TABLE 180.940(a)

Inert ingredients	CAS reg. No.	Limits
* * *	* * *	* * *
C10-C18-Alkyl dimethyl amine oxides.	1643–20–5, 2571–88–2, 2605–79–0, 3332–27–2, 61788–90–7, 68955–55–5, 70592–80–2, 7128–91–8, 85408–48–6, and 85408–49–7.	When ready for use, the end-use concentration is not to exceed 1,350 ppm.
* * *	* * *	* * *

* * * * *

[FR Doc. 2021–17450 Filed 8–16–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket Nos. 20–291 and 09–14; FCC 21–80; FR ID 40050]

911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (the FCC or Commission) adopts rules to implement the Don't Break Up the T-Band Act of 2020, which is section 902 of the Consolidated Appropriations Act, 2021, Division FF, Title IX (section 902). Section 902 directs the Commission to issue final rules, not later than 180 days after the date of enactment of section 902, designating the uses of 911 fees by states and taxing jurisdictions that constitute 911 fee diversion for purposes of certain sections of the United States Code, as amended by section 902. This Report and Order adopts rules that implement the provisions of section 902 requiring Commission action and that help to identify those uses of 911 fees by states and other jurisdictions that support the provision of 911 services.

DATES:

Effective date: This final rule is effective October 18, 2021.

Compliance date: Compliance will not be required for 47 CFR 9.25(b) until the Commission publishes a document in the **Federal Register** announcing that compliance date.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Brenda Boykin, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2062 or via email at *Brenda.Boykin@fcc.gov;* or Jill Coogan, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1499 or via email at *Jill.Coogan@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 21–80, adopted on June 24, 2021 and released on June 25, 2021, and the Erratum released on August 12, 2021. The complete text of this document is available for download at *https://docs.fcc.gov/public/attachments/FCC-21-80A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act

The requirements in 47 CFR 9.25(b) constitute a modification of the information collection with Office of Management and Budget (OMB) Control No. 3060–1122. This modified information collection is subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The modified information collection will be submitted to OMB for review under 47 U.S.C. 3507(d), and compliance with 47 CFR 9.25(b) will not be required until after approval by OMB.

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this is a major rule under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Background

Congress has had a longstanding concern about the practice by some states and local jurisdictions of diverting 911 fees for non-911 purposes. Congress initially enacted measures to limit 911 fee diversion, codified in 47 U.S.C. 615a–1 (section 615a–1).[1] Specifically, section 615a–1(f)(1) provided that nothing in the New and Emerging Technologies (NET) 911 Act, the Communications Act of 1934, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation for the support or implementation of 9–1–1 or enhanced 9–1–1 services, provided that the fee or charge is obligated or expended only in support of 9–1–1 and enhanced 9–1–1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge. The NET 911 Act also required the Commission to report annually on the collection and distribution of fees in each state for the support or implementation of 911 or E911 services, including findings on the amount of revenues obligated or expended by each state "for any purpose other than the purpose for which any such fees or charges are specified."[2] Pursuant to this provision, the Commission has reported annually to Congress on 911 fee diversion every year since 2009. In October 2020, the Commission released a Notice of Inquiry seeking comment on the effects of fee diversion and the most effective ways to dissuade states and jurisdictions from continuing or instituting the diversion of 911/E911

[1] New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 122 Stat. 2620 (NET 911 Act). The NET 911 Act enacted 47 U.S.C. 615a–1 and also amended 47 U.S.C. 222, 615a, 615b, and 942. *See* 47 U.S.C. 615a–1 Editorial Notes.

[2] These annual reports can be viewed at viewed at *https://www.fcc.gov/general/911-fee-reports.*

fees.[3] Shortly thereafter, Congress enacted section 902.[4]

Section 902 requires the Commission to take additional action with respect to 911 fee diversion. Specifically, section 902(c)(1)(C) adds a new paragraph (3)(A) to 47 U.S.C. 615a–1(f) that directs the Commission to adopt rules ''designating purposes and functions for which the obligation or expenditure of 9–1–1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable'' for purposes of section 902 and the Commission's rules. The newly added 47 U.S.C. 615a–1(f)(3)(B) states that these purposes and functions shall be limited to ''the support and implementation of 9–1–1 services'' provided by or in the state or taxing jurisdiction imposing the fee or charge, and ''operational expenses of public safety answering points'' within such state or taxing jurisdiction. The new section also states that, in designating such purposes and functions, the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as the intended purposes and functions for their 911 fees or charges, and ''determine whether such purposes and functions directly support providing 9–1–1 services.''

Section 902 also amends 47 U.S.C. 615a–1(f)(1) to provide that the rules adopted by the Commission for these purposes will apply to states and taxing jurisdictions that impose 911 fees or charges. Whereas the prior version of section 615a–1(f)(1) referred to fees or charges ''obligated or expended only in support of 9–1–1 and enhanced 9–1–1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge,'' the amended version refers to the obligation or expenditure of fees or charges ''*consistent with the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.*'' (Emphasis added.)

In addition, section 902(c) establishes a process for states and taxing jurisdictions to seek a determination that a proposed use of 911 fees should be treated as acceptable even if it is for a purpose or function that has not been designated as such in the Commission's rules. Specifically, newly added 47 U.S.C. 615a–1(f)(5) provides that a state or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of a 911 fee or charge ''for a purpose or function other than a purpose or function designated under [section 615a–1(f)(3)(A)] should be treated as such a purpose or function,'' *i.e.,* as acceptable for purposes of this provision and the Commission's rules. The new section 615a–1(f)(5) provides that the Commission shall grant the petition if the state or taxing jurisdiction provides sufficient documentation that the purpose or function ''(i) supports public safety answering point functions or operations,'' or ''(ii) has a direct impact on the ability of a public safety answering point to—(I) receive or respond to 9–1–1 calls; or (II) dispatch emergency responders.''

Section 902(d) requires the Commission to create the ''Ending 9–1–1 Fee Diversion Now Strike Force'' (911 Strike Force), which is tasked with studying ''how the Federal Government can most expeditiously end diversion'' by states and taxing jurisdictions and reporting to Congress on its findings within 270 days of the statute's enactment.[5] In February, the agency announced the formation of the 911 Strike Force and solicited nominations. On May 21, 2021, the agency announced the 911 Strike Force membership, which includes a diverse array of experts from across the nation representing Federal, state, and local government agencies, state 911 administrators, a consumer group, and organizations representing 911 professionals. The 911 Strike Force held its inaugural meeting on June 3, 2021, and has formed three working groups that will examine: (i) The effectiveness of any Federal laws, including regulations, policies, and practices, or budgetary or jurisdictional constraints regarding how the Federal Government can most expeditiously end 911 fee diversion; (ii) whether criminal penalties would further prevent 911 fee diversion; and (iii) the impacts of 911 fee diversion. Consistent with section 902(d), the 911 Strike Force will complete its work and submit its final report to Congress by September 23, 2021. In addition, Section 902(d)(1) provides that if the Commission obtains evidence that ''suggests the diversion by a State or taxing jurisdiction of 9 1 1 fees or charges,'' the Commission shall submit such information to the 911 Strike Force, ''including any information regarding the impact of any underfunding of 9–1–1 services in the State or taxing jurisdiction.''

Section 902(d)(2) provides that the Commission shall also include evidence it obtains of diversion and underfunding in future annual fee reports, beginning with the first report ''that is required to be submitted after the date that is 1 year after the date of the enactment of this Act.''[6] In addition, section 902(c)(1)(C) provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after the date of the enactment of the new legislation, ''such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the [annual report to Congress on 911 fees].'' Finally, section 902(d)(4) prohibits any state or taxing jurisdiction identified as a fee diverter in the Commission's annual report from participating or sending a representative to serve on any committee, panel, or council established to advise the First Responder Network Authority (FirstNet) under 47 U.S.C. 1425(a) or any advisory committee established by the Commission.

Section 902 does not require states or taxing jurisdictions to impose any fee in connection with the provision of 911 service. As revised, the proviso to section 615a–1 states that nothing in the Act or the Commission's rules ''shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services'' specifically designated by the taxing jurisdiction ''for the support or implementation of 9–1–1 or enhanced 9–1–1 services, provided that the fee or charge is obligated or expended only in support of 9–1–1 and enhanced 9–1–1 services, or enhancements of such services, consistent with the purposes and functions designated in [the Commission's forthcoming rules] as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.'' In this regard, section 902 charges the Commission with adopting rules defining what relevant statutory provisions mean, a responsibility we fulfill in adopting the rules in this Report and Order. In this regard, when we define and describe

[3] 911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008, PS Docket Nos. 20–291 and 09–14, Notice of Inquiry, 35 FCC Rcd 11010, 11010, para. 1 (2020). The Commission received eight comments and seven reply comments in response to the Notice of Inquiry. These filings can be viewed in the FCC's electronic comment filing system (ECFS) at *https://www.fcc.gov/ecfs/,* under PS Docket Nos. 20–291 and 09–14.

[4] Consolidated Appropriations Act, 2021, Public Law 116–260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (section 902).

[5] 47 U.S.C. 615a–1 Statutory Notes (as amended); sec. 902(d)(3).

[6] 47 U.S.C. 615a–1 Statutory Notes (as amended); section 902(d)(3). September 23, 2021 is 270 days after the enactment date of section 902.

''acceptable'' expenditures in this Report and Order or in our rules, we mean to use that term as Congress did in section 902(c)(1)(C).

On February 17, 2021, we adopted a notice of proposed rulemaking (NPRM), which proposed rules to implement section 902 and address 911 fee diversion.[7] The Commission received twenty-eight comments, nine reply comments, and five ex parte filings.

II. Discussion

With this Report and Order, we adopt rules to implement the provisions of section 902 that require Commission action. Specifically, we amend part 9 of our rules to establish a new subpart I that addresses 911 fees and fee diversion in accordance with and for the purposes of the statute. The new subpart I rules (1) clarify what does and does not constitute the kind of diversion of 911 fees that has concerned Congress (and the Commission); (2) establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on fee diversion issues; and (3) codify the specific obligations and restrictions that section 902 imposes on states and taxing jurisdictions, including those that engage in diversion as defined by our rules.

The record indicates that commenters are divided on whether expenditures of 911 fees for public safety radio systems and related infrastructure should be considered acceptable for Section 902 purposes. Our new rules provide additional guidance on this question. We also refer additional questions concerning the application of our new rules to the 911 Strike Force for the development of recommendations. We also note that the petition process established by section 902 provides a mechanism for further consideration of this issue in the context of specific fact patterns, after adoption of the initial rules in this proceeding. We conclude that these changes to part 9 will advance Congress's stated objectives in section 902 in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state and taxing jurisdictions. In sum, the rules we adopt in this document closely track the statutory language addressing 911 fee diversion, and seek to promote transparency, accountability, and integrity in the collection and expenditure of fees collected for 911 services, while providing stakeholders reasonable guidance as part of implementing section 902.

