

3. Amend § 8360.0–5 by revising paragraph (c) to read as follows:

**§ 8360.0–5 Definitions.**

\* \* \* \* \*

(c) *Developed recreation sites and areas* mean sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: Delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

\* \* \* \* \*

4. Revise § 8365.1–5(b)(2) to read as follows:

**§ 8365.1–5 Property and resources.**

\* \* \* \* \*

(b) \* \* \*

(2) Nonrenewable resources such as mineral specimens, common invertebrate and plant fossils, and semiprecious gemstones;

\* \* \* \* \*

5. Revise § 8365.2–3 to read as follows:

**§ 8365.2–3 Occupancy and use.**

In developed camping and picnicking areas, no person shall, unless otherwise authorized:

(a) Pitch any tent, park any trailer, erect any shelter or place any other camping equipment in any area other than the place designed for it within a designated campsite;

(b) Leave personal property unattended for more than 24 hours in a day use area, or 72 hours in other areas. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 484(m));

(c) Build any fire except in a stove, grill, fireplace or ring provided for such purpose;

(d) Enter or remain in campgrounds closed during established night periods except as an occupant or while visiting persons occupying the campgrounds for camping purposes;

(e) Occupy a site with more people than permitted within the developed campsite; or

(f) Move any table, stove, barrier, litter receptacle or other campground equipment.

[FR Doc. E8–23258 Filed 10–2–08; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**DEPARTMENT OF COMMERCE**

**National Telecommunications and Information Administration**

**47 CFR Part 400**

[Docket No. NHTSA–2008–0142]

RIN 2127–AK37

**E–911 Grant Program**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This joint notice proposes implementing regulations for the E–911 Grant Program authorized under 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). The Act authorizes grants for the implementation and operation of Phase II enhanced 911 services and for migration to an IP-enabled emergency network. This NPRM proposes the application, award and administrative requirements for the E–911 grant program and seeks comments thereon.

**DATES:** Written comments may be submitted to this agency and must be received by December 2, 2008.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number NHTSA–2008–0142 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading in the **SUPPLEMENTARY INFORMATION**

section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476–78).

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Mr. Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590. Telephone: (202) 366–9966. E-mail: [Drew.Dawson@dot.gov](mailto:Drew.Dawson@dot.gov).

For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NCC–113, Washington, DC 20590. Telephone: (202) 366–1834. E-mail: [Jin.Kim@dot.gov](mailto:Jin.Kim@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

|   |
|---|
| I. Background   |
| II. Summary of the ENHANCE 911 Act                              |
| III. Proposed Regulations                                       |
| A. Definitions  |
| B. Who May Apply  |
| C. Application Requirements                                     |
| 1. State 911 Plan   |
| 2. Project Budget   |
| 3. Supplemental Project Budget                                  |
| 4. Designated E–911 Coordinator                                 |
| 5. Certifications   |
| 6. Due Date   |
| D. Approval and Award   |
| E. Distribution of Grant Funds                                  |
| F. Eligible Uses for Grant Funds                                |
| G. Non-Compliance   |
| H. Financial and Administrative Requirements                    |
| I. Closeout   |
| IV. Public Participation  |
| V. Statutory Basis for This Action                              |
| VI. Regulatory Analyses and Notices                             |
| A. Executive Order 12866 and Regulatory Policies and Procedures |
| B. Regulatory Flexibility Act                                   |
| C. Executive Order 13132 (Federalism)                           |
| D. Executive Order 12988 (Civil Justice Reform)                 |

- E. Paperwork Reduction Act
- F. Unfunded Mandates Reform Act
- G. National Environmental Policy Act
- H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)
- I. Regulatory Identifier Number (RIN)
- J. Privacy Act

## I. Background

Trends in telecommunications mobility and convergence have put the nation's 911 system at a crossroads. The growing market penetration of both wireless telephones (commonly known as mobile or cell phones) and Voice over Internet Protocol (VoIP) telephony have underscored the limitations of the current 911 infrastructure. The 911 system, based on decades-old technology, cannot handle the text, data, image and video that are increasingly common in personal communications and critical to emergency response.

Many of the limitations of the current 911 system stem from its foundation on 1970s circuit-switched network technology. Each introduction of a new access technology (e.g., wireless) or expansion of system functions (e.g., location determination) requires significant engineering and system modifications. There appears to be consensus within the 911 community on the shortcomings of the present 911 system and the need for a new, more capable system, based upon a digital, Internet-Protocol (IP) based infrastructure.

Today, there are approximately 255 million wireless telephones in use in the United States. About 80 percent of Americans now subscribe to wireless telephone service and 14 percent of American adults live in households with only wireless telephones, i.e., no landline telephones. Of the estimated 240 million 911 calls made each year, approximately one-third originate from wireless telephones. In many communities, at least half of the 911 calls come from wireless telephones. Unlike landline 911 calls, not all wireless 911 calls are delivered to dispatchers with Automatic Number Information (ANI) and Automatic Location Information (ALI), two pieces of information that aid in identifying the telephone number and geographic location of the caller. The increasing use of VoIP communications has compounded this problem because the location of the caller cannot automatically be determined when a 911 call is made on some interconnected VoIP services. Without this information, emergency response times may be delayed. Prompt and accurate location information is critical to delivering emergency assistance.

Ensuring enhanced 911 (E-911) service for each caller, i.e., telephone number and location information of the caller, is increasingly important to public safety, given the vast number of 911 calls originating from wireless and VoIP telephones.

Successful E-911 service implementation requires the cooperation of multiple distinct entities: Wireless carriers, wireline telephone companies (also known as local exchange carriers), VoIP providers, and Public Safety Answering Points (PSAPs). A PSAP is a facility that has been designated to receive emergency calls and route them to emergency personnel. For example, when a 911 call is made from a wireless telephone, the wireless carrier must be able to determine the location of the caller, the local exchange carrier must transmit that location information from the wireless carrier to the PSAP, and the PSAP must be capable of receiving such information.

Currently, many PSAPs are not technologically capable of receiving ANI and ALI from wireless 911 calls. In order to receive this information, PSAPs must upgrade their operations centers and make appropriate trunking arrangements (i.e., establish a wired connection between the PSAP and the networks of the local wireline telephone companies) to enable wireless E-911 data to pass from the wireless carrier to the PSAP. Once a PSAP is technologically capable of receiving this information, the PSAP can submit requests to wireless carriers for E-911 service. Under regulations of the Federal Communications Commission (FCC), this request triggers a wireless carrier's obligation to deploy E-911 service to a PSAP.

