in the broader terms “software” and “data,” which are used in the specified regulatory provisions. Furthermore, the regulatory provisions to which NSGIC provides recommended modifications are taken directly from the statutory language. Therefore, the Agencies decline to make the suggested modifications.

The CO PUC requested clarification as to what qualifies as an “NG911 application eligible for funding,” and specifically asked whether a Computer Aided Dispatch (CAD) system configured similar to an Emergency Services IP-network, or a CAD or radio system that is interoperable with the NG911 network, would be considered an eligible “NG911 application.”⁸⁵

The regulation allows use of funds for “IP-enabled emergency services and applications enabled

⁸³ NSGIC at 1.

⁸⁴ *Id.* at 2.

⁸⁵ CO PUC at 6.

by NG911 services.”⁸⁶ Whether a CAD or a radio system is an eligible application enabled by NG911 services, therefore, depends on whether the CAD or radio system is IP-enabled.

NENA urged the Agencies to “encourage applicants to include relevant [independent verification and validation testing (IV&V)] for all proposed product, service, and system purchases funded with grant monies, or to fund collaborative, multi-jurisdictional IV&V testing” to ensure interoperability.⁸⁷ The NG911 Advancement Act was established to facilitate implementation of NG911 services. While IV&V testing may be a useful tool for grantees, the Agencies do not believe that IV&V testing by individual States is an effective or efficient use of the limited grant funds available at this time.

2. Training

The Agencies requested comment on whether they should set a limit on the amount of 911 Grant Program funds that may be used for training and whether training funds should be limited to training designed to meet the “Recommended Minimum Training Guidelines for Telecommunicators,”⁸⁸ developed as part of a three-year effort by the National 911 program office. Two commenters, APCO and Motorola, stated that use of 911 Grant Program funds for training should not be limited to training designed to meet the “Recommended Minimum Training Guidelines for Telecommunicators.”⁸⁹ APCO recommended that eligible training

⁸⁶ 47 CFR 400.7(b).

⁸⁷ NENA at 1-2.

⁸⁸ See National 911 Program, “Recommended Minimum Training Guidelines for Telecommunicators” (May 19, 2016), *available at* http://www.911.gov/pdf/Recommended_Minimum_Training_Guidelines_for_the_911_Telecommunicator_FINAL_May_19_2016.pdf (Minimum Training Guidelines).

⁸⁹ See APCO at 4, Motorola at 4.

“should be related to operationalizing NG911 capabilities,” whereas Motorola recommended that “NG9-1-1 grant program funds should therefore be made available to support all levels of 9-1-1 services training.”⁹⁰ The CO PUC expressed support for the Minimum Training Guidelines developed by the National 911 Program Office and commented that those guidelines were not unduly burdensome. The CO PUC then stated that it recommends that training expenses “be strictly limited to training pertaining to NG9-1-1 transition and implementation,” but does not believe that there should be a limit on the amount of funds expended on training.⁹¹

After considering the comments received, the Agencies believe that it is important to retain flexibility for grant recipients while ensuring efficient use of funds to meet the statutory intent to assist implementation of NG911. Therefore, the Agencies will not set a limit on the amount of funds that may be used for training. However, 911 Grant Program funds may only be used for training that is related to NG911 implementation and operations. In order to ensure similar levels of training across the different components of NG911, the “Recommended Minimum Training Guidelines for Telecommunicators” must serve as a base level for training provided.

In response to the Agencies' request for comment on possible methods of documentation of PSAP compliance with the Minimum Training Guidelines, the CO PUC recommended certification by the 911 coordinator.⁹² The Agencies' goal is to ensure that training provided using 911 Grant Program funding at least meet the Minimum Training Guidelines with the least burden on grantees. As such, the Agencies will require grantees to submit documentation that

⁹⁰ APCO at 4, Motorola at 4.

⁹¹ CO PUC at 7.

⁹² *See id.* at 8.

describes the training being provided and that identifies the included elements from the Minimum Training Guidelines.

The CO PUC recommended that the Agencies allow recipients to use grant funds to “establish an ongoing training program for public safety telecommunicators.”⁹³ The Agencies believe that establishing an ongoing training program is already an allowable expense under the program, though some costs of establishing such a program may qualify as administrative expenses subject to the 10 percent maximum.