A. Definitions and Applicability

Section 902 defines certain terms relating to 911 fees and fee diversion. To promote consistency, the NPRM proposed to codify these definitions with certain modifications. As described below, we adopt these definitions as proposed.[8]

1. 911 Fee or Charge

Background. Section 902 defines ''9–1–1 fee or charge'' as ''a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State or taxing jurisdiction for the support or implementation of 9–1–1 services.'' In the NPRM, we proposed to codify this definition in the rules. However, we also noted that the statutory definition in section 902 does not address services that may be subject to 911 fees other than Commercial Mobile Radio Services (CMRS) and IP-enabled voice services. As we observed in the NPRM, the reason for this omission is unclear. For example, virtually all states impose 911 fees on wireline telephone services and have provided information on such fees for inclusion in the agency's annual fee reports. In addition, as 911 expands beyond voice to include text and other non-voice applications, states could choose to extend 911 fees to such services in the future.

To promote regulatory parity and avoid gaps that could inadvertently frustrate the rapid deployment of effective 911 services, including advanced Next Generation 911 (NG911) services, we proposed to define ''911 fee or charge'' in the rules to include fees or charges applicable to ''other emergency communications services'' as defined in section 201(b) of the NET 911 Act. Under the NET 911 Act, the term ''other emergency communications service'' means ''the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9–1–1 and enhanced 9–1–1 service.'' We noted that this proposed modification will make clear that the rules in subpart I extend to all communications services regulated by the Commission that provide emergency communications, including wireline services, and not just to CMRS and IP-enabled voice services. We also proposed in the NPRM to extend the definition of ''911 fee or charge'' to include fees or charges designated for the support of ''public safety,'' ''emergency services,'' or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services.

Decision. We adopt our NPRM proposal. The Michigan 911 Entities support including ''other emergency communications services'' in the definition, and no commenter opposes this proposal. We find that this expansion of the definition of ''911 fee or charge'' is reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities under section 902 and other Federal 911-related statutes and Communications Act statutory provisions that, taken together, establish an overarching Federal interest in ensuring the effectiveness of the 911 system. The Commission's general jurisdictional grant includes the responsibility to set up and maintain a comprehensive and effective 911 system, encompassing a variety of communication services in addition to CMRS and IP-enabled voice services. Section 251(e)(3) of the Communications Act of 1934, which directs the Commission to designate 911 as the universal emergency telephone number, states that the designation of 911 ''shall apply to both wireline and wireless telephone service,'' which evidences Congress's intent to grant the Commission broad authority over different types of communications services in the 911 context.[9] Similarly, RAY BAUM'S Act directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls ''regardless of the technological platform used.''[10] In addition, section 615a–1(e)(2) provides that the Commission ''shall enforce this section as if this section was a part of the Communications Act of 1934 [47 U.S.C. 151 *et seq.*]'' and that ''[f]or purposes of this section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively.''

Accordingly, we conclude that including ''other emergency communications services'' within the scope of the definition of 911 fees is also reasonably ancillary to the Commission's effective performance of

[7] 86 FR 12399 (March 3, 2021).

[8] We also clarify in the introductory language of this section of the rules that where the Commission uses the term ''acceptable'' in subpart I, it is for purposes of the Consolidated Appropriations Act, 2021, Public Law 116–260, Division FF, Title IX, section 902(c)(1)(C).

[9] 47 U.S.C. 251(e)(3).

[10] *See* Consolidated Appropriations Act, 2018, Public Law 115–141, 132 Stat. 348, Division P, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act) section 506(c)(1) (codified at 47 U.S.C. 615 Notes).

its statutorily mandated responsibilities for ensuring that the 911 system, including 911, E911, and NG911 calls and texts from any type of service, is available, that these 911 services function effectively, and that 911 fee diversion by states and other jurisdictions does not detract from these critical, statutorily recognized purposes. As we stated in the NPRM, diverting fees collected for 911 service of any type, whether it be wireline, wireless, IP based, or text, undermines the purpose of these Federal statutes by depriving the 911 system of the funds it needs to function effectively and to modernize 911 operations.

We also adopt our proposal in the NPRM to extend the definition of ''911 fee or charge'' to include multi-purpose fees or charges designated for the support of ''public safety,'' ''emergency services,'' or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services. We find that this aspect of the definition is consistent with the purpose of section 902 with respect to 911 fees and charges, which is to discourage states and taxing jurisdictions from diverting these fees and charges for purposes that do not directly benefit the 911 system. Moreover, as we noted in the NPRM, this aspect of the definition is consistent with the approach taken in the agency's annual fee reports, which have found that the mere labelling of a fee is not dispositive and that the underlying purpose of the fee is relevant in determining whether it is (or includes) a 911 fee within the meaning of the NET 911 Act.

Some commenters oppose the proposal to extend the definition of ''911 fee or charge'' to include multi-purpose fees. The New York State Division of Homeland Security and Emergency Services (NYS DHSES) asserts that the Commission's statutory authority is limited to ''specifically designated'' 911 fees or charges, and that the Commission lacks authority to regulate fees and charges designated for other purposes. The Boulder Regional Emergency Telephone Service Authority (BRETSA) argues that extending the definition as proposed will limit 911 funding because some states (including Colorado) have a constitutional prohibition on incurring debt and therefore must establish contingency or sinking funds for unpredictable 911 expenditures. BRETSA asserts that if using the proceeds of such a fee to support 911 will mean that those proceeds cannot thereafter be used for more general purposes, the public safety answering point (PSAP) may be denied funding when needed.

We disagree that our authority under the NET 911 Act extends only to ''specifically designated'' 911 fees or charges. The legislative history of the NET 911 Act indicates Congress's broad intention to discourage or eliminate the diversion of 911 fees by states and political subdivisions. In its report on H.R. 3403 (the bill that was enacted as the NET 911 Act), the House Committee on Energy and Commerce noted Congress's intent that ''[s]tates and their political subdivisions should use 911 or E911 fees only for direct improvements to the 911 system'' and that the Act ''is not intended to allow 911 or E–911 fees to be used for other public safety activities that, although potentially worthwhile, are not directly tied to the operation and provision of emergency services by PSAPs.'' A narrow interpretation covering only ''specifically designated'' 911 fees or charges would frustrate this congressional purpose by creating an opportunity for states to divert the 911 portion of a multi-purpose fee. Moreover, there is no language in the NET 911 Act (or in the amendments made by section 902) that limits the scope of that Act to fees designated exclusively for 911/E911. Finally, in its annual fee reports, the agency has found that multi-purpose fees that support 911/E911 and other purposes fall within the Commission's authority under the NET 911 Act.

With respect to BRETSA's argument that extending the definition of ''911 fee or charge'' as proposed would prevent the establishment of sinking or contingency funds for 911 expenditures, we disagree that this would be prohibited under our rules. As discussed below, we also adopt a safe harbor under which a multi-purpose fee would not be deemed to be diverting 911 fees, and we note that sinking or contingency funds could fall within the safe harbor, provided that they meet the relevant criteria.

2. Diversion

Background. Section 902(f) defines ''diversion,'' with respect to a 9–1–1 fee or charge, as the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by section 902, as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.

In the NPRM, we proposed to codify this definition with minor changes to streamline it. Specifically, we proposed to define diversion as ''[t]he obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to [the applicable rule section in subpart I].'' In addition, we proposed to clarify that the definition of diversion includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated by the Commission.

Decision. We adopt this definition as proposed. We find that it will encourage states and taxing jurisdictions to take proactive steps to address the conditions that enable diversion of 911 fees by political subdivisions, such as counties, that may receive 911 fees.[11]

Several commenters raise concerns with our proposal to specify that diversion includes distribution of 911 fees to a locality that diverts them. The National Emergency Number Association (NENA) states that it is concerned that the administrative burden of local surveillance and potential lack of state-level capacity for diversion enforcement could add to the already significant burden on state-level 911 officials. NENA also expresses concern that states ''may lack the logistical capability to prevent this diversion of funds, especially in a timely manner.'' The National Association of State 911 Administrators (NASNA) notes that in some states, service providers remit fees directly to political subdivisions, such as counties, for 911 use and that due to limits in their statutes or constitutions, these states have limited authority over the local use of those funds. NASNA adds that states ''would have no visibility over how these funds are spent at the local level.'' NASNA suggests that in states where there is limited authority over local 911 fee collection or use, the Commission should require that local units report directly to the Commission, and ''the state should not be held accountable for any finding of diversion

[11] The Illinois State Police support extending the definition of diversion but argue that the Commission should clarify that any local public agency that receives 911 fees from the 911 authority serving its jurisdiction is also responsible for the diversion of 911 fees. IL State Police Mar. 23, 2021 Comments at 2. Section 902 directs us to designate acceptable purposes and functions for the obligation or expenditure of 911 fees by ''any State or taxing jurisdiction.'' 47 U.S.C. 615a–1(f)(3)(A) (as amended); sec. 902(c)(1)(C). Consistent with this, we clarify that taxing jurisdictions would be responsible for fee diversion occurring at the level of the taxing jurisdiction.

occurring at the local level of which it does not have authority.'' Further, NASNA requests that the Commission ''notify the state in a timely manner of any diversion to ensure the state can restrict or require repayment of any grant funds or other restrictions that the local diverter would be subject to under the FCC's rules on 911 fee diversion.''

We find that it is consistent with the intent of section 902 to hold states responsible for fee diversion by localities within their boundaries. Absent such a policy, states or taxing jurisdictions could have an incentive to avoid oversight or accountability for expenditures by political subdivisions. We also decline to require that local units report directly to the Commission, as NASNA requests. The NET 911 Act requires the Commission to report on the ''status in each State'' of the collection and distribution of 911 fees or charges, and the agency's annual 911 fee report questionnaire is consistent with this directive. We note that states may disclose limitations on their authority over local 911 fee collection or use in their responses to the fee report questionnaire and that these questionnaires are publicly available on the Commission's website. We also note that the petition for determination process established by section 902 provides a mechanism for further consideration of this issue in the context of specific fact patterns. In response to concerns that defining diversion in this way could result in the denial of grant funding for states or local jurisdictions on the basis of the actions of localities over which they have no control, we note that decisions with respect to grant eligibility will be made by the agencies managing the grant program, not the Commission. If states and localities seek flexibility under these circumstances with respect to eligibility for grant funding, they must request it from the agencies managing the grant program.[12] We provide additional guidance below on how fee diversion at the local level would affect eligibility for Commission advisory panels.

3. State or Taxing Jurisdiction

Background. Section 902 defines a state or taxing jurisdiction as ''a State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).'' We proposed in the NPRM to codify this definition in our rules. We also proposed to add the definition of ''State'' from 47 U.S.C. 615b to the subpart I rules. Under section 615b, the term ''State'' means ''any of the several States, the District of Columbia, or any territory or possession of the United States.'' Accordingly, provisions in subpart I that apply to any ''State or taxing jurisdiction'' would apply to the District of Columbia and any United States territory or possession as well.