Upgrading the 911 system to an IP-enabled emergency network will enable E-911 calls from more networked communication devices, enable the transmission of text messages, photographs, data sets and video, enable geographically independent call access, transfer, and backup among and between PSAPs and other authorized emergency organizations, and support an "interoperable internetwork" of all emergency organizations.

Many PSAPs do not have the resources to make the upgrades necessary to request E-911 service. Some PSAPs are able to fund upgrades from their existing budgets, but other PSAPs must rely on funds collected by the State to maintain operation and make capital improvements to 911 services. While most States collect some type of wireless fee or surcharge on consumers' wireless telephone bills to

help fund PSAP operations and upgrades, not all State laws ensure that such surcharges are dedicated to their intended use. In fact, some States have used E-911 surcharges to satisfy other State obligations that may be marginally related to public safety, even though PSAPs remain unable to receive E-911 service. *See, e.g., Government Accountability Office (GAO), States' Collection and Use of Funds for Wireless Enhanced 911 Services, GAO-06-338 (March 2006); see also GAO, Survey on State Wireless E911 Funds, GAO-06-400sp (2006).*

Recognizing the need for dedicated funding of E-911 services, the ENHANCE 911 Act was enacted "to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E-911 calls, and to support the construction and operation of a ubiquitous and reliable citizen activated system[.]" The Act directs NHTSA and NTIA to establish a joint program to facilitate coordination and communications among stakeholders and to provide grants for the implementation and operation of E-911 services. The provisions of the Act expire on October 1, 2009. 47 U.S.C. 942(f)(2).

Section 3011 of the Deficit Reduction Act of 2005 (Pub. L. 109-171) authorized \$43.5 million to NTIA for the implementation of the ENHANCE 911 Act, to be derived from the proceeds of an auction of analog television spectrum. Thereafter, the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53), as amended by the Consolidated Appropriations Act, 2008 (Pub. L. 110-161), authorized NTIA to borrow up to \$43.5 million in advance of the spectrum auction and directed the agencies to allow a portion of the funds to be used to give priority to grants that are requested by PSAPs that are not capable of receiving 911 calls for the incremental costs of upgrading from Phase I to Phase II compliance. The New and Emergency Technologies 911 Improvement Act of 2008 (NET 911 Improvement Act) (Pub. L. 110-283) recently amended the Act to permit grant funds to be used for migration to an IP-enabled emergency network.

The agencies are now issuing this NPRM to implement the grant program.

## II. Summary of the ENHANCE 911 Act

The ENHANCE 911 Act requires NHTSA and NTIA to "establish a joint

program to facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E-911 services” and “create an E-911 Implementation Coordination Office [ICO] \* \* \*.” 47 U.S.C. 942(a)(1). The Act charges the ICO with three tasks related to E-911 grant program administration. Specifically, the Act requires the ICO to: (1) Advise and assist eligible entities in the preparation of plans required under the Act for the coordination and implementation of E-911 services; (2) receive and review grant applications and recommend approval or disapproval; and (3) oversee the use of grant funds in fulfilling implementation plans. 47 U.S.C. 942(a)(3). The agencies have centralized the grant-related administrative functions of the ICO within NHTSA.

The Act directs NHTSA and NTIA, acting through the ICO and after consultation with the Department of Homeland Security and the Federal Communications Commission, to provide grants to eligible entities for the implementation and operation of Phase II E-911 services, as defined by FCC regulations. 47 U.S.C. 942(b)(1). (Phase II E-911 service refers to providing PSAPs with the location of all 911 calls by latitude and longitude within 50 to 300 meters depending on the type of technology used. *See* 47 CFR 20.18.) The Act was amended by the NET 911 Improvement Act to permit grant funds to be used for migration to an IP-enabled emergency network.

The Act directs the agencies to issue joint implementing regulations prescribing the criteria for selection for grant awards after a 60-day public comment period. 47 U.S.C. 942(b)(4). The Act requires an applicant to certify that it has coordinated its application with the public safety answering points located within the jurisdiction; that the State has designated a single officer or governmental body to serve as the coordinator of implementation of E-911 services; that it has established a plan for the coordination and implementation of E-911 services; and that it has integrated telecommunications services involved in the implementation and delivery of Phase II E-911 services. 47 U.S.C. 942(b)(3).

In addition, the Act requires each applicant to certify that no portion of any designated E-911 charges imposed by the State or other taxing jurisdiction

within the State is being or will be obligated or expended for any purpose other than E-911 purposes during the period at least 180 days immediately preceding the date of the application and continuing throughout the time grant funds are available to the applicant. 47 U.S.C. 942(c). The Act imposes a penalty for providing false information on a certification. Specifically, an applicant providing false information on a certification will not be eligible to receive an E-911 grant, must return any grant awarded during the time that the certification is not valid, and is ineligible to receive subsequent E-911 grants. 47 U.S.C. 942(c)(4).

### III. Proposed Regulations

As directed by the ENHANCE 911 Act, today’s notice sets forth application, award and administrative procedures to implement the E-911 grant program.

#### A. Definitions (47 CFR 400.2)

Generally, terms used in this part are terms defined by the ENHANCE 911 Act. The NET 911 Improvement Act, which amended the ENHANCE 911 Act to allow grant funds to be used for migration to an “IP-enabled emergency network,” does not define that term. IP, or Internet Protocol, is one method or protocol by which data is sent from one computer to another. *See* RFC 791, “Internet Protocol, DARPA Internet Program Protocol Specification” (Sept. 1981), available at <http://rfc.net/rfc0791.html>; *see also* STD 5 “Internet Protocol, DARPA Internet Program Protocol Specification” (Sept. 1981), available at <http://rfc.net/std0005.html>. Because the agencies believe that such emergency communications should be transmitted securely, the agencies propose defining “IP-enabled emergency network” as an emergency communications network based on an infrastructure allowing secured transmission of data among computers that use the Internet Protocol.

