



BILLING CODE: 3510-60-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

47 CFR Part 400

[Docket No. 170420407-7407-01]

RIN 0660-AA33; RIN 2127-AL86

911 Grant Program

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes revised 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. NTIA and NHTSA (the Agencies) request comments on this proposed rule.

DATES: Comments must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** at 5:00 p.m. Eastern Standard Time.

ADDRESSES: You may submit comments identified by Docket No. 170420407-7407-01 by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: National Telecommunications and Information Administration, U.S. Department of Commerce, Attn: NG911 Grant Program, 1401 Constitution Avenue, NW, Room 4076, Washington, DC 20230.

Instructions: Please note that all material sent via the U.S. Postal Service (including Overnight or Express Mail) is subject to delivery delays of up to two weeks due to mail security procedures. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. Paper submissions should also include an electronic version on CD or DVD in .txt, .pdf, or Word format (please specify version), which should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Note that all comments received are a part of the public record and will be posted without change to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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- 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

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.² PSAPs collectively handle more than an estimated 240 million 911 calls each year.³

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).

² 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>.

About 70 percent of all 911 calls annually are placed from wireless phones.⁴ 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 operations centers.⁵ Most PSAPs rely on decades-old, narrowband, circuit-switched networks capable of carrying only voice calls and very limited amounts of data.⁶ 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).⁷

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 2004.⁸ 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-911⁹ calls, providing E-911 service to 98.6

³ TFOPA Final Report at 15. See also, NENA 9-1-1 Statistics, *available at* <http://www.nena.org/?page=911Statistics>.

⁴ *Id.*

⁵ TFOPA Final Report at 15.

⁶ *Id.*

⁷ *Id.*

⁸ NENA 9-1-1 Statistics, *available at* <http://www.nena.org/?page=911Statistics>.

⁹ See 47 CFR 20.18(e), (h) (defining Phase II enhanced 911 service).

percent of the U.S. population and 96.5 percent of our country's counties.¹⁰ 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 responses.¹¹ 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.¹²

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.¹³ These data suggest that most State and local jurisdictions have already invested in and completed implementation of both basic 911

¹⁰ NENA 9-1-1 Statistics.

¹¹ National 911 Program, Next Generation 911 for Leaders in Law Enforcement Educational Supplement at 3, *available at* https://www.911.gov/ng911_law/download/NG911_Resize_Mar2013_FINAL_LR.pdf.

¹² *Id.* at 4-5.

¹³ National 911 Program, 2016 National 911 Progress Report at 3, 85, 89 (Dec. 2016), *available at* <https://www.911.gov/pdf/National-911-Program-2016-ProfileDatabaseProgressReport-120516-1.pdf>.

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. Summary of the NG911 Advancement Act of 2012

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.¹⁴ 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.¹⁵

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

¹⁴ 47 U.S.C. 942(b)(1).

¹⁵ 47 U.S.C. 942(b)(2).

the term of the grant must repay all grant funds awarded.¹⁶ 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.¹⁷

III. Proposed Regulations

This NPRM proposes modifications to the E-911 Grant Program regulations to implement the changes to the program enacted in the NG911 Advancement Act. With the exception of the proposed changes discussed below, the Agencies propose to retain the E-911 Grant Program regulations set forth at 47 CFR part 400. The Agencies seek comments on this proposal.

A. Heading. *(47 CFR part 400)*

The Agencies propose to amend the heading of Part 400 from “E-911 Grant Program” to “911 Grant Program” to reflect the reauthorization of the grant program.

B. Purpose. *(47 CFR 400.1)*

The Agencies propose to update the Purpose section of the 911 Grant Program regulations set forth at § 400.1 to conform to the NG911 Advancement Act.

C. Definitions. *(47 CFR 400.2)*

The NG911 Advancement Act includes new definitions and makes changes to current definitions to include NG911 services in the 911 Grant Program. The Agencies therefore

¹⁶ 47 U.S.C. 942(c). *See also* 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 (reporting that, of the 53 states and territories that reported information for the 2015 calendar year, eight states and Puerto Rico diverted or transferred 911 fees).

¹⁷ 47 U.S.C. 942(c)(3).

propose to add definitions for: 911 services, emergency call, Next Generation 911 services, and Tribal Organization. The Agencies also propose to revise the definitions for: Designated E-911 charges, E-911 Coordinator, E-911 services, integrated telecommunications services, ICO, PSAP, and State. The Agencies also propose to remove the definitions for eligible entity and Phase II E-911 services.