Decision. We adopt these definitions as proposed. We find that these definitions will be helpful to users of the subpart I regulations, and no commenter opposes them. With respect to the scope of subpart I, we proposed in the NPRM that the rules would apply to states or taxing jurisdictions that collect 911 fees or charges (as defined in that subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services. We believe this provision will help to clarify application of the subpart I rules, and no commenter opposes this proposal. Accordingly, we adopt this rule as proposed.

B. Designation of Obligations or Expenditures Acceptable for Purposes of Section 902

Section 902 requires the Commission to issue rules ''designating purposes and functions for which the obligation or expenditure of 9–1–1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable'' for purposes of the statute. In addition, section 902 provides that the purposes and functions designated as acceptable for such purposes ''shall be limited to the support and implementation of 9 1 1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction.'' Section 902 also provides that the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as their intended purposes and ''determine whether such purposes and functions directly support providing 9–1–1 services.''[13] Moreover, section 902 provides states and taxing authorities with the right to file a petition with the Commission for a determination that an obligation or expenditure of a 911 fee or charge that is imposed for a purpose or function other than those designated as acceptable for purposes of the statute in the Commission rules should nevertheless be treated as having an acceptable purpose or function for such purposes.

1. Standard for Determining Acceptable Purposes and Functions for 911 Fees

Background. In the NPRM, we proposed to codify the statutory standard for acceptable purposes and functions for the obligation or expenditure of 911 fees or charges by providing that acceptable purposes and functions for purposes of the statute are limited to (1) support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge, and (2) operational expenses of PSAPs within such state or taxing jurisdiction. We also noted that this language tracks the language in section 902.

Decision. We adopt the general standard for designating acceptable purposes and functions for expenditures of 911 fees as proposed in the NPRM, with minor modifications to clarify that these designations of acceptable obligations or expenditures are for purposes of section 902.[14] Commenters are generally supportive of this proposal, and the proposed language tracks the language of section 902.

Several commenters urge the Commission to clarify the term ''911 services'' or ''911 systems'' in the

[12] Consistent with this, the agencies administering the grant program would decide eligibility in the situation posed by the Illinois State Police of a locality that has diverted. *See* IL State Police Mar. 23, 2021 Comments at 2.

[13] 47 U.S.C. 615a–1(f)(3)(B) (as amended); sec. 902(c)(1)(C). Section 902 also provides that the Commission ''shall consult with public safety organizations and States and taxing jurisdictions as part of any proceeding under this paragraph.'' 47 U.S.C. 615a–1(f)(3)(C) (as amended); sec. 902(c)(1)(C). The legislative history of section 902 states that ''[a]s part of any proceeding to designate purposes and functions for which the obligation or expenditure of 9–1–1 fees or charges is acceptable, the FCC is required to consider the input of public safety organizations and States and taxing jurisdictions.'' House of Representatives Committee on Energy and Commerce, Report on Don't Break Up the T-Band Act of 2020, H.R. Rep. No. 116–521, at 8 (2020) (emphasis added). We received one comment on this specific issue. *See* New York State Division of Homeland Security and Emergency Services (NYS DHSES) Comments, PS Docket Nos. 20–291 and 09–14, at 9 (rec. Mar. 23, 2021) (arguing that ''the consultation must be in addition to the comments made in response to the Proposed Rule''). We note that to satisfy the consultation requirements of section 902, the Public Safety and Homeland Security Bureau staff conducted outreach to a diverse representative sample of public safety organizations, states, and taxing jurisdictions that expressed an interest in fee diversion issues generally prior to the release of this Report and Order; we solicited public comments on the proposed rules implementing section 902; and we released a public draft prior to adoption of the NPRM so that further input on it could help to inform the Commission's decision.

[14] In particular, we revise the title of § 9.23 to read, ''Designation of acceptable obligations or expenditures for purposes of the Consolidated Appropriations Act, 2021, Division FF, Title IX, section 902(c)(1)(C).'' We also add a reference to ''for purposes of section 902'' in the introductory language of § 9.23(a) and (c). *See* Appendix A of the Commission's Report and Order (final rules).

proposed rule. The City of Aurora asserts that as proposed, the term would be narrowly limited to receipt of the call at the PSAP and processing the call through computer aided dispatch (CAD) 911, and that 911 services should include ''all technology, staff, training, and administration necessary to effectively provide emergency response to the caller.'' The Colorado Public Utilities Commission (CoPUC) comments that what constitutes 911 services ''may mean different things to different people, particularly as technological advances in emergency communications technology blur the lines between what may be considered '911 service' and what may be just part of the emergency communications ecosystem.''

State and local 911 authorities also urge the Commission to adopt broad rules that would provide flexibility at the state and local level and to defer to states and local authorities in determining what constitutes fee diversion. NASNA argues that ''[t]hese rules must be implemented in a manner that does not create conflict with existing state statutes and guidelines.'' NASNA adds that it believes the proposed rules ''do not consider each state's current legislative and regulatory processes that (1) involve their citizen knowledge and involvement, (2) have longstanding systems in place, and (3) have evolved through consensus-based processes that involve both the public safety community and the communication industry.'' The Oklahoma 911 Management Authority (Oklahoma 911) similarly urges the Commission to make the rules ''broad and allow for flexibility within the State and region to narrow the requirements to fit local need.'' Adams County, CO, et al. encouraged the FCC to include a safe harbor for 911 entities that utilize funds from 911 fees in compliance with state laws substantially equivalent to the Colorado statute. BRETSA and the National Public Safety Telecommunications Council (NPSTC) also raise concerns that state fees and taxes are ''matters of state interest,'' or that the Commission should consider whether Federal rules defining how state funds can be used encompass any states' rights issues. Some commenters note that funding priorities and needs may evolve over time, and contend that it is not apparent that the proposed rules provide sufficient flexibility for the future. CTIA—the Wireless Association (CTIA), on the other hand, responds that the Commission may not defer to state laws regarding the permissible uses of 911 fees, as some commenters suggest, because section 902 charges the Commission with the responsibility to determine the appropriate purposes and functions for which 911 fees may be used. CTIA asserts that ''[i]t is well settled that federal agencies may not subdelegate such authority to outside entities (including state sovereign entities) absent express authority to do so, and nothing in the statute permits the Commission to subdelegate this responsibility.''

We agree that our rules should be reasonably broad given the diverse and evolving nature of the 911 ecosystem. Consistent with this approach, our rules identify broad categories of acceptable purposes and functions for 911 fees and provide examples within each category to guide states and localities.[15] As the rules make clear, the examples of acceptable expenditures for purposes of section 902 are non-exclusive and are meant to be illustrative; they are not intended to anticipate every possible use of 911 fees at the state and local level. State and local jurisdictions thus have discretion to make reasonable, good faith determinations whether specific expenditures of 911 fees are acceptable under our rules. In light of this, we do not believe additional clarification of the terms ''911 services'' or 911 systems'' is necessary. We also note that the petition for determination process afforded by section 902 provides a mechanism for states and taxing jurisdictions that seek additional guidance on whether a particular expenditure would be an acceptable use of 911 fees.

We do not agree, however, with commenters who contend that the Commission should defer to state and local law on what constitutes fee diversion for purposes of section 902. As CTIA points out, section 902 charges the Commission with responsibility for determining appropriate purposes and functions for expenditure of 911 funds. A policy of deferring to states or localities on what constitutes fee diversion would negate one of the principal aspects for these purposes of section 902, which is that it revises the language in 47 U.S.C. 615a–1 to make clear that fee diversion is not whatever state or local law says it is. Accordingly, we decline to create a safe harbor for 911 entities that use 911 fees in compliance with their state statute, as this would essentially make the categories of acceptable purposes and functions we establish herein meaningless. We also disagree that our rules encroach in any way on states' rights. Following the congressional directive given to the Commission in section 902, and in furtherance of a nationwide 911 and E911 service, the rules identify and define categories of expenditures that are, or are not, acceptable for 911 fees for the specific purposes of section 902 and, consistent with the statute, provide consequences for states or taxing jurisdictions found to be diverting (such as ineligibility to serve on certain advisory panels). The rules do not, however, prohibit or require collection or expenditure of 911 fees by any state or taxing jurisdiction.

Finally, we clarify the phrase ''support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge,'' under new § 9.23(a). Some commenters contend that, as proposed in the NPRM, § 9.23(a) would prohibit states or other taxing jurisdictions from spending 911 fees outside of the originating jurisdiction (*i.e.,* cross-subsidization) and urge the Commission to permit such expenditures. We believe that Congress did not intend to address all 911 fund cross-subsidization with this language, and this is not the meaning of § 9.23(a). Indeed, many cross-subsidization situations across local or state lines may be necessary for the benefit of a state or taxing jurisdiction's own 911 system. For example, Oklahoma 911 argues that it should be deemed acceptable for purposes of section 902 for the landline fees collected at a very granular level locally to be used to ''pay for valid 9–1–1 expenses outside of the originating taxing jurisdiction when municipalities and counties regionalize or consolidate.'' BRETSA argues, *e.g.,* that there are large or sparsely populated areas that have insufficient PSAP coverage and need subsidies from other taxing jurisdictions within the state. Providing such subsidies from

[15] NYS DHSES contends that the statutory standard for granting a petition for determination under section 902(c)(1)(C) is broader than the standard for defining ''acceptable'' 911 expenditures in the rules, and asserts that the Commission's proposed rules for designating the ''acceptable'' purposes and functions should be consistent with, and not narrower than, the petition standards. NYS DHSES Mar. 23, 2021 Comments at 5–6. *See similarly* City of Aurora, CO Mar. 22, 2021 Comments at 2–3 (arguing language of petition standard supports broader definition of ''acceptable'' 911 use). However, we interpret these two provisions of section 902 as balancing each other, and we reject any argument that Congress intended inconsistent standards for the two provisions. In section 902(c)(1)(C), Congress set forth the standard for the Commission to use in adopting rules by the statutory June 25, 2021 deadline, and then separately set forth the complementary standard for the Commission to use in deciding petitions for determination going forward, to address yet to be identified acceptable 911 purposes or functions in the face of a diverse and evolving 911 ecosystem.

another taxing locality might benefit the taxing locality not only by, *e.g.,* providing mutual redundancy and backup, but also by reducing the load on the taxing locality's 911 system because it no longer has to step in regularly to provide 911 service and support for the underserved area, potentially also at much greater expense and difficulty due to the lack of interconnectivity. In sum, we do not believe that Congress in section 902(c)(1)(C) intended to prohibit cross-subsidization from one taxing state or jurisdiction to another to the detriment of a robust, efficient, and reliable 911 system that serves the public.[16]

2. Designation of Acceptable Purposes and Functions for 911 Expenditures

Background. We proposed in the NPRM that examples of acceptable purposes and functions include, but not be limited to, the following, provided that the state or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:

(1) PSAP operating costs, including lease, purchase, maintenance, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility;

(2) PSAP personnel costs, including telecommunicators' salaries and training;

(3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;

(4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and

(5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.