#### B. Who May Apply (47 CFR 400.3)

The ENHANCE 911 Act directs NHTSA and NTIA to make grants to “eligible entities” for the implementation and operation of Phase II E-911 services. 47 U.S.C. 942(b)(1). The Act defines an eligible entity as “a State or local government or a tribal organization” and includes “public authorities, boards, commissions, and similar bodies created by [a State or local government or a tribal organization] to provide E-911 services.” 47 U.S.C. 942(f)(3)(A), (B). Based on this broad statutory definition,

the agencies estimate that such entities number in the thousands. To minimize administrative costs and to streamline the grant process, the agencies propose to permit only States to apply for grant funds on behalf of all eligible entities located within their borders. We believe that this limitation on the number and identity of applicants is also necessary to properly address the certification requirements under the Act, as States are the only eligible entities capable of certifying that their E-911 charges were not diverted to other uses and capable of designating a single officer or governmental body to serve as the coordinator of implementation of E-911 services. For purposes of this program, a State includes any of the 50 United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

The agencies also believe that the amount of available grant funds supports limiting the applicant pool to States. While the Act authorizes a five-year grant program totaling \$1.25 billion (\$250 million per year), the amount appropriated, on a one-time basis, was only \$43.5 million. The agencies believe that \$43.5 million would not have a meaningful impact on E-911 services if the funds were divided into small grants among a large number of grantees. Therefore, we believe that limiting the applicant pool is necessary to ensure that benefits are realized, and that States are best positioned to make wise resource deployment decisions within their borders.

The agencies propose to require assurances from States in their applications to ensure adequate participation by local governments, tribal organizations, and PSAPs, consistent with the Act. Specifically, the State would be required to coordinate its application with PSAPs and to ensure that 90 percent of the grant funds would be used for the direct benefit of PSAPs. In addition, consistent with the statute, the proposed regulation would require States to identify the amount designated for the benefit of PSAPs without the capability to receive 911 calls or provide an explanation as to why such designation is not practicable.

#### C. Application Requirements (47 CFR 400.4)

The proposed rule outlines the requirements for States to apply for a grant under this program. In order to qualify to receive an E-911 grant, the agencies propose that States must submit an application containing the following components: a State 911 plan, a project budget, a supplementary

project budget, designation of the State E-911 Coordinator, and a certification of compliance with statutory and programmatic requirements. These components are consistent with the application requirements of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. *See* 49 CFR 18.10; Office of Management and Budget (OMB) Circular A-102.

#### 1. State 911 Plan (47 CFR 400.4(a)(1))

The ENHANCE 911 Act requires applicants to certify that they have established a plan for the coordination and implementation of E-911 services. The agencies propose that States would submit a State 911 Plan as part of their application for a grant. As further detailed below, the minimum components of a State 911 plan would incorporate the statutory provisions related to coordination with PSAPs within the State's jurisdiction, giving priority to communities without 911 capability, and the involvement of integrated telecommunications service providers in the implementation and delivery of Phase II E-911 services or in the migration to an IP-enabled emergency network. In addition, a State 911 Plan would be required to provide details about how the State intends to employ technology to achieve compliance with the FCC description of Phase II E-911 services and/or how it intends to migrate to an IP-enabled emergency network.

The Act requires applicants to coordinate their applications with PSAPs within their jurisdiction. To address this requirement, the agencies propose that States would detail in the State 911 Plan the steps they have taken to coordinate their applications with local governments, tribal organizations, and PSAPs within their borders. We believe that requiring States to coordinate their applications with these entities will ensure that the State 911 Plan takes into account the needs of these stakeholders. To ensure that grant funds are used predominantly where their impact is most significant—in the communities—the agencies propose requiring States to demonstrate in the State 911 Plan that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs.

The Act directs the agencies to allow a portion of the E-911 grant funds to be used to give priority to PSAPs that were not capable of receiving 911 as of August 3, 2007. 47 U.S.C. 942(b)(4). To effectuate this provision, the agencies propose that States would identify in their application the percentage of grant funds that will be designated for those

communities. The agencies are stopping short of proposing this as an absolute requirement, however. Based on the amount of grant funds available, we recognize that such a designation may not always be practicable for efficient use of the limited funds. Therefore, if the State chooses not to so designate a portion of the funds, the State would be required to provide an explanation. The agencies believe that the States are best situated to make these difficult resource decisions.

The proposed regulation also would require that the State 911 plan describe how the State has integrated telecommunications service providers involved in the implementation and delivery of Phase II E-911 services and in the migration to an IP-enabled emergency network. 47 U.S.C. 942(b)(3)(A)(iv). The term “integrated telecommunications service providers” refers to local exchange carriers, wireless carriers and Internet Protocol (IP)-enabled voice service providers. It is necessary to detail how integrated telecommunications service providers are involved in the State 911 Plan because they provide essential network functions for consumer delivery of E-911 services.

The agencies also propose that States describe in the State 911 Plan how they plan to use technology to allow a PSAP to meet the functionality required by the FCC's description of Phase II E-911 services or to migrate to an IP-enabled emergency network. Such an approach is consistent with the Act's citation to 47 CFR 20.18 of the FCC's regulations for the meaning of Phase II E-911 services. 47 U.S.C. 942(f)(5). According to 47 CFR 20.18, Phase II E-911 services are described as location information of all 911 calls by longitude and latitude with a specific degree of accuracy. For States interested in using grant funds to migrate to an IP-enabled emergency network, the agencies propose that States provide details about how the State intends to employ technology toward that end.

Finally, because the level of Phase II E-911 services and IP-enabled emergency networks differs significantly from State to State, the agencies propose that States establish performance metrics and timelines for grant project implementation, subject to the ICO's review and the agencies' approval.

#### 2. Project Budget (47 CFR 400.4(a)(2); Appendix A)

The agencies propose that a State would submit a project budget for the projects and activities that it seeks to fund with E-911 grant funds and the required State matching funds. *See* 49

CFR 18.10; OMB Circular A-102.