3. Planning and Administration

The Agencies proposed allowing the use of funds for an assessment, using the FCC's “NG911 Readiness Scorecard,”⁹⁴ in order to assist States in determining the status of their current 911 systems as part of the NG911 implementation process. APCO and the CO PUC both agreed with the Agencies' proposal to allow grant recipients to use a portion of the 10 percent maximum for administrative costs to perform an assessment of the current 911 system.⁹⁵ However, APCO stated that “the Office should avoid limiting applicants' self-assessments to any particular tool,” such as the NG911 Readiness Scorecard.⁹⁶ The NG911 Readiness Scorecard was developed by the Task Force on Optimal Public Safety Answering Point Architecture, with extensive participation from the 911 stakeholder community, both private and public. One of the most important capacities of 911 systems is interoperability. The Agencies believe that a

⁹³ *Id.* at 7.

⁹⁴ See FCC, TFOPA Working Group 2 Phase II Supplemental Report: NG9-1-1 Readiness Scorecard (Dec. 2, 2016), available at https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_WG2_Supplemental_Report-120216.pdf.

⁹⁵ See APCO at 4, CO PUC at 8.

⁹⁶ APCO at 4.

common assessment will help in this goal. For this reason, the Agencies strongly recommend that grantees complete an assessment using the NG911 Readiness Scorecard, but grantees may choose another basis for their assessments.

4. Operation of 911 System

The MO DPS stated that “[f]or 911-PSAPs that only have basic 911 infrastructure and the legacy enhancements from the 2009 E-911 grant, sustainment and maintenance of those systems should be considered as an eligible cost.”⁹⁷ Relatedly, the DC OUC requested that the agencies allow recipients to use grant funds for “continuation or maintenance of NG911” for “early adopters.”⁹⁸ However, in order to maximize use of funds to meet the statutory goal of implementation of an NG911 system, the Agencies have determined that grant recipients may only use 911 Grant Program funds to cover the costs of operating the NG911 system during the period when the recipient is also operating the current legacy system. Once the NG911 system is fully operational, the costs of operating the system should be paid for using surcharge fees collected by State and local governments, as anticipated by the NG911 Advancement Act. Grant recipients should already be using designated 911 charges to fund the operation and maintenance of the 911 or E-911 systems.

While expressing agreement with the Agencies' clarification that operation of the NG911 system is an eligible cost while the grantee is still operating its legacy 911 system, the CO PUC stated that it does “not believe the Agencies intend to restrict the use of funds to only operational costs.”⁹⁹ The Agencies' clarification regarding operation of the NG911 system was intended to

⁹⁷ MO DPS.

⁹⁸ DC OUC.

⁹⁹ CO PUC at 8.

clarify the circumstances in which the costs of operation, as opposed to costs of implementation, of the NG911 system would be allowable. As laid out in the regulation, implementation of the NG911 system—which includes non-recurring and capital expenses related to the NG911 transition—is an eligible cost.

H. Continuing Compliance (400.8)

APCO requested that the Agencies create a clear definition of fee diversion, citing disagreement between the FCC and four States in the most recent FCC report “On State Collection and Distribution of 911 and Enhanced 911 Fees and Charges.”¹⁰⁰ The FCC's annual report is authorized under the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), which is separate from the NG911 Advancement Act. As such, the Agencies are not bound by the FCC's interpretation of non-diversion under the NET 911 Act. The NG911 Advancement Act requires applicants to certify that “no portion of any designated 911 charges imposed by a State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented.”¹⁰¹ As such, fee diversion is largely dependent upon how the fees in question are designated, which varies by State. Providing a single definition of fee diversion, beyond the description provided by the statute and incorporated in the certifications, would ignore the ability of States to designate 911 charges. The Agencies make no change to the rule in response to this comment.

¹⁰⁰ APCO at 3. FCC, Eighth Annual Report to Congress On State Collection and Distribution of 911 and Enhanced 911 Fees and Charges (Dec. 30, 2016), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DA-17-61A2.pdf.

¹⁰¹ 47 U.S.C. 942(c)(2).

Daniel Ramirez submitted a comment that was somewhat unclear, but that the Agencies interpret to state agreement with the non-diversion requirement in the grant.¹⁰²

I. Waiver Authority (400.11)

The CO PUC stated general support for allowing waiver requests for discretionary provisions of the grant program regulations.¹⁰³ APCO stated that certain circumstances could justify a waiver.¹⁰⁴ APCO also requested that the Agencies provide an opportunity for notice and comment by the 911 community when considering whether to grant a waiver.¹⁰⁵ The Agencies intend to only use this waiver ability in extraordinary circumstances. Therefore, we decline to make a change to the regulation in response to this comment.

IV. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Policies and Procedures)

This rulemaking has been determined to be significant under section 3(f)(4) of Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13771

This rulemaking is exempt from the requirements of Executive Order 13771 because it is a “transfer rule.”

Administrative Procedure Act

¹⁰² See Daniel Ramirez.

¹⁰³ See CO PUC at 9.

¹⁰⁴ See APCO at 4.

¹⁰⁵ See *id.*

The effective date of this final rule is the date of publication. The Administrative Procedure Act's required 30-day delay in effective date for substantive rules does not apply here as this rule concerns grants. *See* 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce and the Assistant Chief Counsel for the National Highway Traffic Safety Administration certified to the Small Business Administration Office of Advocacy at the proposed rule stage that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact on a substantial number of small entities. The majority of potential applicants (56) for 911 grants are U.S. States and Territories, which are not "small entities" for the purposes of the RFA. *See* 5 U.S.C. 601(5). The remaining potential grant applicants are a small number of Tribal Organizations (approximately 13) with a substantial emergency management/public safety presence within their jurisdictions. Like States, Tribal Organizations are not "small entities" for the purposes of the RFA. *See* Small Business Regulatory Flexibility Improvements Act of 2015, S. 1536, 114th Cong. § 2(d) (2015) (proposing to add Tribal Organizations to the RFA's "small governmental jurisdiction" definition, one of three categories of "small entities" in the RFA). Therefore, we have determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no Regulatory Flexibility Analysis is required, and none has been prepared.

Congressional Review Act

This rulemaking has not been determined to be major under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Executive Order 13132 (Federalism)

This final rule does not contain policies having federalism implications requiring preparations of a Federalism Summary Impact Statement.

Executive Order 12988 (Civil Justice Reform)

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform, as amended by Executive Order 13175. The Agencies have determined that the final rule meets the applicable standards provided in section 3 of the Executive Order to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12372 (Intergovernmental Consultation)

Applications under this program are subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” which requires intergovernmental consultation with State and local officials. All applicants are required to submit a copy of their applications to their designated State Single Point of Contact (SPOC) offices. *See* 7 CFR part 3015, subpart V.

Executive Order 12630

This final rule does not contain policies that have takings implications.

Executive Order 13175 (Consultation and Coordination with Indian Tribes)

The Agencies have analyzed this final rule under Executive Order 13175, and have determined that the action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. The program is voluntary and any Tribal Organization that chooses to

apply and subsequently qualifies would receive grant funds. Therefore, a tribal summary impact statement is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires each Federal agency to seek and obtain OMB approval before collecting information from the public. Federal agencies may not collect information unless it displays a currently valid OMB control number. OMB has approved the Agencies' requests to use previously-approved Standard Forms 424 (Application for Federal Assistance), 424A (Budget Information for Non-Construction Programs), 424B (Assurances for Non-Construction Programs), 424C (Budget Information for Construction Programs), 425 (Federal Financial Report), and SF-LLL (Disclosure for Lobbying Activities) under the respective control numbers 4040-0004, 4040-0005, 4040-0006, 4040-0007, 4040-0014, and 4040-0013. OMB pre-approved the Agencies' information collection request for the State 911 Plans and the Annual Performance Reports and assigned it control number 0660-0041.

The Agencies received no comments in response to their requests to utilize common forms or their information collection request for the State 911 Plans and Annual Performance Reports. The approved requests to use common forms and approved information collection request may be viewed at reginfo.gov.

Unfunded Mandates Reform Act

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. The program is voluntary and States and Tribal Organizations that choose to apply and

qualify would receive grant funds. Thus, this rulemaking is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

The Agencies have reviewed this rulemaking action for the purposes of the National Environmental Policy Act. The Agencies have determined that this final rule would not have a significant impact on the quality of the human environment.

Dated: July 30, 2018. **David J. Redl,**

Assistant Secretary for Communications and Information, National Telecommunications and Information Administration.

Heidi King,

Deputy Administrator, National Highway Traffic Safety Administration.

List of Subjects in 47 CFR Part 400

Grant programs, Telecommunications, Emergency response capabilities (911)

In consideration of the foregoing, the National Telecommunications and Information Administration, Department of Commerce, and the National Highway Traffic Safety Administration, Department of Transportation, revises 47 CFR part 400 to read as follows:

PART 400—911 GRANT PROGRAM

Sec.

400.1 Purpose.

400.2 Definitions.

- 400.3 Who may apply.
- 400.4 Application requirements.
- 400.5 Approval and award.
- 400.6 Distribution of grant funds.
- 400.7 Eligible uses for grant funds.
- 400.8 Continuing compliance.
- 400.9 Financial and administrative requirements.
- 400.10 Closeout.
- 400.11 Waiver authority.

Appendix A to Part 400 – Initial Certification for 911 Grant Applicants – States

Appendix B to Part 400 – Initial Certification for 911 Grant Applicants – Tribal Organizations

Appendix C to Part 400 – Annual Certification for 911 Grant Recipients – States

Appendix D to Part 400 – Annual Certification for 911 Grant Recipients – Tribal Organizations

Authority: 47 U.S.C. 942.

§ 400.1 Purpose.

This part establishes uniform application, approval, award, financial and administrative requirements for the grant program authorized under the “Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004” (ENHANCE 911 Act), as amended by the “Next Generation 911 Advancement Act of 2012” (NG911 Advancement Act).

§ 400.2 Definitions.

As used in this part—

911 Coordinator means a single officer or governmental body of the State in which the applicant is located that is responsible for coordinating implementation of 911 services in that State.

911 services means both E-911 services and Next Generation 911 services.

Administrator means the Administrator of the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

Assistant Secretary means the Assistant Secretary for Communications and Information, U.S. Department of Commerce, and Administrator of the National Telecommunications and Information Administration (NTIA).

Designated 911 charges means any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve 911, E-911 or NG911 services.

E-911 services means both phase I and phase II enhanced 911 services, as described in § 20.18 of this title, as subsequently revised.

Emergency call refers to any real-time communication with a public safety answering point or other emergency management or response agency, including—

- (1) Through voice, text, or video and related data; and
- (2) Nonhuman-initiated automatic event alerts, such as alarms, telematics, or sensor data, which may also include real-time voice, text, or video communications.

ICO means the 911 Implementation Coordination Office established under 47 U.S.C. 942 for the administration of the 911 grant program, located at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, NTI-140, Washington, DC 20590.

Integrated telecommunications services means one or more elements of the provision of multiple 911 systems' or PSAPs' infrastructure, equipment, or utilities, such as voice, data, image, graphics, and video network, customer premises equipment (such as consoles, hardware, or

software), or other utilities, which make common use of all or part of the same transmission facilities, switches, signaling, or control devices (e.g., database, cybersecurity).

IP-enabled emergency network or IP-enabled emergency system means an emergency communications network or system based on a secured infrastructure that allows secured transmission of information, using Internet Protocol, among users of the network or system.

Next Generation 911 services means an IP-based system comprised of hardware, software, data, and operational policies and procedures that—

- (1) Provides standardized interfaces from emergency call and message services to support emergency communications;
- (2) Processes all types of emergency calls, including voice, data, and multimedia information;
- (3) Acquires and integrates additional emergency call data useful to call routing and handling;
- (4) Delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities;
- (5) Supports data or video communications needs for coordinated incident response and management; and
- (6) Provides broadband service to public safety answering points or other first responder entities.

PSAP means a public safety answering point, a facility that has been designated to receive emergency calls and route them to emergency service personnel.

State means any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession of the United States.

Tribal Organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

§ 400.3 Who may apply.

In order to apply for a grant under this part, an applicant must be a State or Tribal Organization as defined in § 400.2.

§ 400.4 Application requirements.

(a) *Contents for a State application.* An application for funds for the 911 Grant Program from a State must consist of the following components:

(1) *State 911 plan.* A plan that –

(i) Details the projects and activities proposed to be funded for:

(A) The implementation and operation of 911 services, E-911 services, migration to an IP-enabled emergency network, and adoption and operation of Next Generation 911 services and applications;

(B) The implementation of IP-enabled emergency services and applications enabled by Next Generation 911 services, including the

establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and

(C) Training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services.

(ii) Establishes metrics and a time table for grant implementation; and

(iii) Describes the steps the applicant has taken to—

(A) Coordinate its application with local governments, Tribal Organizations, and PSAPs within the State;

(B) Ensure that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs and not more than 10 percent of the grant funds will be used for the applicant's administrative expenses related to the 911 Grant Program; and

(C) Involve integrated telecommunications services in the implementation and delivery of 911 services, E-911 services, and Next Generation 911 services.

(2) *Project budget.* A project budget for all proposed projects and activities to be funded by the grant funds. Specifically, for each project or activity, the applicant must:

(i) Demonstrate that the project or activity meets the eligible use requirement in § 400.7; and

(ii) Identify the non-Federal sources, which meet the requirements of 2 CFR 200.306, that will fund at least 40 percent of the cost; except that as provided in

48 U.S.C. 1469a, the requirement for non-Federal matching funds (including in-kind contributions) is waived for American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands for grant amounts up to \$200,000.

(3) *Supplemental project budget.* States that qualify for a grant under the program may also qualify for additional grant funds that may become available. To be eligible for any such additional grant funds that may become available in accordance with § 400.6, a State must submit, with its application, a supplemental project budget that identifies the maximum dollar amount the State is able to match from non-Federal sources meeting the requirements of 2 CFR 200.306, and includes projects or activities for those grant and matching amounts, up to the total amount in the project budget submitted under paragraph (a)(2) of this section. This information must be provided to the same level of detail as required under paragraph (a)(2) of this section and be consistent with the State 911 Plan required under paragraph (a)(1) of this section.

(4) *Designated 911 Coordinator.* The identification of a single officer or government body to serve as the 911 Coordinator of implementation of 911 services and to sign the certifications required under this part. Such designation need not vest such coordinator with legal authority to implement 911 services, E-911 services, or Next Generation 911 services or to manage emergency communications operations. If a State applicant has established by law or regulation an office or coordinator with the authority to manage 911 services, that office or coordinator must be identified as the designated 911 Coordinator and apply for the grant on behalf of the State. If a State applicant does not have such an office or coordinator established, the Governor of the State must appoint a single officer or governmental body to serve as the 911 Coordinator in order to qualify for a 911 grant.

If the designated 911 Coordinator is a governmental body, an official representative of the governmental body shall be identified to sign the certifications for the 911 Coordinator. The State must notify NHTSA in writing within 30 days of any change in appointment of the 911 Coordinator.

(5) *Certifications.* The certification in Appendix A of this part, signed by the 911 Coordinator, certifying that the applicant has complied with the required statutory and programmatic conditions in submitting its application. The applicant must certify that during the time period 180 days immediately preceding the date of the initial application, the State has not diverted any portion of designated 911 charges imposed by the State for any purpose other than the purposes for which such charges are designated or presented, that no taxing jurisdiction in the State that will be a recipient of 911 grant funds has diverted any portion of designated 911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated or presented, and that, continuing through the time period during which grant funds are available, neither the State nor any taxing jurisdiction in the State that is a recipient of 911 grant funds will divert designated 911 charges for any purpose other than the purposes for which such charges are designated or presented.

(b) *Contents for a Tribal Organization application.* An application for funds for the 911 Grant Program from a Tribal Organization must consist of the following components:

(1) Tribal Organization 911 Plan. A plan that –

(i) Details the projects and activities proposed to be funded for:

(A) The implementation and operation of 911 services, E-911 services, migration to an IP-enabled emergency network, and adoption and operation of Next Generation 911 services and applications;

(B) The implementation of IP-enabled emergency services and applications enabled by Next Generation 911 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and

(C) Training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services.

(ii) Establishes metrics and a time table for grant implementation; and

(iii) Describes the steps the applicant has taken to—

(A) Coordinate its application with PSAPs within the Tribal Organization's jurisdiction;

(B) Ensure that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs and not more than 10 percent of the grant funds will be used for the applicant's administrative expenses related to the 911 Grant Program; and

(C) Involve integrated telecommunications services in the implementation and delivery of 911 services, E-911 services, and Next Generation 911 services.

(2) *Project budget.* A project budget for all proposed projects and activities to be funded by the grant funds. Specifically, for each project or activity, the applicant must:

- (i) Demonstrate that the project or activity meets the eligible use requirement in § 400.7; and
- (ii) Identify the allowable sources, which meet the requirements of 2 CFR 200.306, that will fund at least 40 percent of the cost.

(3) *Supplemental project budget.* Tribal Organizations that qualify for a grant under the program may also qualify for additional grant funds that may become available. To be eligible for any such additional grant funds that may become available in accordance with § 400.6, a Tribal Organization must submit, with its application, a supplemental project budget that identifies the maximum dollar amount the Tribal Organization is able to match from allowable sources meeting the requirements of 2 CFR 200.306, and includes projects or activities for those grant and matching amounts, up to the total amount in the project budget submitted under paragraph (b)(2) of this section. This information must be provided to the same level of detail as required under paragraph (b)(2) of this section and be consistent with the Tribal Organization 911 Plan required under paragraph (b)(1) of this section.

(4) *Designated 911 Coordinator.* Written identification of the single State officer or government body serving as the 911 Coordinator of implementation of 911 services in the State (or States) in which the Tribal Organization is located. If a State has not designated an officer or government body to coordinate such services, the Governor of the State must appoint a single officer or governmental body to serve as the 911 Coordinator in order for the Tribal Organization to qualify for a 911 grant. The Tribal

Organization must notify NHTSA in writing within 30 days of any change in appointment of the 911 Coordinator.

(b) *Responsible Tribal Organization Official.* Written identification of the official responsible for executing the grant agreement and signing the required certifications on behalf of the Tribal Organization.

(5) *Certifications.* The certification in Appendix B of this part, signed by the responsible official of the Tribal Organization, certifying that the applicant has complied with the required statutory and programmatic conditions in submitting its application. The applicant must certify that during the time period 180 days immediately preceding the date of the initial application, the taxing jurisdiction (or jurisdictions) within which the applicant is located has not diverted any portion of designated 911 charges imposed by the taxing jurisdiction (or jurisdictions) within which the applicant is located for any purpose other than the purposes for which such charges are designated or presented and that, continuing through the time period during which grant funds are available, the taxing jurisdiction (or jurisdictions) within which the applicant is located will not divert designated 911 charges for any purpose other than the purposes for which such charges are designated or presented.

(c) *Due dates—(1) Initial application deadline.* The applicant must submit the certification set forth in Appendix A of this part if a State, or Appendix B of this part if a Tribal Organization, no later than the initial application deadline published in the Notice of Funding Opportunity.

Failure to meet this deadline will preclude the applicant from receiving consideration for a 911 grant award.

(2) *Final application deadline.* After publication of the funding allocation for the 911 Grant Program in a revision to the Funding Opportunity, applicants that have complied with paragraph (c)(1) of this section will be given additional time in which to submit remaining application documents in compliance with this section, including a supplemental project budget. The revision to the Notice of Funding Opportunity will provide such deadline information. Failure to meet this deadline will preclude the applicant from receiving consideration for a 911 grant award.

§ 400.5 Approval and award.

- (a) The ICO will review each application for compliance with the requirements of this part.
- (b) The ICO may request additional information from the applicant, with respect to any of the application submission requirements of § 400.4, prior to making a recommendation for an award. Failure to submit such additional information may preclude the applicant from further consideration for award.
- (c) The Administrator and Assistant Secretary will jointly approve and announce, in writing, grant awards to qualifying applicants.

§ 400.6 Distribution of grant funds.

- (a) *Funding allocation.* Except as provided in paragraph (b) of this section—
 - (1) Grant funds for each State that meets the certification requirements set forth in § 400.4 will be allocated—
 - (i) 50 percent in the ratio which the population of the State bears to the total population of all the States, as shown by the latest available Federal census; and

(ii) 50 percent in the ratio which the public road mileage in each State bears to the total public road mileage in all States, as shown by the latest available Federal Highway Administration data.

(2) Grant funds for each Tribal Organization that meets the certification requirements set forth in § 400.4 will be allocated—

(i) 50 percent in the ratio to which the population of the Tribal Organization bears to the total population of all Tribal Organizations, as determined by the most recent population data on American Indian/ Alaska Native Reservation of Statistical Area; and

(ii) 50 percent in the ratio which the public road mileage in each Tribal Organization bears to the total public road mileage in tribal areas, using the most recent national tribal transportation facility inventory data.

(2) *Supplemental project budgets.* As set forth in § 400.4(a)(3) and (b)(3), the ICO reserves the right to allocate additional funds based on supplemental project budgets.

(b)(1) *Minimum distribution.* The distribution to each qualifying State under paragraph (b) of this section shall not be less than \$500,000, except that the distribution to American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands shall not be less than \$250,000.

(2) *Tribal Organization set-aside.* Up to 2 percent of grant funds available under this part will be set aside for distribution to qualifying Tribal Organizations for a 911 grant. The distribution to each qualifying Tribal Organization shall not be more than \$250,000. Any remaining funds after distribution to qualifying Tribal Organizations under this subparagraph will be released for distribution to the States consistent with paragraph (a) of this section.

(c) *Additional notices of funding opportunity.* Grant funds that are not distributed under paragraph (a) of this section may be made available to States and Tribal Organizations through subsequent Notices of Funding Opportunity.

§ 400.7 Eligible uses for grant funds.

Grant funds awarded under this part may be used only for:

(a) The implementation and operation of 911 services, E-911 services, migration to an IP-enabled emergency network, and adoption and operation of Next Generation 911 services and applications;

(b) The implementation of IP-enabled emergency services and applications enabled by Next Generation 911 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and

(c) 911-related training of public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services.

§ 400.8 Continuing compliance.

(a) A grant recipient must submit on an annual basis 30 days after the end of each fiscal year during which grant funds are available, the certification set forth in Appendix C of this part if a State, or Appendix D of this part if a Tribal Organization, making the same certification concerning the diversion of designated 911 charges.

(b) In accordance with 47 U.S.C. 942(c), where a recipient knowingly provides false or inaccurate information in its certification related to the diversion of designated 911 charges, the recipient shall—

- (1) Not be eligible to receive the grant under this part;
- (2) Return any grant awarded under this part during the time that the certification was not valid; and
- (3) Not be eligible to receive any subsequent grants under this part.

§ 400.9 Financial and administrative requirements.

(a) *General.* The requirements of 2 CFR part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including applicable cost principles referenced at subpart E, govern the implementation and management of grants awarded under this part.

(b) *Reporting requirements—(1) Performance reports.* Each grant recipient shall submit an annual performance report to NHTSA, following the procedures of 2 CFR 200.328, within 90 days after each fiscal year that grant funds are available, except when a final report is required under § 400.10(b)(2).

(2) *Financial reports.* Each recipient shall submit quarterly financial reports to NHTSA, following the procedures of 2 CFR 200.327, within 30 days after each fiscal quarter that grant funds are available, except when a final voucher is required under § 400.10(b)(1).

§ 400.10 Closeout.

(a) *Expiration of the right to incur costs.* The right to incur costs under this part will expire as of the end of the period of performance. The grant recipient and its subrecipients and contractors may not incur costs for Federal reimbursement past the expiration date.

(b) *Final submissions.* Within 90 days after the completion of projects and activities funded under this part, but in no event later than the expiration date identified in paragraph (a) of this section, each grant recipient must submit—

(1) A final voucher for the costs incurred. The final voucher constitutes the final financial reconciliation for the grant award.

(2) A final report to NHTSA, following the procedures of 2 CFR 200.343(a).

(c) *Disposition of unexpended balances.* Any funds that remain unexpended after closeout shall cease to be available to the recipient and shall be returned to the government.

§ 400.11 Waiver authority.

It is the general intent of the ICO not to waive any of the provisions set forth in this part.

However, under extraordinary circumstances and when it is in the best interest of the federal government, the ICO, upon its own initiative or when requested, may waive the provisions in this part. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the extraordinary circumstances for the request.

Appendix A To Part 400 –

Initial Certification For 911 Grant Applicants – States

(To be submitted as part of the initial application)

I. On behalf of [State/Territory], I, [print name], hereby certify that:

(check **only one** box below)

- [State or Territory] has established by law or regulation [name of 911 office/coordinator] with the authority to manage 911 services in the State, and I am its representative. See [citation to State law or rule]. [Name of 911 office/coordinator] will serve as the designated 911 Coordinator.
- [State or Territory] does not have an office or coordinator with the authority to manage 911 services, and the Governor of [State or Territory] has designated

(check **only one** circle below)

- me as the State's single officer to serve as the 911 Coordinator of 911 services implementation; or

- o [governmental body] as the State's single governmental body, to serve as the 911 Coordinator of 911 services implementation, and I am its representative.

(check **all** boxes below)

- The State has coordinated the application with local governments, Tribal Organizations and PSAPs within the State.
 - The State has established a State 911 Plan, consistent with the implementing regulations, for the coordination and implementation of 911 services, E-911 services, and Next Generation 911 services.
 - The State will ensure that at least 90 percent of the grant funds are used for the direct benefit of PSAPs.
 - The State has integrated telecommunications services involved in the implementation and delivery of 911 services, E-911 services, and Next Generation 911 services.
- II. I further certify that the State has not diverted and will not divert any portion of designated 911 charges imposed by the State for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing through the time period during which grant funds are available.

I further certify that no taxing jurisdiction in the State that will receive 911 grant funds has diverted any portion of the designated 911 charges for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application.

I further certify that the State will ensure that each taxing jurisdiction in the State that receives 911 grant funds does not divert any portion of designated 911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available.

I agree that, as a condition of receipt of the grant, the State will return all grant funds if the State obligates or expends, at any time for the full duration of this grant, designated 911 charges for any purpose other than the purposes for which such charges are designated or presented, eliminates such charges, or redesignates such charges for purposes other than the implementation or operation of 911 services, E-911 services, or Next Generation 911 services, and that if a taxing jurisdiction in the State that receives 911 grant funds diverts any portion of designated 911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available, the State will ensure that 911 grant funds distributed to that taxing jurisdiction are returned.

- III. I further certify that the State will comply with all applicable laws and regulations and financial and programmatic requirements for Federal grants.

Signature of State 911 Coordinator
(or representative of single governmental body)

Title

Date

Appendix B To Part 400 –
Initial Certification For 911 Grant Applicants – Tribal Organizations

(To be submitted as part of the initial application)

I. On behalf of [*Tribal Organization*], I, [*print name*], hereby certify that:

(check **all** boxes below)

- The Tribal Organization has coordinated the application with PSAPs within its jurisdiction.
- The Tribal Organization has established a 911 Plan, consistent with the implementing regulations, for the coordination and implementation of 911 services, E-911 services, and Next Generation 911 services.
- The Tribal Organization will ensure that at least 90 percent of the grant funds are used for the direct benefit of PSAPs.
- The Tribal Organization has integrated telecommunications services involved in the implementation and delivery of 911 services, E-911 services, and Next Generation 911 services.

II. I further certify that the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located has not diverted and will not divert any portion of designated 911 charges imposed by the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing through the time period during which grant funds are available.

III. I agree that, as a condition of receipt of the grant, the Tribal Organization will return all grant funds if the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located obligates or expends, at any time for the full duration of this

grant, designated 911 charges for any purpose other than the purposes for which such charges are designated or presented, eliminates such charges, or redesignates such charges for purposes other than the implementation or operation of 911 services, E-911 services, or Next Generation 911 services.

IV. I further certify that the Tribal Organization will comply with all applicable laws and regulations and financial and programmatic requirements for Federal grants.

V. The single State officer or government body serving as the 911 Coordinator of implementation of 911 services in each State in which the Tribal Organization is located is _____.

Signature of Responsible Official

Title

Date

Appendix C To Part 400 –
Annual Certification For 911 Grant Recipients – States

(To be submitted annually after grant award while grant funds are available)

On behalf of [*State/Territory*], I, [*print name*], hereby certify that the State has not diverted any portion of designated 911 charges imposed by the State for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing throughout the time period during which grant funds are available.

I further certify that no taxing jurisdiction in the State that will receive 911 grant funds has diverted any portion of the designated 911 charges for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application.

I further certify that the State will ensure that each taxing jurisdiction in the State that receives 911 grant funds does not divert any portion of designated 911 charges imposed by the taxing

jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available.

I agree that, as a condition of receipt of the grant, the State will return all grant funds if the State obligates or expends, at any time for the full duration of this grant, designated 911 charges for any purpose other than the purposes for which such charges are designated or presented, eliminates such charges, or redesignates such charges for purposes other than the implementation or operation of 911 services, E-911 services, or Next Generation 911 services, and that if a taxing jurisdiction in the State that receives 911 grant funds diverts any portion of designated 911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available, the State will ensure that 911 grant funds distributed to that taxing jurisdiction are returned.

Signature of State 911 Coordinator
(or representative of single governmental body)

Title

Date

Appendix D To Part 400 –

Annual Certification For 911 Grant Recipients – Tribal Organizations

(To be submitted annually after grant award while grant funds are available)

On behalf of [*Tribal Organization*], I, [*print name*], hereby certify that the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located has not diverted and will not divert any portion of designated 911 charges imposed by the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing through the time period during which grant funds are available.

I further certify that the Tribal Organization will ensure that the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located that receives 911 grant funds does not divert any portion of designated 911 charges imposed by the taxing jurisdiction (or jurisdictions) for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available.

I agree that, as a condition of receipt of the grant, the Tribal Organization will return all grant funds if the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located

obligates or expends, at any time for the full duration of this grant, designated 911 charges for any purpose other than the purposes for which such charges are designated or presented, eliminates such charges, or redesignates such charges for purposes other than the implementation or operation of 911 services, E-911 services, or Next Generation 911 services.

Signature of Responsible Official

Title

Date

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