We noted in the NPRM that we believe these purposes and functions are consistent with the general standard for designating acceptable uses of 911 fees and charges set out in section 902. In addition, we noted that these purposes and functions are consistent with the agency's past analysis of 911 fee diversion in its annual fee reports, as well as the legislative history of the NET 911 Act. We sought comment in the NPRM on our proposed designation of acceptable and unacceptable purposes and functions under the statute, including whether our proposals were underinclusive or overinclusive. In addition, we sought comment on the purposes and functions that states and taxing jurisdictions have specified as the intended functions for 911 fees and charges and how we should take these specifications into account as we designate acceptable purposes and functions under section 902.

Decision. We revise one of the categories of acceptable purposes and functions in response to commenters' requests for additional examples of expenditures that fall within the category. We adopt the other categories as proposed in the NPRM.

Commenters generally support the proposed framework of general categories of acceptable and unacceptable expenditures for purposes of section 902, with examples within each category. CTIA states that it supports the proposed standard for determining acceptable purposes and functions and notes that section 902 directs the Commission, in considering expenditures, to ''determine whether such purposes and functions directly support providing 9–1–1 services.'' Intrado states that ''the basic framework proposed by the Commission of providing a list of acceptable and unacceptable expenditures and obligations for 911 fees is sound. Addressing fee diversion through a non-exhaustive list of acceptable and unacceptable purposes and functions will invariably produce objections from affected parties. What matters most, however, is the Commission sets a clear demarcation line for compliance that public safety organizations can internalize, which the Commission can accomplish using the proposed rule's framework with an acceptable/unacceptable list of expenditures and obligations.''

Other commenters request additions or changes to the categories of acceptable expenditures. CoPUC contends that more clarity is needed regarding what constitutes ''operational expenses of PSAPs'' in proposed § 9.23(b)(1) because a wide range of different service models exist. Commenters also ask the Commission to clarify the term ''interoperability'' in proposed § 9.23(b)(5). In addition, commenters request a variety of additions to the list of examples within each category, including expenditures for pre-arrival instructions and associated training; maintenance and replacement costs; 911 cybersecurity; budgeting and forecasting; hiring, retention, and training of staff; industry-specific training through organizations such as NENA and the Association of Public-Safety Communications Officials-International, Inc. (APCO); mental health services for 911 professionals; administrative expenses for overseeing 911 programs; compliance costs; 911 call processing systems; CAD systems, mobile data computers (MDCs); geographic information systems (GIS) call routing, wide area networks (WANs), Emergency Services IP Networks (ESInets), and other NG911 technologies; emergency notification systems (ENS); and platforms such as Smart911 and RapidSOS. BRETSA provides an extensive list of requested additions, as does the Illinois State Police.

We agree with commenters that it would be helpful to add some of these examples to the language of the rule. Specifically, we revise § 9.23(b)(1) to refer to PSAP operating costs, including lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility and including NG911, cybersecurity, pre-arrival instructions, and emergency notification systems (ENS). PSAP operating costs also include technological innovation that supports 911.

This revision to the proposed rule makes clear that replacement of 911 systems is an acceptable expenditure for purposes of Section 902 and that 911 includes pre-arrival instructions and ENS. We also add a reference to cybersecurity. As NPSTC and BRETSA note, CSRIC VII recently recommended that spending on cybersecurity improvements be ''explicitly authorized as an eligible use of 9–1–1 funds.'' We also add a reference to NG911, and we revise the language to make clear that acceptable expenditures for these purposes include funding not just for existing systems, but also for innovation that will support 911 in the future.[17] We

[16] We note that the petition for determination process provides a mechanism for states and taxing jurisdictions to seek additional guidance in applying § 9.23(a) to a particular proposal for use of 911 fees for cross-subsidization to meet local needs.

[17] The North Carolina 911 Board (NC 911 Board) suggests clarifying the proposed rules to ''specifically identify'' NG911 services in a manner consistent with 47 U.S.C. 942(e)(1), which defines next generation 911 services as an IP-based system comprised of hardware, software, data, and operational policies and procedures that—(A) provides standardized interfaces from emergency call and message services to support emergency communications; (B) processes all types of emergency calls, including voice, data, and multimedia information; (C) acquires and integrates additional emergency call data useful to call routing and handling; (D) delivers the emergency calls,

find that these additions to the rule will help to clarify the scope of acceptable expenditures for PSAP operating costs in the implementation of section 902.

With respect to additional suggestions from commenters for identifying specified uses of 911 funds as acceptable for purposes of Section 902, we do not believe it is necessary to add every specific example to the text of the rules or to attempt further clarification of terms such as ''operating expenses'' or ''interoperability.'' As we note above, we intend to keep these rules general so that states and taxing jurisdictions have reasonable flexibility to use their good faith judgment in applying the rules to particular circumstances. In addition (and as the rules explicitly state), the categories and examples are non-exclusive and are not intended to specify every possible use of 911 fees that would be acceptable. We also note that the petition for determination process provides a mechanism for states and taxing jurisdictions that seek additional guidance in applying the rules to a particular proposal for use of 911 fees.

3. Designation of Unacceptable Purposes and Functions for 911 Expenditures

Background. We sought comment in the NPRM on specifying examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges for purposes of the statute. We proposed in § 9.23(c) of the rules that such examples would include, but not be limited to, the following:

- Transfer of 911 fees into a state or other jurisdiction's general fund or other fund for non-911 purposes;
- Equipment or infrastructure for constructing or expanding non-public safety communications networks (*e.g.,* commercial cellular networks); and
- Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, that does not have a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders.

We noted that identifying these examples as unacceptable expenditures for purposes of the statute is consistent with the manner in which such expenditures have been analyzed in the agency's annual 911 fee reports and sought comment on whether these examples should be codified.[18]

Decision. We adopt these provisions as proposed in the NPRM, with two minor modifications to § 9.23(c)(3), as detailed below. In light of the divided record on using 911 fees for public safety radio systems, we provide additional guidance on when such use of 911 fees will be deemed to have purposes or functions that ''directly support providing 9–1–1 services'' and so qualifies as ''acceptable'' for purposes of avoiding section 902 consequences. We also seek recommendations from the 911 Strike Force on developing additional specific examples in these regards.

We adopt our proposal to classify as unacceptable for Section 902 purposes the transfer of 911 fees into a general fund or other fund for non-911 purposes. The agency's annual fee reports consistently have found that transferring 911 fees to a state's general fund constitutes fee diversion. In addition, no commenter opposes this provision.

We also adopt our proposal that expenditures of 911 fees for constructing or expanding non-public safety communications networks, such as commercial cellular networks, are not acceptable for Section 902 purposes. This finding is consistent with our approach in the agency's annual 911 fee reports, where the agency has concluded, for example, that construction of commercial cellular towers to expand cellular coverage is not 911 related within the meaning of the NET 911 Act. In the Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, the agency explained that, although expanding cellular coverage ''enhances the public's ability to call 911,'' the NET 911 Act focuses on funding the elements of the 911 call-handling system that are operated and paid for by state and local 911 authorities.

Some commenters recommend a more ''nuanced'' approach that would allow 911 spending on non-public safety communications networks in certain circumstances. For example, BRETSA agrees that ''wireless providers should not require 9–1–1 Authorities to subsidize expansion of their coverage with 9–1–1 Fees,''[19] but expresses concern that § 9.23(c)(2) could prevent Colorado from providing ''diverse paths'' to ''currently unprotected Central Offices [ ] serving PSAPs'' due to ''incidental benefits to wireless providers.'' Oklahoma 911 contends that expenditures to provide for PSAP backup during outages should be looked at on a ''case by case basis'' at the state and local level, to ensure 911 calls are delivered ''quickly and appropriately.'' We agree that expenditures to provide redundancy, backup, or resiliency in components of the 911 network (*e.g.,* components that provide path diversity to PSAPs or support rerouting of 911 traffic in the event of an outage) would not be deemed unacceptable under this rule. We also note that the petition for determination process provides a mechanism for states and taxing jurisdictions to seek additional guidance in applying § 9.23(c)(2) to a particular proposal for use of 911 fees to meet local needs.

We also adopt with minor modifications our proposal to classify as unacceptable, for purposes of section

messages, and data to the appropriate public safety answering point and other appropriate emergency entities; (E) supports data or video communications needs for coordinated incident response and management; and (F) provides broadband service to public safety answering points or other first responder entities. NC 911 Board Mar. 31, 2021 Reply at 2; 47 U.S.C. 942(e)(5). States and taxing jurisdictions should use this definition if they find it is helpful, but we decline to add it to our rules. We believe NG911 technology is still evolving and that we lack an adequate record to define it at this time.

[18] *See* NPRM at 10, paras. 24–25. For example, the annual fee reports have repeatedly found that transferring 911 fees to the state's general fund or using 911 fees for the expansion of commercial cellular networks constitutes fee diversion. *See* NPRM at 11, para. 25. The fee reports also have found that expenditures to support public safety radio systems, including maintenance, upgrades, and new system acquisitions, are not 911 related. *See* NPRM at 11, para. 25. In addition, the agency has found that radio networks used by first responders are ''technically and operationally distinct from the 911 call-handling system.'' *See* NPRM at 11, para. 25. Given our request for comment in the NPRM on such examples in the annual fee reports, we reject contentions such as those raised by Michigan 911 Entities, who argue that the statements in the agency's fee reports on public safety radios were never part of a notice and comment rulemaking and therefore cannot be used as a rationale for adopting rules in this proceeding. Michigan 911 Entities Mar. 23, 2021 Comments at 11–12 & n.6.

[19] BRETSA Mar. 23, 2021 Comments at 27. BRETSA also urges the Commission to focus on the wireless providers, rather than the 911 Authority, when the Commission finds diversion of 911 fees to subsidize commercial wireless towers. BRETSA notes, for example, that the Bureau has labeled West Virginia a fee diverter for ''subsidizing construction of wireless towers to extend 9–1–1 calling capabilities to areas wireless providers have found or represented are not financially viable or only marginally financially viable to serve,'' that wireless providers require 911 Authorities to ''subsidize with 9–1–1 Fees their own commercial wireless services within their licensed service areas,'' and that 911 service is ''an exception to the rule that providers bear the cost of delivering their customers [sic] calls.'' Boulder Regional Emergency Telephone Service Authority Reply, PS Docket Nos. 20–291 and 09–14, at 16–17 (rec. Apr. 2, 2021) (BRETSA Apr. 2, 2021 Reply); *see also* BRETSA Mar. 23, 2021 Comments at 27–28 (''focus should be on the Commission's coverage rules and the actions of the wireless providers rather than on the 9–1–1 Authorities who must pay these subsidies for the providers to expand coverage''). We refer to the 911 Strike Force for further consideration the issue of whether, and how much, the Commission should focus on wireless providers, rather than 911 authorities, when finding fee diversion for subsidization of commercial wireless towers.

902, expenditures of 911 fees on equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that do not directly support 911 services. We revise the language of this section slightly to provide that examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges for purposes of section 902 include, but are not limited to, ''Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that does not directly support providing 911 services.'' The reference to whether such equipment or infrastructure ''directly support[s] providing 911 services'' more closely tracks the language in section 902.