Elsewhere in this notice, the agencies propose to distribute grant funds based on a formula. *See* discussion under Section III.E., below. Based on that proposed formula, we have identified in an appendix to this part the minimum award each State would receive if all States qualified for a grant. A State's project budget would need to account for all funds (those identified in Appendix A for the State and State matching funds) in describing the projects or activities for which it seeks funding, and describe the non-Federal sources that will fund 50 percent of the cost. The non-Federal sources must be consistent with the requirements set out in the matching provision of 49 CFR part 18, DOT's implementation of the government-wide common grant rule for State and local governments. As provided in 48 U.S.C. 1469a, the requirement for non-Federal matching funds under \$200,000 (including in-kind contributions) is waived for the Territorial governments in American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

#### 3. Supplemental Project Budget (47 CFR 400.4(a)(3))

It is possible that some States may choose not to apply or may not qualify for an E-911 grant because they are unable to make the required certifications. To address these contingencies, the agencies propose to distribute all remaining available funds to the pool of qualifying grant recipients, in accordance with the same formula used for the initial distribution. *See* discussion under Section III.E., below. In order to expedite the award of these grant funds, the agencies propose that States would include a supplemental project budget in anticipation of the potential availability of additional grant funds. Specifically, the agencies propose that States identify in their supplemental project budget the maximum amount that the State would be able to match from non-Federal sources and include proposed projects or activities for those grant and matching funds, up to the same total amount and to the same level of detail as required for the project budget under proposed § 400.4(a)(2). The agencies propose that the supplemental project budget meet the same requirements identified for the project budget in § 400.4(a)(2) and be consistent with the State 911 Plan in § 400.4(a)(1).

4. Designated E-911 Coordinator (47 CFR 400.4(a)(4); Appendix B; Appendix C)

The Act requires States to designate a single officer or governmental body to serve as the coordinator of implementation of E-911 services. 47 U.S.C. 942(b)(3)(A)(ii). To implement this provision, the agencies propose that this officer or governmental body would be designated by the Governor, and that the State would document the designation of the E-911 Coordinator by the Governor through the use of a certification. See discussion under the next heading. We are identifying the E-911 Coordinator as the proposed certifying official on the certifications. In the event that a governmental body is designated as the State's E-911 Coordinator, the agencies propose that States affirmatively identify an official representative of the governmental body to serve as the certifying official on the certifications. The agencies also propose that the State notify NHTSA in writing within 30 days of a change in appointment of the E-911 Coordinator. The E-911 Coordinator would act as the liaison between the agencies and the State.

5. Certifications (47 CFR 400.4(a)(5); Appendix B; Appendix C)

The Act requires applicants to certify that they meet certain conditions to qualify for a grant. An applicant must certify that it has: (1) Coordinated its application with the PSAPs located within the jurisdiction; (2) designated a single officer or government body to serve as the E-911 Coordinator; (3) established a plan for the coordination and implementation of E-911 services; and (4) integrated telecommunications involved in the implementation and delivery of Phase II E-911 services. 47 U.S.C. 942(b)(3). The Act also requires that applicants certify at the time of application and annually thereafter that no portion of any designated E-911 charges imposed by the State or other taxing jurisdiction within the State is being diverted for any other purpose during the period at least 180 days before the application date and continuing throughout the period of time for which grant funds are available. 47 U.S.C. 942(c). To meet these statutory requirements, the agencies propose that States submit a certification as part of their application. To meet the statutory requirement for annual certification concerning the diversion of funds, the agencies propose that States submit an annual certification 30 days after the end of each fiscal year. (In this annual certification, States would also certify

that they have appointed a single officer or governmental body as the E-911 Coordinator.)

The agencies also propose that States would certify that they have coordinated their application with local governments, tribal organizations, and PSAPs, and certify that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs. While these certifications go beyond those required by the statute, we believe they will help to ensure that the intent and purposes of the Act are met. Finally, as discussed under the previous heading, the agencies propose that States would certify that the Governor has appointed a single officer or governmental body to serve as the E-911 Coordinator. The agencies have set forth the proposed certifications in appendices to the NPRM.

6. Due Date (47 CFR 400.4(b))

The agencies' proposal establishes an application due date of 60 days after publication of the final rule in the **Federal Register**. This proposed date balances the need to provide the States appropriate time to prepare proposals with the agencies' need for review time prior to award, taking into account that awards must be made by September 30, 2009.

*D. Approval and Award (47 CFR 400.5)*

The Act established the ICO to receive, review and recommend the approval or disapproval of applications for grants. 47 U.S.C. 942(a)(3)(D). The agencies' proposal incorporates this statutory requirement, and would allow the ICO, upon review of a State's application, to request additional information from the State prior to making a determination of award in order to clarify compliance with the statutory and programmatic requirements. As provided by statute, the Administrator of NHTSA and the Assistant Secretary for Communications and Information of the Department of Commerce will jointly approve and announce grant award recipients. The proposal specifies that this approval will be in writing.

*E. Distribution of Grant Funds (47 CFR 400.6; Appendix A)*

The ENHANCE 911 Act does not specify how the grants are to be awarded. In order to distribute grant funds on an equitable and administratively expedient basis for this one-time grant program, the agencies propose to distribute grants to States in accordance with a formula. Specifically, the agencies propose to distribute grant funds as follows: (1) 50 percent in the

ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and (2) 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.

However, we believe that a strict application of the formula would result in many jurisdictions receiving too few funds to make any meaningful progress in deploying Phase II technologies or migrating to an IP-based emergency network. Accordingly, the agencies propose to modify the formula to distribute a minimum of \$500,000 to each State, except that the four territories—American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands—would each receive a minimum of \$250,000. The agencies believe that a lower minimum amount for these four territories is equitable and appropriate due to their vastly lower populations and road miles. The agencies have applied the formula to the total grant funds available (\$41,325,000, after deduction of the five percent for administering the grant program) and calculated the minimum amounts that each State would receive if all States applied for and qualified for a grant award. See Appendix A to this part.

As discussed under Section III.C.3, it is possible that some States may not apply for grant funds or may not qualify for grant funds because they cannot make the required certifications. To address this possibility, the agencies propose to redistribute any remaining grant funds to those States that have qualified for grant funds and have submitted supplemental project budgets as described in proposed § 400.4(a)(3). The agencies propose to distribute these funds in accordance with the same formula discussed above.

*F. Eligible Uses for Grant Funds (47 CFR 400.7)*

The ENHANCE 911 Act provides that the grants are intended for the implementation and operation of Phase II E-911 services or for migration to an IP-enabled emergency network. To implement this requirement, the agencies propose that grant funds and matching funds be used either for the acquisition and deployment of hardware and software that enables compliance with Phase II E-911 services or that enables migration to an IP-enabled emergency network, or for training in the use of such hardware and software. The agencies believe that limiting grant funds to these identified uses will maximize progress toward

implementing Phase II E-911 services and IP-enabled 911 services, and would best effectuate the purposes of the Act.