D. Who may apply. (47 CFR 400.3)

The E-911 Grant Program regulations only permit States to apply for grant funds on behalf of all local governments, Tribal Organizations, and PSAPs located within their jurisdiction. States were required to coordinate their applications with these entities. This approach streamlined the prior grant process and minimized administrative costs of the program, while at the same time, providing safeguards to ensure participation by local governments, Tribal Organizations, and PSAPs. While the Agencies recognize the importance of coordination between States and Tribal Organizations, directing States to coordinate with Tribal Organizations did not result in adequate funding to improve PSAPs serving tribal areas. The fact that tribes are sovereign nations and that some tribal areas cross State lines further complicated this issue.

The Agencies seek to provide equitable funding in a practical manner to ensure the most efficient use of funds to produce maximum benefit in implementing NG911 services. In this NPRM, the Agencies propose to retain the ability of States to apply for funding on behalf of all entities within their jurisdiction, but also to permit Tribal Organizations to apply directly for 911 grants under certain circumstances. The Agencies seek comment on this proposal as well as on any challenges that Tribal Organizations may face under this grant program. Specifically, the Agencies ask commenters to address the following questions:

- i. If the 911 Grant Program were open to Tribal Organizations directly, would tribal PSAPs be able to meet the application requirements provided in proposed 47 CFR 400.4, including statutory requirements such as the matching requirement and non-diversion certifications? What would be the challenges with providing the necessary certifications, if any?
- ii. A Tribal Organization applying for a 911 Program Grant must identify the designated State 911 Coordinator(s) and provide certifications that the Tribal Organization has not diverted designated 911 charges. What would be the challenges associated with providing this information, if any?
- iii. Do the tribal PSAPs collect 911 surcharge fees and/or receive State-provided 911 surcharge funds? If so, are Tribal Organizations able to certify that tribal sub-entities are not diverting 911 surcharge fees?
- iv. What other tribal PSAP issues or challenges should NHTSA and NTIA consider when determining how to involve tribal entities in this grant program?

E. Application requirements. (47 CFR 400.4)

The Agencies propose to retain, with some modifications as specified below, the general components of an application for a 911 grant. In order to accommodate applications from Tribal Organizations, the Agencies propose to reorganize § 400.4 to provide separate application requirement instructions for State (§400.4(a)) and Tribal Organization (§400.4(b)) applicants. The Agencies seek specific comments on the application of these requirements to Tribal Organizations (see questions concerning Tribal Organizations above).

1. State/Tribal 911 Plan

The Agencies propose to retain the State 911 Plan requirements with minor modifications. Specifically, the Agencies propose to update references to E-911 and migration to an IP-enabled emergency network to reflect statutory language in the NG911 Advancement Act. In addition, the Agencies propose to remove the requirement to give priority to communities without 911 from the current E-911 Grant Program regulations, § 400.4(a)(1)(iii), to conform to the NG911 Advancement Act.

The Agencies propose similar Tribal 911 Plan requirements in § 400.4(b).

2. Project Budget

The Agencies propose to retain the project budget requirements. However, the NG911 Advancement Act increased the maximum Federal share of the total cost of a project undertaken as a result of this grant program from 50 percent to 60 percent. The Agencies propose to amend § 400.4(a) accordingly.

3. Supplemental Project Budget and Proposed Two-Step Application Process

In 2009, the Agencies allocated E-911 Grant Program funding to all States under the assumption that all States would qualify for an award. Those preliminary funding levels were published in Appendix A to the rule. Some States, however, were unable to meet the non-Federal matching requirement or to make the required certifications, and therefore rendered the initial funding allocations inaccurate. While the Agencies were able to adjust the funding allocations, this caused some delay in providing full funding to those States participating in the program. The Agencies seek comment on whether to retain the single application structure that requires an applicant to provide a supplemental budget submission in addition to the project budget in the event that additional funds become available for any reason.

Alternatively, the Agencies seek comment on whether a two-step application process should be used. As an example of a possible two-step application process, the Agencies would publish a Notice of Funding Opportunity (NOFO) for the 911 Grant Program providing additional details and deadlines for the application process. As a first step, interested State and Tribal Organization applicants would submit the required certifications set forth at Appendix A or B, respectively. Then, the Agencies would provide preliminary funding allocations for each of the States or Tribal Organizations that meets the certification requirements. As a second step, those States or Tribal Organizations would then submit a complete application packet, including a project budget based on the preliminary funding level. Because of the possibility that additional funds may become available if certain states are unable to meet the certification requirements, these States or Tribal Organizations could also include a supplemental project budget as part of their complete application packet. The Agencies seek comment on this proposed two-step application process and funding allocation determination as set forth in the proposed regulatory text.