Further, with respect to the application of this rule to public safety radio expenditures, we leave the precise dividing line between acceptable and unacceptable radio expenditures open for further refinement, and we refer this issue to the 911 Strike Force for further consideration and the development of recommendations.

Commenters were divided on whether using 911 funds to pay for public safety radio systems constitutes fee diversion. The Tarrant County (TX) 9–1–1 District strongly disagrees with commenters who assert that allowable uses of 911 fees should include items such as radio infrastructure, mobile radios, portable radios, pagers or other systems: ''THIS is exactly the problem. Agencies want to fund the entire public safety response system by recategorizing equipment, vehicles, and unrelated systems as part of the 9–1–1 response. It is emphatically NOT all part of the 9–1–1 system. The purpose of the fee is strictly to support Basic 9–1–1 and Enhanced 9–1–1 (E911) services only.'' CTIA and NTCA—The Rural Broadband Association (NTCA) argue that allowing radio system expenses would depart from fee report precedent, where the agency has ruled that use of funds to support public safety radio systems and associated maintenance and upgrades are not 911-related and constitute fee diversion. The North Carolina 911 Board (NC 911 Board) supports the NPRM proposal and notes that it only funds radio expenses within the PSAP based on the definition of ''call taking'' in the North Carolina statute.

However, some state and local 911 entities urge the Commission to find that expenditures of 911 funds on public safety radio systems are broadly acceptable and do not constitute fee diversion. These commenters contend that radio networks are not operationally and technically distinct from the 911 system and should be treated as integral components of the 911 ecosystem. For example, NYS DHSES asserts that ''[p]ublic safety communication systems are most effective when they address all users. This requires connecting the general public to 911 Centers and their telecommunicators who, in turn, communicate with first responders in the field.'' The Michigan 911 Entities assert that ''[u]nless the Commission is suggesting that police and fire go back to the wired Call Box on the street corner, there is no doubt that a PSAP is virtually useless without its interconnection to the radio system. Similarly, that radio system is useless without subscriber units for the system with which to communicate.''

Several commenters also assert that our proposal to consider expenditures for public safety radio expenses unacceptable for section 902 purposes in certain circumstances is inconsistent with our proposal that expenditures providing for ''the interoperability of 911 systems with one another and with public safety/first responder radio systems'' would be acceptable. The Pennsylvania Emergency Management Agency (PEMA) asserts that ''[t]he proposed rules imply there is a boundary between acceptable and not acceptable radio system expenses, but it is not clear where the boundary lies.'' CoPUC states that the line between acceptable and unacceptable radio equipment ''is not clear at all'' and that ''[p]resumably, radio equipment inside the PSAP is allowed, but everything from the PSAP to the portable radio on a patrol officer's utility belt is part of the infrastructure required to dispatch emergency responders.''

The issue whether radio system expenditures are acceptable or unacceptable for purposes of section 902 turns on how the Commission interprets the statutory provision that 911 fee expenditures directly support the provision of 911 services. We believe it is important to strike a balance between the opposing views in the record while recognizing the evolving nature of the 911 landscape and the variety of specific issues that could arise. Therefore, we reject as overbroad the proposition that all public safety radio expenditures ''directly support the provision of 911 services'' and are therefore acceptable. This is inconsistent with the standard applied in prior 911 fee reports and risks becoming an exception that swallows the rule. However, the test of whether specific radio expenditures directly support the provision of 911 services should be sufficiently flexible to allow for innovation and evolution in the 911 environment. For example, acceptable radio expenditures are not necessarily limited to technology ''inside the PSAP'' and could extend to development of integrated communications systems that support 911-related functions such as caller location or that enhance 911 reliability and resiliency. As NENA points out, the Commission's determinations with respect to edge cases ''evolve and are clarified over time as [the agency] is confronted with new quasi–9–1–1 public safety expenditures.'' We therefore decline to define a ''bright line'' test for applying the rule to specific radio expenditures.

We also find that commenters on both sides of this issue raise arguments that warrant additional consideration in determining where the line should be drawn between acceptable and unacceptable expenditures for public safety radio equipment. Accordingly, we do not specify public safety radio expenditures in our codified list of unacceptable uses, but we adopt our proposal defining expenditures on infrastructure or equipment as unacceptable if they do not directly support providing 911 services. In addition, we refer this issue to the 911 Strike Force for further guidance on how to apply this standard—to be delivered to the Commission contemporaneously with its final report to Congress—including the extent to which radio expenditures should be considered acceptable for purposes of section 902 because they provide for the interoperability of 911 systems with one another and with public safety/first responder radio systems. Finally, we note that the petition for determination process established by the statute provides a mechanism for further consideration of this issue in the context of specific cases after adoption of these rules.

4. Safe Harbor for Multi-Purpose Fee or Charge

Background. In the NPRM, we proposed to adopt an elective safe harbor in our rules providing that if a state or taxing jurisdiction collects fees or charges designated for ''public safety,'' ''emergency services,'' or similar purposes and a portion of those fees goes to the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the state or taxing jurisdiction: (1) Specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not

commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined in § 9.23 under new subpart I. We reasoned that the rules should provide states and taxing jurisdictions the flexibility to apportion the collected funds between 911 related and non-911 related programs, but include safeguards to ensure that such apportionment is not subject to manipulation that would constitute fee diversion.

Decision. We adopt the safe harbor provision as proposed. As we note above, Congress tasked us with designating the acceptability of the obligation and expenditure of 911 fees or charges for purposes of determining whether section 902 consequences will apply. Consistent with that mandate, and to incentivize states and taxing jurisdictions to be transparent about multi-purpose fees, adopting a safe harbor provision offers flexibility to states and taxing jurisdictions to have the 911 portion of such multi-purpose fees be deemed acceptable while not having the non-911 portion be deemed diversion. Some commenters support adoption of the proposed safe harbor, while other commenters object to the creation of the safe harbor provision as regulating non-911 fees outside of the Commission's authority or as burdensome. In establishing the safe harbor, we believe that we are neither regulating non-911 fees nor overstepping the responsibility Congress required of the Commission. Because new paragraphs (3)(A) and (B) of section 615a–1(f) require the Commission to define ''acceptable'' expenditures of 911 fees or charges for purposes of section 902, and because some states and taxing jurisdictions collect 911 fees or charges as part of multi-purpose fees, we conclude that the Commission has the obligation to consider the portions of such fees that are dedicated to 911 services. The safe harbor is a voluntary provision that provides a set of criteria for states and taxing jurisdictions with multi-purpose fees to demonstrate that they are not diverting 911 fees or charges. Accordingly, § 9.23(d)(2), which provides that the 911 portion of such fees or charges is segregated and not commingled with any other funds, only applies to states and taxing jurisdictions that opt to use the safe harbor provision to demonstrate that they are not diverting 911 fees. Arguments that fee segregation exceeds the Commission's authority or is burdensome are obviated by the elective nature of the safe harbor.

We find that the safe harbor will promote visibility into how funds ostensibly collected for both 911 and other purposes are apportioned, which furthers Congress's transparency goals and enhances our ability to determine whether 911 funds are being diverted. Without such visibility, multi-purpose fees could be used to obscure fee diverting practices from Commission inquiry, and potentially could render our rules and annual 911 fee report ineffective.

We also clarify that the safe harbor provision is not intended to preclude the use of fees collected for non-911 purposes from later being used for 911 purposes. BRETSA ''supports the Commission's proposal in Section 9.23(d),'' but challenges a purported provision that ''if a fee which is specified to be for a purpose other than 9–1–1 is used to support 9–1–1, it will thereafter be considered a 9–1–1 Fee.'' BRETSA misconstrues the safe harbor provision. Nothing in the rules we adopt in this document would prevent a state or taxing jurisdiction from using fees originally collected for other public safety purposes to instead support 911 services if needed, and then later using those same non-911 public safety fees to support other public safety purposes again.

BRETSA also contends that the safe harbor prohibition on comingling of 911 funds with other funds is ''unnecessarily restrictive.'' We disagree. Segregation of 911 funds in a separate account will help to ensure that the funds are fully traceable, provide a straightforward framework to avoid 911 fee diversion issues, and promote transparency in the use of 911 fees when a state or taxing jurisdiction collects a fee for both 911 and non-911 purposes. We also clarify that states and taxing jurisdictions are not required to use the safe harbor provision of our rules. Thus, a state or taxing jurisdiction may create an alternative multi-purpose fee mechanism that does not meet the safe harbor requirements. If it does so, however, the burden will be on the state or taxing jurisdiction to demonstrate that it is not diverting 911 funds.

Finally, BRETSA suggests that ''[i]n section 9.23(d)(1), it should suffice if the 9–1–1 funding statute or regulations specify the: (i) Amount or percentage of such fees or charges which are dedicated to purposes other than 9–1–1 Services, (ii) minimum amount or percentage dedicated to 9–1–1 services, or (iii) prioritize use of the fees or charges for 9–1–1 Service (*e.g.,* permit use of the fees for non-911 purposes after the costs of 9–1–1 Service have been met[)].'' BRETSA's suggestions (i) and (ii) appear consistent with § 9.23(d)(1), as long as the state or taxing jurisdiction adheres to § 9.23(d)(2) requiring that the fees be kept segregated. We do not intend the safe harbor to restrict flexibility of states and taxing jurisdictions to adjust the percentages of a multi-purpose fee that are allocated to 911 and non-911 purposes.

5. Diverter Designations

Some commenters raise concerns regarding the sufficiency of the process by which jurisdictions are determined to be engaged in diversion by the Commission, or request additional procedural safeguards before being designated a diverter in the annual fee report. In addition, some commenters urge creation of an appeal process for states identified as diverters, and one commenter requests a process by which a diversion finding can be removed once a state has come into compliance.

We decline to adopt such procedures that are not provided for in either section 902 or the NET 911 Act. As discussed above, Congress directed the Commission to adopt final rules defining the acceptable uses of 911 fees and to rule on petitions for determination for additional uses, in order to discourage fee diversion.[20] Section 902 also does not alter the well-established data collection and reporting process that the agency has employed to compile its annual reports. To the contrary, Congress implicitly affirmed the agency's existing reporting processes by requiring that Federal grant recipients participate in the annual data collection.