#### *G. Non-Compliance (47 CFR 400.8)*

The Act requires that grant funds be returned to the government if a State makes a false certification concerning the diversion of E-911 charges. 47 U.S.C. 942(c)(4). The proposal incorporates this statutory requirement.

#### *H. Financial and Administrative Requirements (47 CFR 400.9)*

The agencies' proposal specifies that the requirements of 49 CFR part 18, DOT's implementation of the government-wide common grant rule for State and local governments, including applicable cost principles in circulars of the Office of Management and Budget, will apply to E-911 grants. In addition, the agencies propose that grant recipients submit annual performance reports and quarterly financial reports, following the procedures of 49 CFR 18.40 and 18.41, respectively.

#### *I. Closeout (47 CFR 400.10)*

The Act provides that enhanced 911 is a national priority. To effectuate the Act's intent, the agencies believe that the States should use grant funds in an expeditious manner to implement E-911 services in their communities. According to industry estimates, upgrading the average PSAP takes approximately three years. Accordingly, the agencies propose that the total duration of the grant program be three years. The agencies also propose that grant recipients submit a final voucher for costs incurred within 90 days after the completion of projects and activities funded under this part, but in no event later than three years after grant award. Finally, the proposal specifies that the final reporting requirements of 49 CFR 18.50 would apply to E-911 grants, and that any funds remaining unexpended at the end of fiscal year 2012 will no longer be available to the State and must be returned to the government.

### **IV. Public Participation**

#### *A. How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments must not be more than 15 pages long. 49 CFR 553.21. However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically on the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

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

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### *C. Will the agencies consider late comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

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

You may read the comments received by the Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the docket.

Please note that even after the comment closing date, we will continue to file relevant information on the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

### **V. Statutory Basis for This Action**

The agencies' proposal would implement the grant program created by section 104 of the ENHANCE 911 Act of 2004, as amended (Pub. L. 108-494, codified at 47 U.S.C. 942), which requires the Administrator and the Assistant Secretary to issue joint implementing regulations prescribing the criteria for grant awards.

### **VI. Regulatory Analyses and Notices**

#### *A. Executive Order 12866 and Regulatory Policies and Procedures*

Executive Order 12866, "Regulatory Planning and Review," provides for making determinations whether a regulatory action is "significant" and

therefore subject to OMB review and to the requirements of the Executive Order. 58 FR 51735, Oct. 4, 1993. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. The rulemaking action is not considered to be significant within the meaning of Executive Order 12866 or the agencies' regulatory policies and procedures.

The agencies' proposal would not affect amounts over the significance threshold of \$100 million each year. The proposal sets forth application procedures and showings to be made to be eligible for a grant. The funds to be distributed under the procedures developed in the proposal total \$43.5 million, well below the annual threshold of \$100 million. The agencies' proposal would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The agencies' proposal would not create an inconsistency or interfere with any actions taken or planned by other agencies. The agencies' proposal would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, the agencies' proposal would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In consideration of the foregoing, the agencies have determined that if it is made final, this rulemaking action would not be economically significant. The impacts of the rule would be so minimal that a full regulatory evaluation is not required.

### B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). 5 U.S.C. 601 *et seq.* The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

NHTSA and NTIA have considered the effects of this proposal under the Regulatory Flexibility Act. States are the recipients of funds awarded under the section 2010 program and they are not considered to be small entities under the Regulatory Flexibility Act. Therefore, we certify that this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

### C. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism," requires NHTSA and NTIA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." 64 FR 43255, Aug. 10, 1999. "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed

regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agencies have analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132, and have determined that this proposed rule would not have Federalism implications as defined in the order.

### D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform," the agencies have considered whether this rulemaking would have any retroactive effect. 61 FR 4729, Feb. 7, 1996. This rulemaking action would not have any retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This NPRM, if made final, would result in a new collection of information that would require OMB clearance pursuant to 5 CFR part 1320. Before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

- (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) The accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- (iii) How to enhance the quality, utility, and clarity of the information to be collected;
- (iv) How to minimize the burden of the collections of information on those who are to respond, including the use

of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, the agencies ask for public comments on the following proposed collections of information:

*Title:* E-911 Grant Program.  
*OMB Control Number:* N/A  
*Requested Expiration Date of Approval:* Three years from the approval date.

*Type of Request:* New collection.  
*Affected Public:* State Governments  
*Form Number:* N/A  
*Abstract:* 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) authorizes a joint grant program between the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation and the National Telecommunications and Information Administration (NTIA) of the Department of Commerce to facilitate coordination among all parties involved in the organization of E-911 services.

The Act requires an applicant to certify to several conditions in its application in order to qualify for a grant. Specifically, an applicant must certify that (1) it has coordinated its application with the public safety answering points (PSAP's); (2) it has designated a single officer or governmental body to serve as the coordinator of implementation of E-911 services; (3) it has established a plan for the coordination of and implementation of E-911 services; (4) it has integrated telecommunications services involved in the implementation of E-911 services; and (5) no portion of any designated E-911 charges imposed by the State or other taxing jurisdiction within the State is being diverted for any other purpose during the period at least 180 days before the application date and continuing throughout the period of time for which grant funds are available. In addition, the Act requires grantees to match at least 50 percent from non-Federal sources.

The information collected for this grant program is to include an application consisting of a State 911 Plan, project budget information and certifications. This information is necessary to determine whether a State satisfies the criteria for a grant award.

In a **Federal Register** document published on March 11, 2008, NHTSA sought public comment on a proposed collection of information for the E-911

grant program. See 73 FR 13068. In that notice, NHTSA inadvertently identified HS-217 (Highway Safety Program Cost Summary) for submission in the application instead of SF-424 (Application for Federal Assistance), including SF-424a and SF-424b, which have been approved by OMB. The agencies intend to use the SF-424 forms as part of the application for the E-911 grant program. Accordingly, the agencies are not required to obtain OMB approval for the use of these forms.

A State must also submit a State 911 Plan as part of its application. This plan must detail the projects and activities proposed to be funded for the implementation of Phase II E-911 services or migration to an IP-enabled emergency network, establish metrics and a time table for grant implementation, and describe the steps that the State has take to meet the grant criteria. It is important for the agencies to review each applicant's plan to confirm that the applicant has met certain statutory requirements—a plan for the coordination of and implementation of E-911 services, coordination of its application with PSAPs, involvement of integrated telecommunications services in the implementation of E-911 services, and priority funding to communities without 911 capability.