4. Designated 911 Coordinator

The Agencies propose to retain the requirement for a Designated 911 Coordinator for State applicants. The NG911 Advancement Act requires, as a condition of eligibility for a non-State applicant, that the State in which it is located has designated a 911 Coordinator. Therefore, for the purpose of applications by Tribal Organizations, the Agencies propose that the Tribal Organization identify the Designated State 911 Coordinator. Although a Tribal Organization applicant would not have to designate its own 911 Coordinator, the Agencies propose that it designate a responsible official to execute the grant agreement and sign the required certifications.

5. Certifications

The Agencies propose to retain the certification requirements in § 400.4(a)(5) with updates to allow for certification by Tribal Organizations and to reflect the statutory requirements in the NG911 Advancement Act.

6. Due Date

The Agencies also propose to amend the 911 Grant Program regulations to provide that the deadlines for the initial and subsequent submission requirements will be contained in the NOFO.

F. Approval and Award. (47 CFR 400.5)

The Agencies propose to update the Approval and Award section of the 911 Grant Program regulations set forth at § 400.5 to account for Tribal Organization applicants as described above.

G. Distribution of grant funds. (47 CFR 400.6)

The E-911 Grant Program distributed grant funds to eligible States using a formula based on State population and public road mileage. The Agencies propose to apply the same formula for distribution of grant funds to States and Territories in the new round of funding under the 911 Grant Program. As in the E-911 Grant Program, the formula will provide for a minimum grant amount of \$500,000 for States and \$250,000 for Territories.

In the E-911 Grant Program, population and road miles were used as the basis for the formula because 911 services are used by people, and because the ability to make any phone calls (therefore to make 911 calls) in 2009 was dependent upon the presence of copper land lines and/or cell towers. Road miles were used as a surrogate for cell tower coverage in the 2009 regulation because at that time, cell towers were the primary means of transmitting 911 calls to PSAPs, and were likely to be built along roadways – especially in rural areas. Ultimately,

though, the combination of population and road miles favored urban areas over rural and remote areas.

Telecommunications technology has evolved tremendously since 2009. The placement of phone calls is now much less dependent upon the presence of copper facilities. In fact, the Federal Communications Commission (FCC) has observed that, as of 2015, almost 75 percent of U.S. residential customers (approximately 88 million households) no longer received telephone service over traditional copper facilities and relied increasingly on wireless, Voice over Internet Protocol (VoIP) and satellite technologies, including hybrid cell tower/satellite technology.¹⁸ In recognition of this continuing technological displacement, the FCC in 2016 issued an order streamlining legacy regulations to make it easier for carriers to retire copper, landline telephone networks and replace them with fiber or wireless technology.¹⁹ Although delivery of location information has improved with the use of Assisted Global Position System (A-GPS), in rural and remote areas, location-finding technology is less accurate, since cell towers are typically placed along major highways and there may not be a sufficient number of towers to provide accurate triangulation to locate callers.²⁰ Rural public safety agencies and PSAPs are finding creative

¹⁸ *In the Matter of Technology Transitions*, GN Docket No. 13-5; *In the Matter of US Telecom Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3; *In the Matter of Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, at ¶ 16 (July 15, 2016) (hereinafter Declaratory Ruling), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-90A1.pdf.

¹⁹ *See id.*

²⁰ *See* Congressional Research Service, *An Emergency Communications Safety Net: Integrating 911 and Other Services*, CRS Report at 5-6 (Aug. 25, 2008), available at https://www.everycrsreport.com/files/20080825_RL32939_a6d2f372243a38357f5104b181e8fa326481e3ac.pdf.

solutions, such as satellite-based communications technologies, to overcome these communications challenges.²¹

Additionally, research shows that rural and tribal 911 call centers face significant challenges because they serve larger geographical areas and, as a result, first responders may take more time to reach the scene of the emergency. PSAP call takers in rural areas may be required to stay on the phone longer and provide more extensive emergency instructions until help arrives.²² Additionally, since the bulk of funding to 911 call centers comes from states and municipalities, rural 911 centers may lack the resources needed for technology upgrades, equipment, and training.²³

The Agencies propose to retain the formula used for distribution in the E-911 grant program, however, given the advances in technology and the unique challenges faced by rural and remote PSAPs, the Agencies are seeking comment on whether other factors should be considered as part of the formula for distribution of grant funds or whether the current formula is the best framework to distribute the up to \$110 million available in new funding for the program. Specifically, the Agencies ask commenters to address the following questions:

²¹ See James J. Augustine, Rural Coverage: Communications Challenges for EMS (Oct. 17, 2012), available at <https://www.ems1.com/ems-products/communications/articles/1356405-Rural-coverage-Communications-challenges-for-EMS/>.

²² *Id.*

²³ Linda K. Moore, Congressional Research Service, *Emergency Communications: The Future of 911*, CRS Report at 9-10 (Mar. 16, 2010), available at https://c.yumcdn.com/sites/www.nena.org/resource/collection/F203778C-3D83-4118-B5E3-3A95819586E1/CRS_911_Report_3.16.10.pdf.

- i. Do the existing factors of State population and public road mileage adequately account for remote and rural areas? If not, would the factor of land area, as determined by the Census Bureau, improve the accounting for rural and remote areas?
- ii. Given the evolution in technology since the previous grants were awarded (*e.g.*, less dependence on cell towers and increased adoption of satellite and hybrid technologies), are there other factors that the program should consider and what weight should the formula give to each factor and why?

To accommodate grant awards to Tribal Organizations, the proposal would authorize the Agencies to set aside 2 percent of available grant funds for distribution to Tribal Organizations with maximum awards of no more than \$250,000. The Agencies propose to allocate funding based on a formula as follows: (1) 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,²⁴ and (2) 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. The Agencies seek comment on this proposal for distribution to Tribal Organizations. The Agencies further seek comment on whether a formula-based approach is the most equitable and/or efficient way to distribute new grant funds. If yes, what factors should the program consider and what weight should the formula give to each factor and why? If not, please identify other allocation methods that the Agencies should consider adopting for use in this grant program.

H. Eligible uses for grant funds. (47 CFR 400.7)

²⁴ As computed under the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4101 *et seq.*

The NG911 Advancement Act has broadened the eligible uses of grant funds to include: adoption and operation of NG911 services and applications; and 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. Accordingly, the Agencies propose to modify § 400.7 to include these new eligible uses. The Agencies also provide clarification on the following specific uses:

1. NG911 Services

The NG911 Advancement Act, by name and intent, was established to facilitate implementation of NG911 services, and the acquisition of such NG911 services is allowable as an eligible use of 911 Grant Program funds. Some grant recipients may choose to purchase the hardware and software that perform the necessary functions enabling NG911 calls to be received, processed and dispatched and use their own staff to operate and maintain the NG911 system. Other recipients may choose to contract with vendors that own the hardware and software, and provide NG911 enabling functions as a service to State or local 911 entities. Still other recipients may choose to enter into subaward relationships with local jurisdictions to implement the purposes of the grant. The Agencies propose that any of these options, alone or in combination, would be an eligible use of grant funds. To “facilitate coordination and communication between Federal, State, and local emergency communications systems [and] emergency services personnel,” the Agencies propose that recipients be required to specify the purchase of hardware, software, and/or services that comply with current NG911 standards, as

listed in the Department of Homeland Security’s SAFECOM Guidance.²⁵

2. Training

Given that the intent of this grant program is specifically to improve the technology and operation of the 911 system, the NG911 Advancement Act permits grant funds to be used for training directly related to 911 services for public safety personnel, including call-takers, first responders, and other individuals and organizations that are part of the emergency response chain in 911 services. The Agencies seek comment on what, if any, limitations should be imposed on such costs.

As part of a three-year, multi-stakeholder effort, the National 911 program office facilitated the development of the “Recommended Minimum Training Guidelines for Telecommunicators” that identified nationally recognized, universally accepted minimum topics that can be used to train aspiring and current 911 telecommunications professionals, and to provide the foundation for ongoing professional development.²⁶ The Agencies seek comment on whether use of 911 Grant Program funds for training should be limited to training designed to meet these minimum training guidelines. If these minimum training guidelines are required, what, if any, challenges would this condition impose on PSAPs? What should the Agencies consider as appropriate documentation of the PSAPs’ compliance in meeting the minimum

²⁵ 47 U.S.C. 942(a)(1). *See also* Department of Homeland Security, “Fiscal Year 2016 SAFECOM Guidance on Emergency Communications Grants,” at Appendix B – Technology and Equipment Standards (2016), *available at* <https://www.dhs.gov/sites/default/files/publications/FY%202016%20SAFECOM%20Guidance%20FINAL%20508C.pdf>.

²⁶ *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.

training guidelines?

3. Planning and Administration

The Agencies intend to continue to allow recipients to use up to 10 percent of grant funds to cover administrative expenses incurred as a direct result of participation in the grant program. The Agencies propose allowing recipients to use a portion of the 10 percent maximum for administrative costs to perform an assessment of their current 911 system, using the “NG9-1-1 Readiness Scorecard” produced by the FCC’s Task Force for Optimal PSAP Architecture,²⁷ which includes the ongoing activities necessary to develop, modify, and improve the framework for State and Tribal NG911 governance, strategic planning, and coordination.

4. Operation of 911 System

The NG911 Advancement Act provides that 911 grant funds are intended to assist in implementation of NG911 systems and anticipates that jurisdictions will use fees collected by State and local governments to fund operations of 911 services.²⁸ In order to maximize use of funds to meet this goal, eligible entities may only use grant funds to assist in the implementation of an NG911 system.²⁹ However, as the implementation of NG911 occurs, States, local, and tribal 911 authorities and PSAPs are required to operate parallel NG911 and legacy E-911 or 911 systems while the transition is being completed. While surcharges collected by State and local

²⁷ 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. The Task Force developed the NG911 Readiness Scorecard with extensive participation from the 911 stakeholder community, and in conjunction with the National 911 Program.

²⁸ See 47 U.S.C. 942(b)(1) and (c). See also ENHANCE 911 Act of 2004, Pub. L. 108-494, Title I, § 102, 118 Stat. 3986 (2004).

²⁹ Implementation of a NG911 system does not include construction of new PSAPs. Thus, the Agencies do not propose to permit the use of grant funds for purposes of such construction.

governments already pay for the operation of a current legacy system, grant funds can be used only to cover the cost of operating the NG911 system until such time as the current legacy system is shut down and the system is fully operational using only NG911 technology.

I. Continuing compliance. (47 CFR 400.8)

The Agencies propose to amend the Non-compliance section of the 911 Grant Program regulations as set forth at § 400.8 to conform to the NG911 Advancement Act and to reflect the proposed ability of Tribal Organizations to apply directly for grant funds. Any applicant or grant recipient that provides a certification knowing that the information provided in the certification is false (1) will not be eligible to receive the grant; (2) must return any grant awarded under this part during the time that the certification is not valid; and (3) will not be eligible to receive any subsequent grants under this part.³⁰

J. Financial and administrative requirements. (47 CFR 400.9)

In 2014, the Department of Commerce and the Department of Transportation, among other executive branch agencies, adopted the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements (OMB Uniform Guidance). See OMB Uniform Guidance, 2 CFR part 200, 2 CFR part 1327 (DOC's implementing regulations), and 2 CFR part 1201 (DOT's implementing regulation). Accordingly, the Agencies propose to amend the financial and administrative requirements section of the 911 Grant Program as set forth at 47 CFR 400.9 to conform to the OMB Uniform Guidance. Because this is a joint rulemaking, the Agencies will apply the OMB Uniform Guidance without any agency-specific deviations.

K. Closeout. (47 CFR 400.10)

³⁰ See 47 U.S.C. 942(c)(4).

The funds made available from the Public Safety Trust Fund for the new grants are available for obligation until September 30, 2022, and will be cancelled and returned to the Treasury no later than September 30, 2027. The recipients' right to incur costs under this part will expire as of the end of the period of performance announced in the Notice of Funding Opportunity, but in no event later than July 2, 2027. The Agencies are amending this section to reflect this new date and to update the reference to the new OMB Uniform Guidance.

L. Waiver authority. *(47 CFR 400.11)*

It is the general intent of the Agencies that the provisions of the 911 Grant Program regulations not be waived. The Agencies, however, recognize that there may be extraordinary circumstances in which it is in the best interest of the federal government to waive program regulations. Accordingly, the Agencies propose to permit applicants or grant recipients to request waiver of any of the provisions of the program regulations and also to reserve the right for the Agencies to do so on their own initiative. The Agencies recognize that such waiver authority may only be exercised for requirements that are discretionary and not mandated by statute or other applicable law. The Agencies seek comment on this proposal.

M. Appendices. *(47 CFR part 400, App. A, B, C, and D)*

The Agencies propose to delete and replace the Appendices from the E-911 Grant Program. In their place, the Agencies propose to insert the following Appendices to conform to the certification requirements contained in the NG911 Advancement Act and to reflect the proposed ability of Tribal Organizations to apply directly for grant funds: Appendix A (Initial Certification For 911 Grant Applicants – States), Appendix B (Initial Certification For 911 Grant Applicants – Tribal Organizations), Appendix C (Annual Certification For 911 Grant Recipients – States), and Appendix D (Annual Certification For 911 Grant Recipients – Tribal Organizations).

IV. Public Participation

A. How do I prepare and submit comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number listed in this document in your comments. Your primary comments should be no longer than 15 pages. You may attach additional documents to your primary comments. There is no limit on the length of the attachments.

You may submit comments identified by Docket No. 170420407-7407-01 by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: National Telecommunications and Information Administration, U.S. Department of Commerce, Attn: NG911 Grant Program, 1401 Constitution Avenue NW, Room 4076, Washington, DC 20230.

B. How can I be sure my comments were received?

All comments received are a part of the public record and will be posted without change to <http://www.regulations.gov>.

If you submit your comments by mail, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, you will be notified with the postcard by mail.

C. Will the Agencies consider late comments?

The Agencies will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the Agencies will also consider comments received after that date.

D. How can I read the comments submitted by other people?

Comments will be available on <http://www.regulations.gov>. Follow the online instructions for accessing the docket. Please note that even after the comment closing date, the Agencies may continue to file relevant information on the docket as it becomes available. Accordingly, the Agencies recommend that you periodically check the docket for new material.

V. Statutory Basis for This Action

The Agencies' proposal would implement 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. 942).

VI. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Policies and Procedures)

This rulemaking has been determined to be significant under section 3(f) 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."

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 have certified to the Small Business Administration Office of Advocacy that this proposed rule would not 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 proposed 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 proposed 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 proposed 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 proposed rule does not contain policies that have takings implications.

Executive Order 13175 (Consultation and Coordination with Indian Tribes)

The Agencies have analyzed this proposed rule under Executive Order 13175, and have determined that the proposed 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. The Agencies’ proposed use of 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) has been approved previously by OMB under the respective control numbers 4040-0004, 4040-0005, 4040-0006, 4040-0007, 4040-0014, and 4040-0013. The Agencies will submit a Request for Common Form to OMB to use the previously-approved information collection instruments.

The Agencies obtained OMB approval previously for an information collection related to the annual progress reporting and closeout reporting requirements and State 911 Plans for the E-911 Grant Program, under OMB Control Number 2127-0661. At the request of NHTSA, OMB discontinued this information collection on January 31, 2012. The Agencies are seeking a new information collection that will operate as a reinstatement with change of the previously approved information collection. With the new information collection that will operate as a reinstatement with change, the Agencies propose to collect information for the State 911 Plans, and Annual Performance Reports. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Agencies have submitted the proposed new information collection that will operate as a reinstatement with change to OMB for its review. The Agencies will use the collection of information to ensure that grant recipients are effectively monitored and evaluated against the core purposes of the 911 Grant Program. The Agencies are seeking OMB approval for a period of three years.

OMB Control Number: None

Form Number(s): None

Type of Review: Regular

Affected Public: State, local, and Tribal Organizations

Frequency: Once, State 911 Plan; Annually, Annual Performance Report

Number of Respondents: 60 (42 States, District of Columbia, 4 Territories, 13 Tribal Organizations)

Average Time Per Response: 154 hours (State 911 Plan - 94 hours and Annual Performance Report - 60 hours)

Estimated Total Annual Burden Hours: 9,240 hours

Estimated Total Annual Cost to Public: \$400,000 (\$244,156 for the State 911 Plan; \$155,844 for the Annual Performance Report)

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection to the close of the proposed rule's comment period. Direct all written comments regarding the collection of information to the Office of Information and Regulatory Affairs of OMB, Attention: Desk officer for Department of Commerce, Nicholas A. Fraser. OMB may file public comments, in the form of a Notice of Action, on the collection of information within 60 days of the publication of this NPRM. *See* 5 CFR 1320.11(c).

Unfunded Mandates Reform Act

This proposed 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 proposal would not have a significant impact on the quality of the human environment.

Dated: September 14, 2017.

Leonard Bechtel,

Chief Financial Officer and Director of Administration, Performing the non-exclusive duties of the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration.

Jack Danielson,

Acting 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, propose to revise part 400 in title 47 of the Code of Federal Regulations 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, US 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)(a) *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 revised Notice of 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 revised 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 Agencies reserve 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
- [*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

[FR Doc. 2017-19944 Filed: 9/20/2017 8:45 am; Publication Date: 9/21/2017]