For similar reasons, we decline to establish a ''glide path'' or ''phase-in'' period for states and taxing jurisdictions to come into compliance with our rules, as proposed by some commenters. Section 902 does not provide any mechanism for the Commission to delay the implementation of these rules under the statute. We recognize that commenters are concerned about the potential 911 grant eligibility consequences of being designated a fee diverter based on the rules adopted in this order. The Michigan Chapter of APCO, for example, asserts that a

[20] 47 U.S.C. 615a–1(f)(3)(A), (f)(5) (as amended); sec. 902(c)(1)(C). Furthermore, Congress defined diversion under section 902(f)(4) in reference to the final rules that the Commission issues here, stating that diversion is ''the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules.'' 47 U.S.C. 615a–1 Statutory Notes (as amended); sec. 902(f)(4). When the agency reports to Congress as required by 47 U.S.C. 615a–1(f)(2) on the status of diversion in states and taxing jurisdictions, it will do so using this definition. *See* 47 U.S.C. 615a–1 Statutory Notes (as amended); sec. 902(d)(2).

determination of diversion puts significant Federal grant money at risk, which could hinder the 911 system in fulfilling its primary purpose and ultimately harm those it was originally created to protect. Several commenters note that a finding of diversion could impact eligibility for future grants under the Leading Infrastructure for Tomorrow's America (LIFT America) Act if it is enacted into law. However, these issues are beyond the scope of this proceeding. The current 911 grant program is administered by the National Telecommunications and Information Administration (NTIA) and the National Highway Traffic Safety Administration (NHTSA), and the LIFT America Act, as currently drafted, provides for grants to be administered by these same agencies. Thus, these agencies, and not the Commission, will determine the appropriate criteria for eligibility to receive 911 grants, including whether a state or taxing jurisdiction would be eligible in the circumstances raised by commenters.[21]

Petition for Determination

Background. Section 902(c)(1)(C) provides that a state or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of a 911 fee for a purpose or function other than those already deemed ''acceptable'' by the Commission should be treated as an acceptable expenditure. The state or taxing jurisdiction must demonstrate that the expenditure: (1) ''supports public safety answering point functions or operations,'' or (2) has a direct impact on the ability of a public safety answering point to ''receive or respond to 9–1–1 calls'' or to ''dispatch emergency responders.'' If the Commission finds that the state or taxing jurisdiction has provided sufficient documentation to make this demonstration, section 902 provides that the Commission shall grant the petition.

In the NPRM, we proposed to codify these provisions in our rules. We stated our belief that ''Congress intended this petition process to serve as a safety valve allowing states to seek further refinement of the definition of obligations and expenditures that are considered 911 related.'' We also stated that the proposed rule would set clear standards for what states must demonstrate to support a favorable ruling, including the requirement to provide sufficient documentation. In addition, to promote efficiency in reviewing such petitions, we proposed that states or taxing jurisdictions seeking a determination do so by filing a petition for declaratory ruling under § 1.2 of the Commission's rules. We noted that the declaratory ruling process would promote transparency regarding the ultimate decisions about 911 fee revenues that legislatures and executive officials make and how such decisions promote effective 911 services and deployment of NG911. We proposed to delegate authority to the Public Safety and Homeland Security Bureau to rule on these petitions for determination, following the solicitation of comments and reply comments via public notice. We sought comment on these proposals and on any possible alternative processes for entertaining such petitions.

We adopt our proposed rules and procedures for addressing petitions for determination, with some clarifications. Commenters generally support these proposals, although most commenters recommend modifications or additions to the process. We address these issues in turn.

Petitions and permitted filers. First, we adopt our proposal that states or taxing jurisdictions seeking a determination must do so by filing a petition for declaratory ruling under § 1.2 of the Commission's rules.[22] Some commenters, however, urge us to make the declaratory ruling process available to other stakeholders, such as communications providers and public safety organizations, to request Commission guidance on whether certain measures constitute 911 fee diversion. For example, CTIA asserts that expanding this process would ''create a deterrent effect that can restrain state or local taxing jurisdictions from taking new actions that may constitute 9–1–1 fee diversion.'' However, other commenters oppose expanding the petition process to other stakeholders. The Adams County E–911 Emergency Telephone Service Authority, Arapahoe County 911 Authority, and Jefferson County Emergency Communications Authority (AAJ Authorities) note that section 902 ''clearly states'' that ''only states and taxing jurisdictions'' can initiate such proceedings, for the limited purpose of determining whether an expenditure by such a state or taxing jurisdiction is consistent with the Commission's rules. BRETSA also opposes expanding the petition process to other stakeholders, noting the ''wide disparity'' between the resources of wealthy service providers and many PSAPs, most of which ''do not regularly retain counsel and participate in Commission proceedings,'' and might ''lack the resources to oppose'' the petitions. Another commenter, Consumer Action for a Strong Economy (CASE), proposes a different mechanism, suggesting that to encourage reporting by non-governmental entities, the Commission could establish ''a new docket or a portal'' in which non-governmental entities could provide evidence demonstrating that a state or taxing jurisdiction is underfunding 911 services or ''has failed to meet an acceptable purpose and function for the obligation or expenditure of 911 fees or charges.'' The AAJ Authorities ask the Commission to reject CASE's proposal, contending that creation of a new docket or portal would create ''undue burdens'' for states and local 911 authorities, which would have to spend time and resources responding to Commission inquiries. The AAJ Authorities also note that Commission ''already has an information collection process to identify fee diverters.''

We find that, under the explicit language of section 902, only a ''State or taxing jurisdiction'' may file a petition for determination, and that other stakeholders (*e.g.,* communications providers) may not file a petition for determination. In addition, we decline to create a ''new docket or portal'' for non-governmental authorities to report 911 fee diversion and underfunding issues. Non-governmental parties can provide information to the Commission on a 911 fee concern at any time and can comment on annual 911 fee reports and state responses to the FCC data

[21] NTIA and NHTSA administer the 911 Grant Program, enacted by the ENHANCE 911 Act section 158 (codified at 47 U.S.C. 942(c)), and amended by the NG911 Act section 6503 (codified at 47 U.S.C. 942(c)). In rulemakings to revise the implementing regulations for the 911 Grant program, NTIA, NHTSA, the Department of Commerce, and the Department of Transportation have clarified that they ''are not bound by the FCC's interpretation of non-diversion under the NET 911 Act.'' 911 Grant Program, 83 FR 38051, 38058 (Aug. 3, 2018) (codified at 47 CFR part 400).

[22] The Commission notes that the decision to apply § 1.2 of the Commission's rules to the filing of these section 902 petitions is limited to the use of § 1.2 as a procedural vehicle for conducting an adjudication of these petitions. Accordingly, any limitations of 47 CFR 1.2 and the Administrative Procedure Act at 5 U.S.C. 554(e) that might arise from the specification that the Commission may issue a declaratory ruling to terminate a controversy or remove uncertainty do not apply here. Rather, the standard for accepting and granting these special petitions for determination is dictated by the statutory requirements of section 902(c)(1)(C)—specifically, that the Commission must grant such a petition if it finds that the State has provided sufficient documentation to demonstrate that the ''purpose or function'' (i) supports PSAP functions or operations, or (ii) has a direct impact on the ability of a PSAP to ''(I) receive or respond to 911 calls; or (II) dispatch emergency responders.'' 47 U.S.C. 615a–1(f)(5)(B) (as amended); sec. 902(c)(1)(C).

collection. We find that these existing procedural options available to non-governmental entities are sufficient and decline to add another layer of procedures. For example, these other stakeholders may file a petition for declaratory ruling under § 1.2 of the Commission's rules or a petition for rulemaking under § 1.401 of the Commission's rules. However, such petitions would not be subject to or entitled to the specialized petition for determination process and substantive standards that we establish here.

Bureau delegation and public comment. In general, the Public Safety and Homeland Security Bureau (Bureau) has delegated authority under our existing rules that is sufficient to act on petitions for determination in the first instance. We also adopt our NPRM proposal that the Bureau seek comment on petitions. Although the North Carolina 911 Board expresses concern that the comment and reply process could lead to administrative burdens for state and local government, other commenters support the proposal. We conclude that seeking comment on petitions will promote transparency and informed decision-making in furtherance of Congress's goals.

Time Limits. We decline to place a time limit on Bureau action on petitions for determination. We agree with commenters who advocate for timely action on petitions, but also agree with CTIA that the process needs ''to allow for public comment and sufficient deliberation of whether expenditures are appropriately within the scope of the Commission's rules.'' Although some commenters advocate mandatory timelines, imposing a rigid time limit on an as yet unknown volume of petition decisions, many of which will require careful consideration of complex situations and questions, would not allow time for sufficient deliberation or public input, would unduly burden limited Commission staff resources, and would potentially lead to inconsistent results.

Review. Some commenters advocate that an appeal process should be available, whether specifically in relation to the petition decision, or as a more general matter for any finding of fee diversion. In terms of appeals of the Bureau's petition decisions, we believe creating any specialized appeal process is unnecessary, because petitioners may submit petitions for reconsideration under § 1.106 of the Commission's rules or applications for Commission review of any Bureau-level decision under § 1.115 of the Commission's rules.

Blanket Waivers. We continue to believe that Congress intended the petition process ''to serve as a safety valve allowing states to seek further refinement of the definition of obligations and expenditures that are considered 911 related.'' However, BRETSA argues that the petition process should include provisions for ''blanket waivers'' or special rules for certain common situations that affect a large number of 911 authorities. We decline to establish such specialized provisions. We find that our general guidelines on acceptable and unacceptable 911 expenditures are sufficiently broad, and that these overarching national guidelines, the illustrative lists of examples, and the petition process complement each other, with the petition process allowing localized refinements that accommodate varying circumstances as well as a reasonable mechanism to evaluate future perhaps as yet unforeseen, but legitimate, expenses. We also note that nothing in the rules prevents multiple states or taxing authorities from filing a joint petition to address a common issue.

Eligibility To Participate on Advisory Committees

Background. Pursuant to section 902(d)(4), any state or taxing jurisdiction identified by the agency in the annual 911 fee report as engaging in diversion of 911 fees or charges ''shall be ineligible to participate or send a representative to serve on any committee, panel, or council established under section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 . . . or any advisory committee established by the Commission.'' In the NPRM, we proposed to codify this restriction in § 9.26 as it applies to any advisory committee established by the Commission.

Decision. We adopt the proposal from the NPRM with a minor modification and provide additional guidance and clarification on certain aspects of the rule.[23] As proposed, we find that any state or taxing jurisdiction identified by the agency as engaging in diversion will be ineligible to participate on any advisory committee established by the Commission. The first fee diversion report required to be submitted one year after the enactment of section 902 will include a list of states and taxing jurisdictions identified as practicing fee diversion. The agency will begin identifying representatives of diverting jurisdictions on its current advisory committees, if any, following the issuance of that report, and evaluate how to remove such representatives from current advisory committees. One commenter supports the prohibition without caveats, and some commenters seek clarification on or ask the Commission to revisit the scope of the prohibition against serving on advisory committees when a state or taxing jurisdiction has been designated a diverter.[24]

We clarify that only employees of a diverting jurisdiction (*i.e.,* state or other taxing jurisdiction) who are acting as official representatives of that jurisdiction will be ineligible to participate on advisory committees established by the Commission. Further, we clarify that this prohibition will not extend to representatives of non-diverting localities that are located within diverting states. We also clarify that an individual who is employed by a diverting jurisdiction may still serve on a Commission advisory committee as a representative of a public safety organization or other outside association. Lastly, we clarify that an advisory committee ''established'' by the Commission includes any advisory committee established under the Federal Advisory Committee Act and any other panel that serves an advisory function to the Commission as reflected on the Commission's website.[25] In light

[23] We revise the language of the proposed rule to clarify the reference to section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a–1(f)(2)).