*Estimated Annual Burden:* 2240 hours (for State 911 plans).

*Estimated Number of Respondents:* 56 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands).

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility; the accuracy of the agencies' estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments must refer to the docket and notice numbers cited at the beginning of this NPRM and be submitted to one of the addresses identified at the beginning of this NPRM.

#### F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final

rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This proposed rule would not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the \$100 million threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

#### G. National Environmental Policy Act

NHTSA and NTIA 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.

#### H. 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. Therefore, a tribal summary impact statement is not required.

#### I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**. 65 FR 19477, Apr. 11, 2000.

#### List of Subjects in 47 CFR Part 400

Grant programs, Telecommunications, Emergency response capabilities (911).

In consideration of the foregoing, the National Highway Traffic Safety Administration, Department of Transportation, and the National Telecommunications and Information

Administration, Department of Commerce propose to establish a new Chapter IV consisting of Part 400 in Title 47 of the Code of Federal Regulations to read as follows:

#### CHAPTER IV—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE, AND NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

#### PART 400—E-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 Non-compliance.

400.9 Financial and administrative requirements.

400.10 Closeout.

Appendix A to Part 400: Minimum Grant Awards Available to Qualifying States

Appendix B to Part 400: Certification for E-911 Grant Applicants

Appendix C to Part 400: Annual Certification for E-911 Grant Recipients

**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.

#### § 400.2 Definitions.

As used in this part—

*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 E-911 charges* mean 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 E-911 services.

*E-911 Coordinator* means a single officer or governmental body of the State that is responsible for implementing E-911 services in the State.

*E-911 services* mean both phase I and phase II enhanced 911 services, as described in 47 CFR 20.18.

*Eligible entity* means a State or local government or tribal organization,

including public authorities, boards, commissions, and similar bodies created by such governmental entities to provide E-911 services.

*ICO* means the National E-911 Implementation Coordination Office established under 47 U.S.C. 942 for the administration of the E-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.

*IP-enabled emergency network* means an emergency communications network based on an infrastructure allowing secured transmission of data among computers that use the Internet Protocol.

*Phase II E-911 services* mean phase II enhanced 911 services, as described in 47 CFR 20.18.

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

*State* includes any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

#### § 400.3 Who may apply.

In order to apply for a grant under this part, an applicant must be a State applying on behalf of all eligible entities within its jurisdiction.

#### § 400.4 Application requirements.

(a) *Contents.* A State's application for funds for the E-911 grant program must consist of the following components:

(1) *State 911 Plan.* A plan that details the projects and activities proposed to be funded for the implementation and operation of Phase II E-911 services or migration to an IP-enabled emergency network, establishes metrics and a time table for grant implementation, and describes the steps the State has taken to—

(i) Coordinate its application with local governments, tribal organizations, and PSAPs within the State;

(ii) Ensure that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs;

(iii) Give priority to communities without 911 capability as of August 3, 2007 to establish Phase II coverage by identifying the percentage of grant funds designated for those communities or providing an explanation why such designation would not be practicable in successfully accomplishing the purposes of the grant;

(iv) Involve integrated telecommunications services in the implementation and delivery of Phase II

E-911 services or in the migration to an IP-enabled emergency network; and  
(v) Employ the use of technologies to achieve compliance with Phase II E-911 services or for migration to an IP-enabled emergency network.

(2) *Project budget.* A project budget for all proposed projects and activities to be funded by the grant funds identified for the State in Appendix A to this part and matching funds. Specifically, for each project or activity, the State 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 49 CFR 18.24, that will fund at least 50 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.* To be eligible for 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 49 CFR 18.24, 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 E-911 Coordinator.* The identification of a single officer or government body appointed by the Governor of the State to serve as the E-911 Coordinator of implementation of E-911 services and to sign the certifications required under this part. If the Governor appoints a governmental body to serve as the E-911 Coordinator, an official representative of the governmental body shall be identified to sign the certifications for the E-911 Coordinator. The State must notify NHTSA in writing within 30 days of any change in appointment of the E-911 Coordinator.

(5) *Certifications.*

(i) The certification in Appendix B to this part, signed by the E-911 Coordinator, certifying that the State has complied with the required statutory and programmatic conditions in

submitting its application, including that the State and all other taxing jurisdictions within the State have not, during the time period 180 days preceding the application date, diverted any portion of designated E-911 charges imposed by the State or any other taxing jurisdiction within the State to any purpose other than the purposes for which such charges are designated, and will not do so throughout the time period during which grant funds are available.

(ii) Submitted on an annual basis 30 days after the end of each fiscal year during which grant funds are available, the certification in Appendix C to this part, signed by the E-911 Coordinator, making the same certification as required under paragraph (a)(5)(i) of this section concerning the diversion of designated E-911 charges.

(b) *Due date.* The State must submit the application documents identified in this section so that they are received by the ICO no later than 60 days after publication of the Final Rule in the **Federal Register**. Failure to meet this deadline will preclude the State from receiving consideration for an E-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 State, with respect to any of the application submission requirements of § 400.4, prior to making a determination of award.

(c) The Administrator and Assistant Secretary will jointly approve and announce, in writing, grant awards to qualifying States no later than September 30, 2009.

#### § 400.6 Distribution of grant funds.

(a) *Initial distribution.* Subject to paragraph (b) of this section, grant funds for each State that meets the requirements in § 400.4 will be distributed—

(1) 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

(2) 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.

(b) *Minimum distribution.* The distribution to each qualifying State under paragraph (a) 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.

(c) *Supplemental distribution.* Grant funds that are not distributed under paragraph (a) of this section will be redistributed among qualifying States that have met the requirements of § 400.4, including the submission of a supplemental project budget as provided § 400.4(a)(3), in accordance with the formula in paragraph (a) of this section.

**§ 400.7 Eligible uses for grant funds.**

Grant funds awarded under this part may be used only for the acquisition and deployment of hardware and software that enables the implementation and operation of Phase II E-911 services, for the acquisition and deployment of hardware and software to enable the migration to an IP-enabled emergency network, or for the training in the use of such hardware and software, provided such uses have been identified in the State 911 Plan.

**§ 400.8 Non-compliance.**

In accordance with 49 U.S.C. 942(c), where a State provides false or inaccurate information in its certification related to the diversion of E-911 charges, the State shall be required to return all grant funds awarded under this part.

**§ 400.9 Financial and administrative requirements.**

(a) *General.* The requirements of 49 CFR part 18, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including applicable cost principles referenced at 49 CFR 18.22, 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 49 CFR 18.40, within 90 days after each fiscal year that grant funds are available,

except when a final report is required under § 400.10(b)(ii).

(2) *Financial reports.* Each grant recipient shall submit quarterly financial reports to NHTSA, following the procedures of 49 CFR 18.41, within 30 days after each fiscal quarter that grant funds are available, except when a final voucher is required under § 400.10(b)(i).

**§ 400.10 Closeout**

(a) *Expiration of the right to incur costs.* The right to incur costs under this part expires on September 30, 2012. The State and its subgrantees 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—

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

(ii) A final report to NHTSA, following the procedures of 49 CFR 18.50(b).

(c) *Disposition of unexpended balances.* Any funds that remain unexpended by the end of fiscal year 2012 shall cease to be available to the State and shall be returned to the government.

**Appendix A to Part 400**

**MINIMUM GRANT AWARDS AVAILABLE TO QUALIFYING STATES**

| State name           | Minimum E-911 grant award |
|----------------------|---------------------------|
| Alabama .....        | \$686,230.25              |
| Alaska .....         | 500,000.00                |
| American Samoa ..... | 250,000.00                |
| Arizona .....        | 627,067.26                |
| Arkansas .....       | 594,060.05                |
| California .....     | 2,841,352.77              |
| Colorado .....       | 662,637.98                |
| Connecticut .....    | 500,000.00                |

**MINIMUM GRANT AWARDS AVAILABLE TO QUALIFYING STATES—Continued**

| State name                                     | Minimum E-911 grant award |
|--|---------------------------|
| Delaware .....                                 | 500,000.00                |
| District of Columbia .....                     | 500,000.00                |
| Florida .....                                  | 1,579,728.30              |
| Georgia .....                                  | 1,063,089.13              |
| Guam .....                                     | 250,000.00                |
| Hawaii .....                                   | 500,000.00                |
| Idaho .....                                    | 500,000.00                |
| Illinois .....                                 | 1,343,670.10              |
| Indiana .....                                  | 783,700.36                |
| Iowa .....                                     | 668,545.47                |
| Kansas .....                                   | 770,896.23                |
| Kentucky .....                                 | 584,385.38                |
| Louisiana .....                                | 511,974.11                |
| Maine .....                                    | 500,000.00                |
| Maryland .....                                 | 500,000.00                |
| Massachusetts .....                            | 527,000.57                |
| Michigan .....                                 | 1,108,704.89              |
| Minnesota .....                                | 874,841.32                |
| Mississippi .....                              | 500,000.00                |
| Missouri .....                                 | 891,711.03                |
| Montana .....                                  | 500,000.00                |
| Northern Mariana Islands .....                 | 250,000.00                |
| Nebraska .....                                 | 508,655.45                |
| Nevada .....                                   | 500,000.00                |
| New Hampshire .....                            | 500,000.00                |
| New Jersey .....                               | 666,876.13                |
| New Mexico .....                               | 500,000.00                |
| New York .....                                 | 1,603,343.25              |
| North Carolina .....                           | 971,280.91                |
| North Dakota .....                             | 500,000.00                |
| Ohio .....                                     | 1,203,583.60              |
| Oklahoma .....                                 | 700,339.78                |
| Oregon .....                                   | 500,000.00                |
| Pennsylvania .....                             | 1,242,455.97              |
| Puerto Rico .....                              | 500,000.00                |
| Rhode Island .....                             | 500,000.00                |
| South Carolina .....                           | 541,705.79                |
| South Dakota .....                             | 500,000.00                |
| Tennessee .....                                | 751,822.46                |
| Texas .....                                    | 2,702,727.44              |
| Utah .....                                     | 500,000.00                |
| Vermont .....                                  | 500,000.00                |
| Virgin Islands .....                           | 250,000.00                |
| Virginia .....                                 | 758,028.12                |
| Washington .....                               | 734,176.40                |
| West Virginia .....                            | 500,000.00                |
| Wisconsin .....                                | 820,409.48                |
| Wyoming .....                                  | 500,000.00                |
| <b>Total Available E-911 Grant Funds .....</b> | <b>41,325,000.00</b>      |

BILLING CODE 4910-59-P

**APPENDIX B****CERTIFICATION FOR E-911 GRANT APPLICANTS**

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

(check **all** boxes below)

- The Governor of \_\_\_\_\_ has designated  
[State or Territory]

(check **only one** circle below)

- me as the State's single officer to serve as the E-911 Coordinator of E-911 services implementation; or
  - \_\_\_\_\_ as the State's single governmental body,  
[identify governmental body]  
to serve as the E-911 Coordinator of E-911 services implementation, and I am its representative.
- 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 E-911 services.
- The State will ensure that at least 90 percent of the grant funds for the direct benefit of PSAPs.
- The State has integrated telecommunications services involved in the implementation and delivery of Phase II E-911 services.
- The State will provide at least 50 percent of the cost of each project funded under this grant from non-Federal sources (if applicable).

II. I further certify that neither the State nor any taxing jurisdiction within the State has diverted any portion of designated E-911 charges imposed by the State or taxing jurisdiction within 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 agree that, as a condition of receipt of the grant, the State will return all grant funds if the State or any taxing jurisdiction within the State obligates or expends, at any time for the full duration of this grant, designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented.

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

\_\_\_\_\_  
Signature of State E-911 Coordinator  
(or representative of single governmental body)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**APPENDIX C****ANNUAL CERTIFICATION FOR E-911 GRANT RECIPIENTS**

On behalf of \_\_\_\_\_, I, \_\_\_\_\_,  
[State or Territory] [print name]

hereby certify that:

(check **all** boxes below)

- The Governor of \_\_\_\_\_ has designated  
[State or Territory]

(check **only one** circle below)

- me as the State's single officer to serve as the E-911 Coordinator of E-911 services implementation; or
- \_\_\_\_\_ as the State's single governmental body,  
[identify governmental body]  
to serve as the E-911 Coordinator of E-911 services implementation, and I am its representative.
- Neither the State and nor any taxing jurisdiction within the State has diverted any portion of designated E-911 charges imposed by the State or taxing jurisdiction within the State for any purpose other than the purposes for which such charges are designated or presented from 180 days preceding the date of the application and continuing through the period in 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 or any taxing jurisdiction within the State obligates or expends, at any time for the full duration of this grant, designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented.