[24] NPSTC notes that section 902(d)(4) references the ineligibility of diverting states or taxing jurisdictions to serve on FirstNet committees, panels, or councils, and states that this section encompasses the FirstNet Public Safety Advisory Committee (PSAC). NPSTC Mar. 23, 2021 Comments at 7. NPSTC asserts that ''[t]he PSAC appears to be established by Congress in the legislation, not by the Commission.'' *Id.* at 7. NPSTC argues that ''the Commission, in coordination with the FirstNet governmental entity, should clarify any impact of this legislation to FirstNet and related advisory committees, councils or panels,'' as ''an individual on the PSAC that represents a public safety or governmental association/organization should not be penalized for an employer's 911 fee decisions over which he/she may have no involvement.'' *Id.* at 7; *see also* IAFC Apr. 2, 2021 Reply at 5 (quoting NPSTC). We observe that at the May 5, 2021 FirstNet board meeting, FirstNet updated the charter of the PSAC to prevent representatives of fee diverting jurisdictions from participating on the PSAC. *See* First Responder Network Authority, Board Resolution 109–Bylaws and Public Safety Advisory Committee Charter Revisions at 1–2 & Exh. B (May 5, 2021), *https://firstnet.gov/sites/default/files/Resolution%20109%20-%20Bylaws%20and%20PSAC%20Charter%20Revisions%20May%202021.pdf.*

[25] A full list of the advisory committees established by the Commission can be found at *https://www.fcc.gov/about-fcc/advisory-committees-fcc.* This prohibition would not extend to the Regional Planning Committees (RPCs), which are administrative rather than advisory in nature. *See* NPSTC Mar. 23, 2021 Comments at 6 (requesting clarification of whether RPCs would be considered committees ''established'' by the Commission).

of these clarifications, we believe the prohibition appropriately balances the interests of Congress in restricting representatives of fee diverting jurisdictions from serving on advisory committees, without limiting representatives of non-diverting jurisdictions from providing their perspectives. Our clarification tracks NPSTC's view that an individual ''may be employed by a locality or state, but serve voluntarily in public safety associations/organizations for the benefit of all public safety,'' and may wish to end diverting practices.

Mission Critical Partners proposes that the restriction on diverter participation on advisory committees be expanded to include ''congressional panel[s], the National 911 Program, or other public safety-related committees, panels, or councils.'' Because this proposal would exceed Congress's directive in section 902, we decline to adopt it.

Reporting Requirement

Background. Section 902(c)(1)(C) provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after the date of enactment of section 902, ''such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare [the annual report to Congress on 911 fees].'' [26] In the NPRM, we proposed to codify this provision in § 9.25 under new subpart I to require grant recipients to provide such information to the Commission.

Decision. We adopt our proposal, which was unopposed in the comment record, with clarifying modifications.[27] Mission Critical Partners notes that the collection of information regarding states' use of 911 funds ''provides comprehensive information for Congress to scrutinize and understand the needs of states and local 911 authorities.'' APCO notes that ''[u]sing the strike force and annual reports to better understand the relationship between funding for 9–1–1 and emergency response will produce helpful information for public safety agencies and serve the Commission's and Congress's goal of discouraging fee diversion.''

Underfunding 911 Services and Improving the Annual 911 Fee Report

Background. In the Notice of Inquiry in this proceeding, we sought comment on whether improvements to the agency's data collection and reporting process could further discourage fee diversion. Section 902(d)(2) provides that, beginning with the first annual fee report ''that is required to be submitted after the date that is 1 year after the date of the enactment of this Act,'' the Commission shall include in each report ''all evidence that suggests the diversion by a State or taxing jurisdiction of 9–1–1 fees or charges, including any information regarding the impact of any underfunding of 9–1–1 services in the State or taxing jurisdiction.'' Given that section 902 similarly requires us to forward any evidence of fee diversion, ''including any information regarding the impact of any underfunding of 9–1–1 services,'' to the 911 Strike Force, in the NPRM we sought comment on how we can best emphasize this aspect in our information collection reports.

Decision. As a threshold matter, we direct the Bureau to update the annual 911 fee report questionnaire to reflect the rules adopted in the Report and Order. This should help address concerns raised by commenters that our annual data collection be more effective in identifying fee diversion.

Commenters generally support the Commission's approach of using the 911 Strike Force and annual reports to better understand underfunding.[28] APCO and several other commenters urge us to take a ''broad approach'' to analyzing the extent and impacts of 911 underfunding, whether or not it is caused by 911 fee diversion. Commenters note that the presence or absence of fee diversion does not reliably correlate to adequate funding for 911 and suggest that we take additional steps to study the broader impacts of underfunding the 911 system. We direct the Bureau to modify the annual fee report questionnaire to seek additional information on the underfunding of 911 systems, including both (1) information on the impact of fee diversion on 911 underfunding, and (2) information on 911 underfunding in general. We also refer this issue to the 911 Strike Force. The 911 Strike Force is charged with examining, among other things, ''the impacts of diversion,'' and we expect that its report will address underfunding as a potential impact of diversion.

We decline two requests from the NC 911 Board to expand the Commission's approach to analyzing underfunding, first that the Commission address underfunding of 911 as a prerequisite to finding that fee diversion has occurred, and second that the Commission provide more detail regarding the intent, definition, and scope of underfunding. Neither section 902 nor the NET 911 Act contains a requirement that the Commission find underfunding prior to finding fee diversion. Regarding the request that the Commission provide more detail about the intent, definition, and scope of underfunding, we note that section 902 did not specifically direct the Commission to define underfunding at this time, but we refer the topic of defining underfunding 911 to the 911 Strike Force to study.

III. Procedural Matters

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Report and Order on small entities. The FRFA is set forth in Appendix B of the Commission's Report and Order.

Paperwork Reduction Act of 1995 Analysis. The requirements in § 9.25(b) constitute a modified information collection to OMB Control No. 3060–1122. The modified information collection will be submitted to the Office of Management and Budget

[26] 47 U.S.C. 615a–1(f)(4) (as amended); sec. 902(c)(1)(C). NHTSA and NTIA will review the regulations for the 911 Grant Program at 47 CFR part 400 in order to determine how best to implement the new obligation under the law. The Commission will work with these agencies to ensure a coordinated compliance regime.

[27] We revise the language of the rule to clarify the reference to section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a–1(f)(2)). We also clarify that each state or taxing jurisdiction subject to this requirement must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau.

[28] APCO Mar. 23, 2021 Comments at 2 (using the Strike Force and annual reports will produce helpful information and serve the goal of discouraging fee diversion ''while looking at the bigger picture of the extent of underfunding regardless of the source''); NC 911 Board Mar. 31, 2021 Reply at 3 (stating that the NC 911 Board ''supports the Commission's apparent intent to seek greater clarity [on underfunding] through the Strike Force''); IAFC Apr. 2, 2021 Reply at 5–6 (quoting and supporting APCO's assertion that the Commission should use the Strike Force and annual reports to produce helpful information regarding underfunding). We note that the 911 Strike Force is due to submit its report to Congress by September of this year, which will not be enough time for the agency to pass along underfunding information collected through the fee report process this year. The 911 Strike Force will examine, however, the impact of fee diversion on underfunding, and the Commission will submit to the 911 Strike Force the information that it currently has, as mandated by statute. *See* 47 U.S.C. 615a–1 Statutory Notes (as amended); sec. 902(d)(1)–(3).

(OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that the new or modified information collection requirements in § 9.25(b) will be unduly burdensome on small businesses. Applying these modified information collections will implement section 902 and promote transparency in the collection and expenditure of 911 fees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B of the Commission's Report and Order.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this is a major rule under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Additional Information. For additional information on this proceeding, contact Brenda Boykin, *Brenda.Boykin@fcc.gov* or 202–418–2062, Rachel Wehr, *Rachel.Wehr@fcc.gov* or 202–418–1138, or Jill Coogan, *Jill.Coogan@fcc.gov* or 202–418–1499, of the Public Safety and Homeland Security Bureau, Policy and Licensing Division.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM adopted in February 2021. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

The Report and Order adopts rules to implement section 902 of the Consolidated Appropriations Act, 2021 that required the Commission to take action to help address the diversion of 911 fees by states and taxing jurisdictions for purposes unrelated to 911. The Commission amends part 9 of its rules to establish a new subpart I to address the use of 911 fees and fee diversion in accordance with the requirements of section 902. More specifically, the rules the Commission adopts in the new subpart I designate illustrative, non-exhaustive purposes and functions for the obligation or expenditure of 911 fees or charges by states and taxing jurisdiction authorized to impose such a fee or charge that are acceptable for purposes of section 902 and the Commission's rules; clarify what does and does not constitute 911 fee diversion; establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on fee diversion issues; and codify the specific restrictions that section 902 imposes on states and taxing jurisdictions that engage in diversion, such as the exclusion from eligibility to participate on Commission advisory committees.

The Commission adopts rules in the Report and Order that provide guidance on the types of expenditures of 911 fees for public safety radio systems and related infrastructure that can be considered acceptable but leaves the precise dividing line between acceptable and unacceptable radio expenditures open for further refinement, and refers this issue to the 911 Strike Force for further consideration and development of recommendations. The Report and Order also codifies the provision of section 902 that allows states and taxing jurisdictions to petition the FCC for a determination that an obligation or expenditure of a 911 fee for a purpose or function other than those deemed acceptable by the Commission should be treated as an acceptable expenditure. Further, the Commission amends its rules to include a voluntary safe harbor provision that provides if a state or taxing jurisdiction collects fees or charges designated for ''public safety,'' ''emergency services,'' or similar purposes and a portion of those fees goes to the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the state or taxing jurisdiction meets certain criteria. This safe harbor provision should incentivize states and taxing jurisdictions to be transparent about multi-purpose fees, while providing flexibility to states and taxing jurisdictions to have the 911 portion of such multi-purpose fees be deemed acceptable while not having the non-911 portion be deemed diversion.

The safe harbor provision should also provide visibility into how funds ostensibly collected for both 911 and other purposes are apportioned, while including safeguards to ensure that such apportionment is not subject to manipulation that would constitute fee diversion. Inclusion of the safe harbor furthers Congress's transparency goals and enhances our ability to determine whether 911 funds are being diverted. Without such visibility, multi-purpose fees could increase the burden on limited Commission staff resources in analyzing varied fee structures, and potentially render our rules and annual 911 fee report ineffective. The changes to part 9 adopted in the Report and Order are consistent with and advance Congress's stated objectives in section 902 in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state or taxing jurisdictions. The rules closely track the statutory language of section 902 addressing 911 fee diversion and seek to promote transparency, accountability, and integrity in the collection and expenditure of fees collected for 911 services, while providing stakeholders reasonable guidance as part of implementing section 902.