\_\_\_\_\_  
Signature of State E-911 Coordinator  
(or representative of single governmental body)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

Issued on: September 29, 2008.

**David Kelly,**

*Acting Administrator, National Highway  
Traffic Safety Administration.*

**Meredith Attwell Baker,**

*Acting Assistant Secretary for  
Communications and Information.*

[FR Doc. E8-23266 Filed 10-2-08; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 501, 515, and 552

[GSAR Case 2008-G506; Docket 2008-0007;  
Sequence 23]

RIN 3090-A176

### General Services Acquisition Regulation; GSAR Case 2008-G506; Rewrite of GSAR Part 515, Contracting by Negotiation

**AGENCY:** Office of the Chief Acquisition  
Officer, General Services  
Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services  
Administration (GSA) is proposing to  
amend the General Services Acquisition  
Regulation (GSAR) to revise language  
that provides requirements for  
contracting by negotiation.

**DATES:** Interested parties should submit  
written comments to the Regulatory  
Secretariat on or before December 2,  
2008 to be considered in the  
formulation of a final rule.

**ADDRESSES:** Submit comments  
identified by GSAR Case 2008-G506 by  
any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "GSAR Case 2008-G506" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with GSAR Case 2008-G506. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "GSAR Case 2008-G506" on your attached document.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat  
(VPR), 1800 F Street, NW, Room 4041,  
ATTN: Laurieann Duarte, Washington,  
DC 20405.

*Instructions:* Please submit comments  
only and cite GSAR Case 2008-G506 in  
all correspondence related to this case.  
All comments received will be posted  
without change to <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov), including any  
personal and/or business confidential  
information provided.

**FOR FURTHER INFORMATION CONTACT** For  
clarification of content, contact Mr.  
Michael O. Jackson at (202) 208-4949.  
For information pertaining to the status  
or publication schedules, contact the  
Regulatory Secretariat (VPR), Room  
4041, GS Building, Washington, DC  
20405, (202) 501-4755. Please cite  
GSAR Case 2008-G506.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The General Services Administration  
(GSA) is amending the General Services  
Administration Acquisition Regulation  
(GSAR) to revise sections of GSAR part  
515 that provide requirements for  
contracting by negotiation.

This rule is a result of the General  
Services Administration Acquisition  
Manual (GSAM) Rewrite initiative  
undertaken by GSA to revise the GSAM  
to maintain consistency with the FAR  
and to implement streamlined and  
innovative acquisition procedures that  
contractors, offerors, and GSA  
contracting personnel can utilize when  
entering into and administering  
contractual relationships. The GSAM  
incorporates the GSAR as well as  
internal agency acquisition policy.

GSA will rewrite each part of the  
GSAR and GSAM, and as each GSAR  
part is rewritten, will publish it in the  
**Federal Register**.

This rule covers the rewrite of GSAR  
Part 515. The specific changes are as  
follows:

- GSAR 501.106 - Added Control  
Number 3090-0163 as a cross reference  
for 515.201-1.

- GSAR 515.204—Added a paragraph  
to specify that the senior procurement  
executive is the designee per FAR  
15.204(e).

- GSAR 515.204-1—Moved  
paragraph (a) to 515.204. Renumbered  
remaining paragraphs and references  
accordingly.

- GSAR 515.205—Added "or unless  
the incumbent contractor is otherwise  
ineligible for the award" to advise  
contracting officers that they are not  
obligated to include an offeror in the  
competition if they are not eligible to  
compete.

- GSAR 515.209-70, Examination of  
records by GSA clause—

- a. In paragraph (b), changed "You" to  
"The contracting officer" eliminated the  
dashes in "Assistant Inspector General-  
Auditing" and "Regional Inspector  
General-Auditing"; and replaced each  
dash with a "for"; and

- b. Paragraphs (c) and (d) were  
transferred to Part 538 because they only

pertain to Federal Supply Schedule  
(FSS) Multiple Award Schedule (MAS).

- 515.305, Proposal evaluation—  
a. Transferred paragraph (a),  
renumbered it 515.208-70 and made it  
non-regulatory;

- b. Transferred paragraph (b),  
renumbered it 515.305-71 and made it  
non-regulatory;

- c. Made 515.305-70 non-regulatory;  
and

- d. The text made non-regulatory and  
renumbered to 515.208-70 and  
515.305-71, as well as the text that was  
formerly regulatory at 515.305-70, the  
team decided that it did not affect the  
public and was only applicable  
internally to GSA.

- 515.408, Solicitation provisions  
and contract clauses—Transferred to  
GSAM Part 538 because it is only  
applicable to the Multiple Award  
Schedules Program. This proposed  
revision also includes the CSP-1 form.

- 515.7002, Procedures—  
a. Replaced "You" with "Contracting  
Officer" throughout the clause. Also  
changed "Base your determination" to  
"This determination should be based";

- b. In paragraph (a) changed FAR  
reference "14.202-4(g)" to "14.202-4(f)"  
and changed "However, qualifications"  
to "Samples are not requested. Any  
samples submitted with". This is to  
include minor editorial changes  
suggested by the Advanced Notice of  
Public Rulemaking; and

- c. In paragraph (b)(1) deleted  
"52.214-20" and replaced it with  
"552.214-72". Deleted the remainder of  
the paragraph.

- 552.215-71—Transferred to Part  
538 because of the proposed move in  
515.209-70(c) and (d).

- 552.215-72—Transferred to Part  
538 because of the proposed move in  
515.408.

As a result of the rewrite of GSAM  
Part 515, certain text and clauses such  
as 552.215-71, Examination of Records  
by GSA (Multiple Award Schedule), and  
552.215-72, Price Adjustment—Failure  
to Provide Accurate Information, were  
transferred to the GSAM rewrite team  
handling the rewrite of GSAM Part 538.  
The 538 team was assembled with GSA  
personnel who have experience in  
dealing with GSAM Part 538, including  
personnel from GSA's Federal  
Acquisition Service, which is the GSA  
component responsible for GSA's  
Multiple Award Schedules. GSA  
established a process in the rewrite  
initiative where text and clauses that  
were found more suited to be allocated  
to other parts of the GSAM were sent to  
the other rewrite teams for their analysis  
and incorporation into their assigned  
rewrite parts.