B. Summary of Significant Issues Raised by Comments in Response to the IRFA

There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally

defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA's) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over internet protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

All Other Telecommunications. The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or VoIP services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million, and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The rules adopted in the Report and Order to implement section 902 will impose new or additional reporting or recordkeeping and/or other compliance obligations on small and other sized state and taxing jurisdictions subject to compliance with the Commission's 911 fee obligation or expenditure requirements. While some of the requirements will only impact entities that choose to invoke the provisions, the Commission is not in a position to determine whether small entities will have to hire professionals to comply and cannot quantify the cost of compliance for small entities. Below we discuss the reporting and recordkeeping requirements implicated in the Report and Order.

New § 9.25 requires that if a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such State or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a–1(f)(2)). Each state or taxing

jurisdiction subject to paragraph (a) of this section must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau (Bureau).

The Report and Order directs the Bureau to update the Commission's 911 fee report questionnaire to facilitate the provision of information regarding states' use of 911 funds in order for the Commission to prepare an annual report to Congress on 911 fees. The Report and Order also directs the Bureau to modify the annual fee report questionnaire to obtain additional information on the underfunding of 911 systems, including both (1) information on the impact of fee diversion on 911 underfunding, and (2) information on 911 underfunding in general.

Pursuant to the voluntary Petition for Determination process adopted in the Report and Order to resolve questions of what are and are not acceptable 911 expenditures, a petitioning state or taxing jurisdiction is required to provide information show that a proposed expenditure: (1) Supports PSAP functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. The information and documentation that a state or taxing jurisdiction is required to provide the Commission to make the requisite showing will impact the reporting and recordkeeping requirements for small entities and others subject to the requirements.

Similarly, pursuant to the voluntary safe harbor provisions adopted in the Report and Order, small and other sized state or taxing jurisdictions that utilize the safe harbor provision to have the non-911 portion of a multi-purpose fee or charge not constitute diversion, must: (1) Specify the amount or percentage of such fees or charges that is dedicated to 911 services; (2) show that the 911 portion of such fees or charges are segregated and not commingled with any other funds; and (3) obligate or expend the 911 portion of such fees or charges for acceptable purposes and functions as defined in § 9.23 under new subpart I.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

In the Report and Order the approach we take to implement the provisions of section 902 that require Commission action to help address diversion of 911 fees for other purposes by state and taxing jurisdictions, adopts changes to part 9 of the Commission's rules seeking to achieve the stated objectives of Congress's mandates in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunication services or to states and taxing jurisdictions. Using this approach, we have taken the steps discussed below to minimize any significant economic impact or burden for small entities.

To promote consistency for small entities and others who will be subject to both section 902 and our rules, the rules adopted in the Report and Order and codified in part 9 of the Commission's rules, closely tracks the statutory language from section 902. Specifically, the definitions in section 902 for certain terms relating to 911 fees and fee diversion in part 9 of our rules were adopted and codified as proposed in the NPRM. For a few terms, limited modifications were made to the definition, *i.e.,* the definitions for the terms ''911 fee or charge'' and ''Diversion'' include modifications to promote regulatory parity and avoid gaps that could inadvertently interfere with the rapid deployment of effective 911 services. We believe that having consistency between section 902 and our rules will avoid additional compliance costs for small entities.

Similarly, to fulfill the Commission's obligations associated with issuing rules designating acceptable purposes and functions, we use language from section 902, codifying the statutory standard for which the obligation or expenditure of 911 fees or charges by any state or taxing jurisdiction is considered acceptable. We considered but rejected arguments to defer to states and local authorities in determining what constitutes fee diversion. A policy of deferring to states or localities on what constitutes fee diversion would negate one of the principal aspects of section 902, which is that it revises the language in 47 U.S.C. 615a–1 to make clear that fee diversion is not whatever state or local law says it is. Section 902 charges the Commission with responsibility for determining appropriate purposes and functions for expenditure of 911 funds and we agree that our rules should be reasonably broad given the evolving and diverse 911 ecosystem. The rules adopted in the Report and Order establish broad categories of acceptable purposes and functions for 911 fees and provide examples within each category to guide states and localities. Therefore, we have provided State and local jurisdictions sufficient discretion to make reasonable, good faith determinations whether specific expenditures of 911 fees are acceptable under our rules.

In the final rules we specify examples of both acceptable and unacceptable purposes and functions for the obligation or expenditure of 911 fees or charges. For example, we revised § 9.23(b)(1) from the NPRM proposal to include examples to make clear that replacement of 911 systems is an acceptable expenditure and that 911 includes pre-arrival instructions and ENS and also added a reference to cybersecurity. Identifying and including specific examples in the Commission's rules should enable small entities to avoid unacceptable expenditures in violation of our rules, which could impact eligibility for Federal grants and participation in Federal advisory committees.

Finally, we adopt two processes in the Report and Order that could minimize the economic impact for small entities, (1) the safe harbor for multi-purpose fees or charges and (2) the petition for determination. As discussed in the prior section, the safe harbor provision gives flexibility to states and taxing jurisdictions to implement multi-purpose fees or charges and to have the 911 portion of such multi-purpose fees be deemed acceptable and the non-911 portion not deemed 911 fee diversion provided certain conditions are met. Also discussed in the prior section, the Commission adopted a petition for determination process to resolve questions of what are and are not acceptable 911 expenditures, allowing states and other taxing jurisdictions to request a determination on whether a proposed expenditure would constitute fee diversion. Using these processes small, and other sized state and taxing jurisdictions can avoid violating section 902 and the Commission's rules for 911 fee diversion and any ensuing economic and other consequences.

G. Report to Congress

26. The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

Accordingly, *it is ordered,* pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up the T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Public Law 116–260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 47 U.S.C. 615a–1, and the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, and 615b, that this Report and Order is hereby *adopted.*

It is further ordered that the amendments of part 9 of the Commission's rules, as set forth in Appendix A of the Commission's Report and Order, *are adopted,* effective sixty (60) days after publication in the **Federal Register**. Compliance will not be required for paragraph (b) in § 9.25 until after approval by the Office of Management and Budget. The Commission delegates authority to the Public Safety and Homeland Security Bureau to publish a document in the **Federal Register** announcing that compliance date and revising paragraph (c) in § 9.25.

It is further ordered that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 9

Communications common carriers, Communications equipment, Radio, Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 9 as follows:

PART 9—911 Requirements

■ 1. The authority citation for part 9 is revised to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, and Section 902 of Title IX, Division FF, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

■ 2. Add subpart I, consisting of §§ 9.21 through 9.26, to read as follows:

Subpart I—911 Fees

Sec.
9.21 Applicability.
9.22 Definitions.
9.23 Designation of acceptable obligations or expenditures for purposes of the Consolidated Appropriations Act, 2021, Division FF, Title IX, section 902(c)(1)(C).
9.24 Petition regarding additional purposes and functions.
9.25 Participation in annual fee report data collection.
9.26 Advisory committee participation.

§ 9.21 Applicability.

The rules in this subpart apply to States or taxing jurisdictions that collect 911 fees or charges (as defined in this subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services.

§ 9.22 Definitions.

For purposes of this subpart, the terms in this section have the following meanings set forth in this section. Furthermore, where the Commission uses the term ''acceptable'' in this subpart, it is for purposes of the Consolidated Appropriations Act, 2021, Public Law 116–260, Division FF, Title IX, section 902(c)(1)(C).

911 fee or charge. A fee or charge applicable to commercial mobile services, IP-enabled voice services, or other emergency communications services specifically designated by a State or taxing jurisdiction for the support or implementation of 911 services. A 911 fee or charge shall also include a fee or charge designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fee or charge include the support or implementation of 911 services.

Diversion. The obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to § 9.23. Diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated as acceptable by the Commission pursuant to § 9.23.

Other emergency communications services. The provision of emergency information to a public safety answering point via wire or radio communications, and may include 911 and E911 service.

State. Any of the several States, the District of Columbia, or any territory or possession of the United States.

State or taxing jurisdiction. A State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

§ 9.23 Designation of acceptable obligations or expenditures for purposes of the Consolidated Appropriations Act, 2021, Division FF, Title IX, section 902(c)(1)(C).

(a) Acceptable purposes and functions for the obligation or expenditure of 911 fees or charges for purposes of section 902 are limited to:

(1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and

(2) Operational expenses of public safety answering points within such State or taxing jurisdiction.

(b) Examples of acceptable purposes and functions include, but are not limited to, the following, provided that the State or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:

(1) PSAP operating costs, including lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility and including NG911, cybersecurity, pre-arrival instructions, and emergency notification systems (ENS). PSAP operating costs include technological innovation that supports 911;

(2) PSAP personnel costs, including telecommunicators' salaries and training;

(3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;

(4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and

(5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.

(c) Examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges for purposes of section 902 include, but are not limited to, the following:

(1) Transfer of 911 fees into a State or other jurisdiction's general fund or other fund for non-911 purposes;

(2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (*e.g.,* commercial cellular networks); and

(3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that does not directly support providing 911 services.

(d) If a State or taxing jurisdiction collects fees or charges designated for ''public safety,'' ''emergency services,'' or similar purposes that include the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the State or taxing jurisdiction:

(1) Specifies the amount or percentage of such fees or charges that is dedicated to 911 services;

(2) Ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and

(3) Obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section.

§ 9.24 Petition regarding additional purposes and functions.

(a) A State or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of 911 fees or charges for a purpose or function other than the purposes or functions designated as acceptable in § 9.23 should be treated as an acceptable purpose or function. Such a petition must meet the requirements applicable to a petition for declaratory ruling under § 1.2 of this chapter.

(b) The Commission shall grant the petition if the State or taxing jurisdiction provides sufficient documentation to demonstrate that the purpose or function:

(1) Supports public safety answering point functions or operations; or

(2) Has a direct impact on the ability of a public safety answering point to:

(i) Receive or respond to 911 calls; or

(ii) Dispatch emergency responders.

§ 9.25 Participation in annual fee report data collection.

(a) If a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such State or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a–1(f)(2)).

(b) Each State or taxing jurisdiction subject to paragraph (a) of this section must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau.

(c) Paragraph (b) of this section contains information collection and recordkeeping requirements. Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph (c) accordingly.

§ 9.26 Advisory committee participation.

Notwithstanding any other provision of law, any State or taxing jurisdiction identified by the Commission in the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a–1(f)(2)), as engaging in diversion of 911 fees or charges shall be ineligible to participate or send a representative to serve on any advisory committee established by the Commission.

[FR Doc. 2021–16068 Filed 8–16–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2020–0032; FF09M220002012;2012;FXMB1231099BPP0]

RIN 1018–BE34

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2021–22 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to Tribal requests for U.S. Fish and Wildlife Service (hereinafter ''Service'' or ''we'') recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule is effective August 17, 2021.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2020–0032. You may obtain copies of referenced reports from the Division of Migratory Bird Management's website at *http://www.fws.gov/migratorybirds/* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2020–0032.

Information Collection Requirements: Written comments and suggestions on the information collection requirements may be submitted at any time to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference ''OMB Control Number 1018–0171'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–2012;1050.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones