

FCC FACT SHEET*

Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts

Report and Order and Further Notice of Proposed Rulemaking - PS Docket Nos. 15-91 and 15-94

Background: The nation's Emergency Alert System (EAS) and Wireless Emergency Alerts (WEA), which ensure that the public is quickly informed about emergency alerts issued by government entities and delivered over radio, television, and mobile wireless devices, have increasing importance in the wake of the emergencies and disasters Americans have faced in recent years.

On January 1, 2021, Congress enacted Section 9201 of the National Defense Authorization Act for Fiscal Year 2021 (NDAA21) which directs the Commission, in consultation with the Federal Emergency Management Agency (FEMA), to complete a rulemaking and adopt rules within 180 days to (a) ensure mobile devices cannot opt out of receiving WEA alerts from the FEMA Administrator; (b) establish a state EAS plan checklist for State Emergency Communications Committees (SECCs) and amend the annual requirements for SECCs to ensure they meet, review, and update their EAS plans annually; (c) enable reporting by the FEMA Administrator and State, Tribal, or local governments of false EAS and WEA alerts; and (d) provide for repeating EAS alerts issued by the President, the FEMA Administrator, and any other entity determined appropriate by the Commission, in consultation with the FEMA Administrator. The Commission proposed rules to implement Section 9201 (a)-(d) of the NDAA21 on March 17, 2021 (<https://www.fcc.gov/document/fcc-proposes-further-strengthen-emergency-alerting-0>). This Report and Order fulfills our obligations under the statute by adopting rules to implement the NDAA21's provisions. The Further Notice of Proposed Rulemaking initiates a proceeding to seek comment on additional EAS improvements requested by FEMA.

What the Report and Order Would Do:

- Combine the current non-optional class of WEA "Presidential Alerts" with FEMA Administrator Alerts into a new alert class called "National Alerts," and clarify that WEA National Alerts may be nationwide or regional in distribution.
- Require certification of annual SECC meetings, amend the Commission's review and approval process of annual SECC plans, and establish an EAS Plan Content Checklist.
- Specify that the FEMA Administrator or a State, local, Tribal, or territorial government may voluntarily report EAS or WEA false alerts to the FCC Operations Center at FCCOPS@fcc.gov, informing the Commission of the event and any relevant details.
- Clarify how alert originators can repeat their alert transmissions.

What the Further Notice of Proposed Rulemaking Would Do:

- Seek comment on whether to delete, redefine or replace certain EAS emergency event codes that are no longer relevant or may cause public confusion.
- Seek comment on whether to update the EAS to support a "persistent" display and notification of EAS messages that warn the public of severe threats to loss of life.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in PS Docket Nos. 15-91 and 15-94, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 11 of the Commission's Rules) PS Docket No. 15-94
Regarding the Emergency Alert System)
)
Wireless Emergency Alerts) PS Docket No. 15-91

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: "Insert Adopted Date"

Released: "Insert Release Date"

Comment Date: (60 days after date of publication in Federal Register)

Reply Comment Date: (90 days after date of publication in Federal Register)

By the Commission:

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I. INTRODUCTION

1. Today the Commission takes measures to enhance the efficacy of the Emergency Alert System (EAS) and Wireless Emergency Alerts (WEA). Specifically, and in consultation with the Federal Emergency Management Agency (FEMA), we implement Section 9201 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,¹ which requires the Commission to complete a rulemaking and adopt rules within 180 days to (a) ensure mobile devices cannot opt out of receiving WEA alerts from the FEMA Administrator;² (b) establish a state EAS plan checklist for State Emergency Communications Committees (SECCs) and amend the requirements for SECCs, to ensure they meet, review, and update their EAS plans annually ;³ (c) enable reporting by the FEMA Administrator and State, Tribal, or local governments of false EAS and WEA alerts;⁴ and (d) provide for repeating EAS alerts issued by the President, the FEMA Administrator, and any other entity determined appropriate by the Commission, in consultation with the FEMA Administrator.⁵ We believe the rules we adopt today will improve the capabilities and efficacy of EAS and WEA as systems for distributing vital alert information to all Americans, and will do so in a cost-effective manner. In the *Further Notice of Proposed Rulemaking*, we seek comment on several recommendations made by FEMA for further EAS improvements, specifically, deleting outdated references in our rules, re-naming certain EAS terms to enhance public awareness, and updating EAS capability for alerts that are persistent during certain extreme emergencies.

II. BACKGROUND

2. WEA⁶ is a tool for authorized federal, state and local government entities to geographically target alerts and warnings to WEA-capable mobile devices of participating Commercial

¹ See National Defense Authorization Act for Fiscal Year of 2021, Pub. L. 116-283, 134 Stat. 3388, § 9201 (NDAA21), <https://www.congress.gov/bill/116th-congress/house-bill/6096/text>.

² See *id.*, § 9201(a).

³ See *id.*, § 9201(b).

⁴ See *id.*, § 9201(c).

⁵ See *id.*, § 9201(d).⁶ WEA was established by the WARN Act. See Warning, Alert and Response Network (WARN) Act, Title VI of the Security and Accountability for Every Port Act of 2006, 120 Stat. 1884, codified at 47 U.S.C. § 1200, et seq. (2006) (WARN Act). From a technical standpoint, WEA is currently deployed by FEMA and participating Commercial Mobile Service providers based on standards created by the Alliance for Telecommunications Industry Solutions (ATIS), the Telecommunications Industry Association (TIA) (jointly, ATIS/TIA), and the 3rd Generation Partnership Project (3GPP). See Communications Security, Reliability, and Interoperability Council (CSRIC) IV, Working Group Two, Wireless Emergency Alerts, Geotargeting, Message Content and Character Limitation Subcommittee, Final Report at 7 (2014), available at https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_CMAS_Geo-Target_Msg_Content_Msg_Len_Rpt_Final.pdf (CSRIC IV WEA Messaging Report).

⁶ WEA was established by the WARN Act. See Warning, Alert and Response Network (WARN) Act, Title VI of the Security and Accountability for Every Port Act of 2006, 120 Stat. 1884, codified at 47 U.S.C. § 1200, et seq. (2006) (WARN Act). From a technical standpoint, WEA is currently deployed by FEMA and participating Commercial Mobile Service providers based on standards created by the Alliance for Telecommunications Industry Solutions (ATIS), the Telecommunications Industry Association (TIA) (jointly, ATIS/TIA), and the 3rd Generation Partnership Project (3GPP). See Communications Security, Reliability, and Interoperability Council (CSRIC) IV, Working Group Two, Wireless Emergency Alerts, Geotargeting, Message Content and Character Limitation Subcommittee, Final Report at 7 (2014), available at https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_CMAS_Geo-Target_Msg_Content_Msg_Len_Rpt_Final.pdf (CSRIC IV WEA Messaging Report).

Mobile Service (CMS) providers' subscribers.⁷ These alert messages are separated into four categories, with varying requirements governing their use: (i) Presidential Alert; (ii) Imminent Threat Alert; (iii) Child Abduction Emergency/AMBER Alert; and (iv) Public Safety Message.⁸ In terms of distribution, an alert originator sends a WEA Alert Message using FEMA-approved alert origination software to the Integrated Public Alert and Warning System (IPAWS) Open Platform for Emergency Networks administered by FEMA. The IPAWS system then authenticates, validates and delivers that alert for dissemination to participating CMS providers' alert gateways.⁹ Participating CMS providers' WEA infrastructure then transmits the alert message content to their subscribers' WEA-capable devices. These devices receive alerts from IPAWS in a standard message format called the Common Alerting Protocol, which is an open, interoperable format.¹⁰ When the alert message is received by a WEA-capable mobile device, it is prominently presented to the subscriber as long as the subscriber has not opted out of receiving alert messages of that category.¹¹ WEA messages must be accessible to individuals with disabilities.¹² Of particular relevance to this proceeding, the Commission's WEA rules currently allow CMS Providers to provide their subscribers with the option (which the subscriber selects on their mobile device) to opt out of receiving any or all of the WEA alert categories, except the Presidential Alert.¹³

3. The EAS is a national public warning system through which broadcasters, cable systems, and other EAS Participants deliver alerts to the public to warn them of impending emergencies and dangers to life and property.¹⁴ The primary purpose of the EAS is to provide the President with "the capability to provide immediate communications and information to the general public at the National,

⁷ A "Participating CMS Provider" is a Commercial Mobile Service Provider that has voluntarily elected to transmit Alert Messages under Part 10 of the Commission's rules. *See* 47 CFR § 10.10(f). *See also* 47 CFR § 10.10(d); 47 U.S.C. § 332(d)(1) (defining the term "commercial mobile service").

⁸ *See* 47 CFR § 10.400.

⁹ *See id.*

¹⁰ The Common Alerting Protocol standard was developed by the Organization for the Advancement of Structured Information Standards (OASIS), and incorporates a language developed and widely used for web documents. *See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, ET Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642, 648-49, paras. 10-11 (2012) (*Fifth Report and Order*). The Common Alerting Protocol is an open, interoperable, XML-based standard that can include multimedia such as streaming audio or video. *See* OASIS CAP v1.2 (IPAWS Profile for the OASIS Common Alerting Protocol IPAWS USA). Common Alerting Protocol-formatted messages contain standardized fields that facilitate interoperability between and among devices. *See id.*

¹¹ *See* Joint ATIS/TIA CMAS Mobile Device Behavior Specification (ATIS-TIA-J-STD-100). *See also* 47 CFR § 10.280.

¹² All classes of WEA messages must be accompanied by an audio attention signal and vibration cadence to ensure accessibility. *See* 47 CFR §§ 10.520, 10.530; *see also The Commercial Mobile Alert System*, First Report and Order, 23 FCC Rcd 6144, 6168-69, paras. 64-67 (2008) (explaining that these requirements were adopted in order to ensure WEA accessibility).

¹³ *See* 47 CFR § 10.280.

¹⁴ *See, e.g., Fifth Report and Order*, 27 FCC Rcd at 646, para. 6; *Review of the Emergency Alert System*, EB Docket No. 04-296, *Notice of Proposed Rulemaking*, 19 FCC Rcd 15775, 15776-77, paras. 6-8 (2004). The Commission's rules define EAS Participants as analog radio broadcast stations, including AM, FM, and Low-power FM stations; digital audio broadcasting stations, including digital AM, FM, and Low-power FM stations; Class A television and Low-power TV stations; digital television broadcast stations, including digital Class A and digital Low-power TV stations; analog cable systems; digital cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. *See* 47 CFR § 11.11(a).

State and Local Area levels during periods of national emergency.”¹⁵ The EAS is also used to distribute alerts issued by state, local, Tribal, and territorial governments, as well as by the National Weather Service (NWS).¹⁶ Although EAS Participants are required to broadcast Presidential alerts, they participate in broadcasting state and local EAS alerts on a voluntary basis.¹⁷ The Commission, FEMA, and the NWS implement the EAS at the federal level.¹⁸

4. The EAS is a broadcast-based, hierarchical alert message distribution system in which an alert message originator at the local, state, or national level encodes (or arranges to have encoded) a message in the EAS Protocol.¹⁹ The alert is then broadcast from one or more EAS Participants, and subsequently relayed from one station to another until all affected EAS Participants have received the alert and delivered it to the public.²⁰ The EAS is not designed to facilitate alert origination by EAS

¹⁵ 47 CFR § 11.1. Under the Part 11 rules, national activation of the EAS for a Presidential alert message, initiated by the transmission of an Emergency Action Notification (EAN) event code, is designed to provide the President the capability to transmit an alert message (in particular, an audio alert message) to the American public within ten minutes from any location at any time and must take priority over any other alert message and preempt other alert messages in progress. *See, e.g., Review of the Emergency Alert System*, First Report and Order, 20 FCC Rcd. 18625, 18628, para. 8 (2005) (*First Report and Order*). *See also, e.g.,* 47 CFR §§ 11.33(a)(11), 11.51(m), (n).

¹⁶ The National Weather Service is the most prolific originator of alerts containing emergency weather information. NWS also administers NOAA Weather Radio (NWR). *See* National Weather Service NWR, <https://www.weather.gov/nwr/> (last visited May 18, 2021).

¹⁷ *See* 47 CFR § 11.55(a); *First Report and Order*, 20 FCC Rcd at 18628, para. 8.

¹⁸ The respective roles of the Commission, FEMA, and NWS are defined in a series of Executive documents. *See* 1981 State and Local Emergency Broadcasting System (EBS) Memorandum of Understanding Among the Federal Emergency Management Agency (FEMA), Federal Communications Commission (FCC), the National Oceanic and Atmospheric Administration (NOAA), and the National Industry Advisory Committee (NIAC) reprinted as Appendix K to Partnership for Public Warning Report 2004-1, *The Emergency Alert System (EAS): An Assessment*; Memorandum, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995) (1995 Presidential Statement); and Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 26, 2006).

¹⁹ *See* 47 CFR § 11.31. Under this protocol, an EAS alert uses a four-part message: (1) preamble and EAS header codes (which contain information regarding the identity of the sender, the type of emergency, its location, and the valid time period of the alert); (2) audio attention signal; (3) audio message, if included by the alert originator; and (4) preamble and “end of message” (EOM) codes. *See id.* § 11.31(a). Although the EAS Protocol specifies that the message can be audio, video, or text, in practice, only audio is sent.

²⁰ *See Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket Nos. 15-94 and 15-91, *Notice of Proposed Rulemaking and Notice of Inquiry*, 35 FCC Rcd xxx, xxx, paras. 8-9 (March 17, 2021) (*Notice*), 2021 WL 1235914, for a description of this process. Since June 30, 2012, authorized emergency alert authorities also have been able to distribute EAS alerts over the Internet to EAS Participants (who in turn deliver the alert to the public) by formatting those alerts in the Common Alerting Protocol and delivering those alerts through the FEMA administered IPAWS. *See* 47 CFR § 11.56; *see also Fifth Report and Order*, 27 FCC Rcd at 644-45, para. 4. EAS Participants are required to convert Common Alerting Protocol-formatted EAS messages into messages that comply with the EAS Protocol requirements for distribution over the legacy EAS following the procedures set forth in the EAS-CAP Industry Group’s (ECIG) Recommendations for a CAP EAS Implementation Guide, Version 1.0 (May 17, 2010) (“ECIG Implementation Guide”) (this document is available on ECIG’s web site at: <http://eas-cap.org/documents.htm>) (last visited Jan. 20, 2021). *See* 47 CFR § 11.56.

Participants or automated repetition of alerts.²¹ EAS alerts must also be accessible to individuals with disabilities.²²

5. In January 2018, the Hawaii Emergency Management Agency mistakenly issued an emergency alert through IPAWS that falsely warned the public of a non-existent inbound ballistic missile attack.²³ Shortly following this event, the Public Safety and Homeland Security Bureau (Bureau) conducted an investigation and issued a report of factual findings about the causes of the incident with recommendations.²⁴ The Bureau recommended several improvements towards the goal of preventing such false alerts in the future, including changes to states' internal emergency alert readiness testing processes, additional steps for states to publicize corrections to false alerts, and regular consulting between state governments and SECCs for review of EAS procedures and review of State EAS Plans.²⁵ The Hawaii false alert event and the Bureau's review were a major impetus to the eventual adoption of Section 9201 of the NDAA21.²⁶

6. On January 1, 2021, Congress adopted Section 9201 of the NDAA21 to improve the effectiveness of EAS and WEA, improve the preparedness of SECCs, and strengthen the FCC's oversight of EAS and WEA.²⁷ On March 19, 2021, the Commission released a *Notice of Proposed Rulemaking and Notice of Inquiry* seeking public comment on implementing the provisions of Section 9201 of the NDAA21.²⁸ In the *Notice*, the Commission proposed to adopt rules to ensure that mobile devices cannot opt out of receiving WEA alerts from the FEMA Administrator.²⁹ The Commission also proposed rules to encourage chief executives of states to form SECCs if none exist in their states as well as to adopt various requirements concerning the SECCs' administration of State EAS Plans.³⁰ The Commission further proposed to create a voluntary system for the FEMA Administrator and State, local, Tribal, and territorial governments to report false EAS and WEA alerts when they occur.³¹ Finally, the Commission proposed rules to permit repeating EAS alerts issued by the President, the FEMA Administrator, and any other entity determined appropriate under the circumstances by the Commission, in consultation with the Administrator of FEMA.³²

²¹ Nonetheless, EAS Participants may voluntarily serve as manual entry points for alerts originated by state and local authorities.

²² See 47 CFR § 11.51(d); *Review of the Emergency Alert System*, EB Docket No. 04-296, Sixth Report and Order, 30 FCC Rcd 6520, 6536-42, paras. 34-46 (2015).

²³ S. Rep. No. 116-240, at 3 (2020).

²⁴ Report and Recommendations; Hawaii Emergency Management Agency January 13, 2018 False Alert, (PSHSB, April 2018), <https://www.fcc.gov/document/fcc-releases-report-hawaii-false-emergency-alert>.

²⁵ *Id.* at 24-25.

²⁶ S. Rep. No. 116-240, at 3-4 (2020).

²⁷ S. Rep. No. 116-240, at 3 (2020); H. Rep. No. 116-582, at 2 (2020).

²⁸ See *Notice*, 35 FCC Rcd at XXX.

²⁹ *Id.* at paras. 12-19 (implementing NDAA21, § 9201(a)).

³⁰ *Id.* at paras. 23-34 (implementing NDAA21, § 9201(b)).

³¹ *Id.* at paras. 35-40 (implementing NDAA21, § 9201(c)).

³² *Id.* at paras. 41-56 (implementing NDAA21, § 9201(d)). The *Notice of Inquiry* portion of the item sought comment on the feasibility of updating EAS to enable or improve alerts to consumers provided through the Internet, including from streaming services. *Id.* at paras. 57-71. At the conclusion of this inquiry, the Commission will submit a report on its findings and conclusions to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. NDAA21 § 9201(e).

7. In response to the *Notice*, the Commission received 25 comments and 6 reply comments, representing 27 different entities and individuals, including a range of SECCs, tribal governments, federal agencies, local government entities, service providers, service and equipment vendors, and trade and advocacy organizations.³³

III. DISCUSSION

A. Wireless National Alerts

1. National Alert Class for the President and FEMA Administrator

8. In the *Notice*, we proposed to create a new, non-optional class of National Alerts by re-naming and re-designating WEA Presidential Alerts to include alerts from both the President and from the FEMA Administrator.³⁴ We adopt this proposal with minor modifications to the proposed rules, finding it not only consistent with the NDAA21's amendment of the WARN Act, but the most cost-effective way to prevent mobile wireless subscribers from opting out of receiving alerts issued by the FEMA Administrator.³⁵ Re-naming Presidential Alerts to a single National Alerts class to include alerts by the President, the President's designees, and the FEMA Administrator avoids the significant, unnecessary, and therefore wasteful costs of creating a new alert class solely for the FEMA Administrator. Further, as commenters have observed, a single National Alert class also mitigates diminished public response to alerts that are labeled as Presidential.³⁶

9. We conclude that the establishment of a new class of WEA messages called National Alerts is the most cost-effective way to implement non-optional FEMA Administrator alerts, obviating the need for major technical or costly changes to WEA infrastructure by leveraging existing capabilities already inherent in the Presidential alert classification. Accordingly, we amend section 10.400(a) of our rules to rename Presidential Alert as National Alert and redefine the class as "an alert issued by the President of the United States or the President's authorized designee, or by the Administrator of FEMA."³⁷ We also amend sections 10.500(f), 10.320(e)(3), 10.410, and 10.420 of our rules to reflect the

³³ We note that several commenters make additional requests for WEA improvements that are beyond the scope of the *Notice* and the NDAA21's focus on alerting systems' operational reliability and credibility. We therefore limit the discussion in this item to the issues raised by the *Notice*. We further decline to address or incorporate these new issues into the *FNPRM* in this proceeding, which is limited to EAS issues raised by FEMA, in light of the Commission's responsibility to consult with FEMA under the NDAA21. *See, e.g.*, Navajo Nation and NNTRC Comments at 2-5 (requirements for agreements between Apple and third party distributors for iPhone WEA functionality); CTIA Comments at 9; Professor Bean Comments at 2-5 (additional testing and/or public outreach and education about WEA); TDI, et al.; Comments at 2-4 (improved access for people with disabilities and mandatory originator inclusion of website links in alerts); NYCEM Comments at 1-2, 8 (multi-media messaging, additional multi-lingual capabilities, expanding non-optional WEA alert classes); Taylor Comments at 1; Avi Primo Comments at 1-2 (creating different vibrations or tones for different WEAs).

³⁴ *Notice*, 35 FCC Rcd at xxxx, paras. 12-13, 15, and at xxxxx, Appendix A.

³⁵ NDAA21, § 9201(a), requiring that "[n]ot later than 180 days after the date of enactment of this Act" the Commission shall "adopt regulations to implement the amendment [of the WARN Act]"; see also 47 U.S.C. § 1201(b)(2)(E) (CMS providers that elect to transmit WEA alerts can offer subscribers the capability to opt out of such alerts, except for alerts issued by the President).

³⁶ *See* New York City Emergency Management (NYCEM) Comments at 2; REC Comments at 1-2; Professor Bean Comments at 1-2.

³⁷ Final Rules, Appendix A. Previous section 10.400 of the Commission's rules identifies four classes of WEAs, one of which is Presidential Alerts, which may only be originated by the President or the President's authorized designee. 47 CFR §§ 10.400, 10.400(a).

renaming of Presidential Alerts as National Alerts.³⁸ Commenters addressing this issue unanimously support the single National Alerts class for both the President and FEMA Administrator. Notably, FEMA supports changing the Presidential Alert to National Alert, stating that it “better reflects the new broader use of national alerts.”³⁹

10. We also affirm that the adoption of the National Alerts class will not limit FEMA’s or the President’s ability to send geotargeted alerts as necessary. As the record reflects, there is no bar to the FEMA Administrator or President sending National Alerts to a specific region.⁴⁰ Commenters observe that targeting the delivery of the National Alert to a specific geographic area will not present any unique technical issues or require system updates that are not already in place in the existing infrastructure used to deliver Presidential Alerts.⁴¹ Instead, as commenters note, National Alerts will use the existing WEA handling code for Presidential Alerts,⁴² and, as long as the FEMA Administrator follows the same origination parameters for geotargeting a WEA message that a Presidential Alert would use, regional alert distribution would raise no unique issues.⁴³ Nevertheless, for further clarification, we adopt an amended version of our proposed rule 10.400(a) to specify that National Alerts may be either nationwide or regional in distribution.⁴⁴

11. We disagree with some commenters who argue that the combined Presidential/FEMA administrator alert class should be renamed Federal Alerts to avoid potential confusion if the public receives an alert from FEMA that is regional or local in nature.⁴⁵ As an initial matter, we note that most commenters, including FEMA, support the proposed National Alerts class and raise no concerns with the name.⁴⁶ If a National Alert is sent regionally, the message text will contain only relevant regional or local information, and will be geotargeted to those areas that need the emergency instruction.⁴⁷ Further, we believe that the improved public response for alerts that are labeled as National rather than as Presidential or Federal outweighs these commenters’ concerns. Notably, as explained in more detail below, mobile device header identification for National Alerts remains optional for participating CMS providers, so if any providers are concerned about customer confusion from using a National Alerts device display

³⁸ Final Rules, Appendix A. Previous section 10.500(f) of the Commission’s rules requires that Presidential Alerts must always be presented to subscribers of participating CMS providers, and prohibits subscriber opt out from receiving Presidential Alerts. 47 CFR § 10.500(f). The Commission’s rules we are amending today to re-name Presidential Alerts as National Alerts also require special treatment of Presidential Alerts to ensure these alerts are always transmitted and prioritized above all other WEAs, and are not required to include mandatory elements beyond what the President wishes to communicate – elements which are required for other alert originators and classes (*e.g.*, event type, area affected, recommended action, expiration time with time zone, and sending agency). 47 CFR §§ 10.320(e)(3), 10.410, 10.420. Presidential Alerts preempt all other alerts, such as Imminent Threat Alerts, AMBER Alerts and Public Safety Messages, which are processed on a first in-first out (FIFO) basis. 47 CFR § 10.410.³⁹ FEMA Comments at 3.

³⁹ FEMA Comments at 3.

⁴⁰ See ATIS Comments at 3; NYCEM Comments at 2-3.

⁴¹ See ATIS Comments at 3; NYCEM Comments at 2-3.

⁴² See NYCEM Comments at 3.

⁴³ See ATIS Comments at 3; NYCEM Comments at 2-3.

⁴⁴ Final Rules, Appendix A.

⁴⁵ See CTIA Comments at 7; ATIS Comments at 2, footnote 2; Wireless RERC Reply Comments at 4-5; DAS Reply Comments at 2.

⁴⁶ See FEMA Comments at 3; NYCEM Comments at 2; REC Comments at 2; Professor Bean Comments at 1-2; PBS and APTS Comments at 7-8; TDI, et al., Comments at 2; Navajo Nation and Navajo Nation Telecommunications Regulatory Commission (NNTRC) Comments at 3; Timm Comments at 1.

⁴⁷ ATIS Comments at 3-4.

header, they are free not to deploy one to handsets. Finally, the President and FEMA Administrator are encouraged to always identify an office in the alert message text with an “identifying character string” like POTUS or FEMA,⁴⁸ or with the name of any other office or office acronym as the President sees fit.

12. *Benefits.* We believe, consistent with record support, that a benefit of the National Alert rule we adopt today is mitigating the potential harm of reduced public response to alerts labeled as Presidential or Federal.⁴⁹ Furthermore, FEMA has confirmed that it “will include content in the alert to indicate whether the alert was originated from the President or the FEMA Administrator.”⁵⁰ We agree with FEMA’s decision to ensure that every National Alert includes text in the alert message itself identifying an originating office, whether that office is FEMA, the President, or any other office the President may designate for any alert, as this will avoid public confusion.⁵¹ As the President may designate other officials to send WEA National Alerts, the originating office identified in a National Alert message is not limited to either the President or FEMA, but the message may also be identified as coming from the Department of Defense, the Department of Homeland Security, the Centers for Disease Control, or any other secretary or official the President designates.

13. We observe that the non-optional prioritization and presentation of National Alerts is based on the technical WEA handling code used, which will always be the same for all National Alerts regardless of which originating office is identified in the text of an alert message. The content of the National Alert message displayed to subscribers, including the written name of the originating office, has no bearing on the non-optional presentation or prioritization of these WEA messages. No commenting party has identified any potential “technical alert transmission or presentation issues”⁵² arising from this combined National Alerts class, nor have we identified any. As FEMA explains, “FEMA is responsible for . . . activation of the IPAWS for the President,”⁵³ so FEMA conducts the technical IPAWS initiation of both Presidential alerts and FEMA alerts. Accordingly, prioritization between a simultaneous Presidential National Alert and a FEMA National Alert would be accomplished manually by FEMA, not by operation of technical parameters in the WEA or IPAWS system architecture. Even if it were technically possible for two National Alerts to be issued via IPAWS at the same time, one from the President and one from FEMA, our rules and the design of the WEA system ensure that both alerts would be prioritized and presented.⁵⁴

⁴⁸ CTIA Comments at 6.

⁴⁹ Commenting parties point out that there may be adverse effects to public response from identifying National Alerts as coming from the President. *See* NYCEM Comments at 2; REC Comments at 1-2; Professor Bean Comments at 1-2.

⁵⁰ FEMA Comments at 3.

⁵¹ 47 CFR § 10.400(a) (a Presidential Alert may be issued by the President “or the President’s authorized designee.”). Our re-named National Alerts class rule section retains this same language regarding Presidential designees.

⁵² *Notice*, 35 FCC Rcd at xxxx, para. 14.

⁵³ FEMA Comments at 1.

⁵⁴ Based on the configuration of WEA systems, users would receive notifications of both non-optional alerts, and both alerts would be displayed on a user’s handset, one at a time, the second displayed after a user dismisses the first one. The WEA system is designed to both store and display all received alerts on phones until dismissed manually by a user. *See* 47 CFR § 10.510 (“Devices marketed for public use under part 10 must present an Alert Message as soon as they receive it but may not enable an Alert Message to preempt an active voice or data session. If a mobile device receives a WEA Alert Message during an active voice or data session, the user may be given the option to control how the Alert Message is presented on the mobile device with respect to the use of the common vibration cadence and audio attention signal.”). Also, devices engaged in active voice or data sessions on 4G LTE networks must receive and prominently present WEA messages as soon as they are available. Legacy WEA-capable mobile

(continued....)

14. We are persuaded by the record that a single alert class for the President and FEMA Administrator would most benefit the public,⁵⁵ avoid unnecessary costs,⁵⁶ and improve the effectiveness of these alerts, thereby improving public safety.⁵⁷ For instance, commenters observe that “[s]ome WEA message recipients who receive presidential alerts—and who deem the president unreliable—may not comply with stated protective-action guidance.”⁵⁸ Similarly, NYCEM, REC Networks, and Professor Hamilton Bean state that a single National Alerts class will promote public safety because identifying these alerts by political offices distracts public attention from the important emergency information being conveyed.⁵⁹ Many commenters also underscore that use of a single National Alert class will avoid unnecessary network upgrade costs, because adding a new non-optional WEA handling code and alert class requires “significant changes to industry standards, service provider gateways, radio access networks and mobile devices.”⁶⁰ Several commenters state that because few, if any, technical changes will be necessary to participating CMS provider networks or mobile devices to implement this proposal, the National Alert can be available for use by FEMA immediately.⁶¹ ATIS and other commenters, for example, observe that since National Alerts will use the same WEA handling code⁶² as the now-replaced class of Presidential Alerts, this change will be seamless and automatic for the WEA and will not require costly and time-consuming upgrades to CMS provider gateways and other network elements.⁶³

15. *Costs.* The National Alerts class we adopt today is the most cost-effective way of implementing the NDAA21 requirement to ensure subscribers may not opt out of receiving FEMA Administrator alerts. We reject the alternative of creating a new, separate WEA handling code and class of non-optional alerts named FEMA Administrator Alert. That approach would require participating CMS providers and mobile device manufacturers to develop new standards and would require changes to

devices that cannot receive the Alert Message during an active voice or data session must present the WEA message prominently as soon as it is received, upon the conclusion of the active voice or data session. *Wireless Emergency Alerts; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Report and Order and Further Notice of Proposed Rulemaking, PS Docket Nos. 15-94 and 15-91, 31 FCC Rcd 11112, 11152, para. 60 (2016).

⁵⁵ See Navajo Nation and NNTRC Comments at 3; TDI, et al., Comments at 2; Timm Comments at 1.

⁵⁶ See CTIA Comments at 2-3, 6; PBS and APTS Comments at 8; ATIS Comments at 2, 4.

⁵⁷ See NYCEM Comments at 2 (“NYCEM developed this recommendation based on comments received during a convenience-sample survey of over 2,000 respondents following the national WEA test in October 2018. Presidents, as can be the case with many elected office holders, can be polarizing figures, and one’s perception toward the President may delay and/or detract from the critical public safety message that a national WEA activation would aim to galvanize. NYCEM argues that changing the header to ‘National Alert’ reduces this risk of potential pre-existing attitudes towards a political figure from detracting from or delaying life-saving actions.”); REC Comments at 1-2; Professor Bean Comments at 1-2.

⁵⁸ Professor Bean Comments at 2; see also NYCEM Comments at 2; REC Comments at 1-2.

⁵⁹ See NYCEM Comments at 2; REC Comments at 1-2; Professor Bean Comments at 1-2.

⁶⁰ ATIS Comments at 4 (citing the *Notice*); see also CTIA Comments at 2-3, 6; PBS and APTS Comments at 8.

⁶¹ *Notice*, 35 FCC Rcd at xxxx, paras. 13, 15. See CTIA Comments at 2-3, 6; ATIS Comments at 4.

⁶² See ATIS Standard on Wireless Emergency Alert (WEA) 3.0 Federal Alert Gateway to CMSP Gateway Interface Specification, ATIS-0700037.v002, Alliance for Telecommunications Industry Solutions (May 2, 2019) at 48, 64. The WEA handling code is the element in Common Alerting Protocol messages that IPAWS transforms into messages that are sent to the participating CMS provider gateways. This element is exchanged between IPAWS and the participating CMS provider gateways as the Commercial Mobile Alert for C Interface (CMAC) “CMAC_special_handling” element, and the CMS provider systems use this element to identify an alert as Presidential or otherwise.

⁶³ See ATIS Comments at 3 (noting that “no changes are necessary in order to allow the ability for FEMA to begin sending alerts under the [new alert] class”); CTIA Comments at 6.

CMS provider gateways, Radio Access Networks, and mobile devices to enable a new handling code that is specific to a FEMA Administrator Alert, resulting in a cost of approximately \$43.5 million, with an estimated implementation timeframe of approximately 30 months. We arrived at this cost estimate based on the costs we assessed as attendant to adding the Public Safety Message alert classification to WEA.⁶⁴ As noted above, the National Alert class will use the existing WEA handling code and other infrastructure already in place for Presidential Alerts. As such, the record reflects that the newly adopted National Alert can be effective for use immediately.

2. Mobile Handset Display Screen Header and Menu Updates

16. We adopt the proposals set forth in the *Notice* to require participating CMS providers that use WEA header displays and settings menus that read Presidential Alert to either discontinue the handset display of the words Presidential Alert or otherwise change the display to read National Alert.⁶⁵ Although the Commission does not require participating CMS providers to display Presidential Alert headers or to identify these alerts in settings menus, some providers have elected to do so.⁶⁶ For those providers that have elected to display such headers, this provision will alleviate potential public confusion from receiving an alert from the FEMA Administrator that is labeled as a Presidential Alert. Commenters agree that the requirement to update device screens to reflect the National Alerts class is necessary to achieve the intended benefits of replacing Presidential Alerts with National Alerts.⁶⁷ As NYCEM observes, leaving device text that flashes Presidential Alert when a National Alert is issued would undermine the purpose of removing automatic specific government office identification from these alerts.⁶⁸

17. We require implementation of this requirement by participating CMS providers by July 31, 2022, but exempt network infrastructure that is technically incapable of meeting this requirement—such as where legacy devices or networks cannot be updated to support header display changes. We note that participating CMS providers agree that the July 31, 2022 timeframe is generally reasonable, particularly if legacy devices are exempt.⁶⁹ Although CTIA indicates some device updates “may” take longer,⁷⁰ without adequate support for the basis of those delays, we decline to extend the deadline. CTIA alludes to “technical feasibility and challenges of modifying diverse WEA-capable devices to support the enhancements,” but does not explain how the device updates required by today’s rule would be more time-consuming or challenging than similar past updates.⁷¹ Instead, CTIA proposes that the July 31, 2022 deadline apply to standards and testing only, and that deployment of the header updates to handsets have

⁶⁴ See *Wireless Emergency Alerts*, PS Docket No. 15-91, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11166, para. 87 (2016) (“In this section, we show that we can reasonably expect the minimum benefit resulting from the improvements to WEA we adopt today to exceed their maximum cost. The maximum reasonable cost burden our rules could present to Participating CMS Providers is \$40 million as a one-time cost . . . These costs result from modifications to standards and software. . .”). The \$40 million figure was adjusted upwards to \$43.5 million to account for increases in wages in recent years. There would be no relevant technical difference between creating a new alert message classification for Public Safety Messages and creating a new alert message classification for FEMA Administrator alerts.

⁶⁵ *Notice*, 35 FCC Rcd at xxxx, paras. 16, 18, and at xxxxx, Appendix A. We delegate authority to the Bureau to briefly extend the July 31, 2022 effective date, if necessary, to obtain PRA approval from the Office of Management and Budget (OMB).

⁶⁶ *Notice*, 35 FCC Rcd at xxxx, paras. 12, 16.

⁶⁷ NYCEM Comments at 3.

⁶⁸ NYCEM Comments at 3.

⁶⁹ CTIA Comments at 8.

⁷⁰ CTIA Comments at 3.

⁷¹ CTIA May 7, 2021 *Ex Parte* at 3-4.

no deadline.⁷² We decline to adopt CTIA’s proposal based on the important public safety interest of changing the name of Presidential Alerts for improved public response to alerts.⁷³ When the Commission adopted rules in 2017 to enable the delivery of Blue Alerts over WEA, the Commission allowed a period of 18 months for participating CMS providers to make the necessary changes to their network infrastructure.⁷⁴ In the *Blue Alerts Order* proceeding, participating CMS providers requested 18 months based on the need to modify multiple network elements including the “C-interface,” the secure interface that exists between IPAWS and CMS provider gateways.⁷⁵ The handset display rule we adopt today does not require a C-interface update, and neither CTIA nor any participating CMS provider has proposed a specific alternative deadline. Accordingly, we believe our proposed 13-month period is reasonable for these updates, and we adopt our proposed deadline of July 31, 2022.

18. In the interim period, we are reassured by FEMA’s commitment to distinguish its National Alerts from those issued by the President in the text of the WEA message itself, minimizing risks of misattribution.⁷⁶ We decline to require National Alert originators to identify the originating office as either FEMA or the President, as CTIA and ATIS suggest, though we recognize the importance of subscribers being able to identify some originating office with any alert received. We observe that, under both our existing and revised rule 10.400(a), alerts may be sent by the President or the President’s authorized designee, and the President may designate additional officials to send such alerts.⁷⁷ Accordingly, as noted earlier, we encourage FEMA, which is responsible for IPAWS initiation of all National Alerts regardless of which office originates the National Alert, to always identify an originating office in the text of a National Alert message to ensure the public is not confused by a WEA that contains no information about who is sending it.

19. *Costs and Benefits.* This rule we adopt today requires changes to deployed mobile devices that can be implemented via over-the-air software updates or changes to newly manufactured devices,⁷⁸ and we estimate implementation will result in only minimal costs.⁷⁹ We note that commenters did not take issue with this cost estimate. Further, legacy devices that cannot be updated are exempt from this requirement.

20. We believe it is reasonable to expect that the benefits of this handset display rule will outweigh the costs. The handset display rule we adopt today carries the benefits of ensuring the effectiveness of the WEA during a national emergency. Because the new National Alerts class of WEA messages can be sent by either the FEMA Administrator or by the President, displaying the heading of Presidential Alert in a mobile device menu or as the header for an incoming Presidential Alert would

⁷² See CTIA May 7, 2021 *Ex Parte* at 3-4.

⁷³ NYCEM Comments at 2; REC Comments at 1-2; Professor Bean Comments at 1-2.

⁷⁴ *Amendment of Part 11 of the Commission’s Rules Regarding Emergency Alert System*, PS Docket No. 15-94, Report and Order, 32 FCC Rcd 10812, 10822, para. 21 (2017) (*Blue Alerts Order*).

⁷⁵ *Blue Alerts Order*, 32 FCC Rcd at 10823, para. 22.

⁷⁶ FEMA Comments at 3.

⁷⁷ 47 CFR § 10.400(a). The President may designate officials, *e.g.*, by Executive Order under 3 U.S.C. § 301.

⁷⁸ See CTIA Comments at 3, 8-9; ATIS Comments at 2-4.

⁷⁹ We estimate that the time and cost of the standards and software updates that would likely be required to remove the Presidential Alert display text from phones and/or replace it with National Alert will be minimal. We arrive at this estimate in part based on the costs we assessed as attendant to adding Blue Alerts to WEA. *Blue Alerts Order*, 32 FCC Rcd at 10824, para. 25 (“Although we recognize that EAS equipment manufacturers will incur some costs... we believe that 12 months will provide sufficient time to dovetail the BLU upgrade with other scheduled upgrades, posing minimal expense to equipment manufacturers. We believe that the costs for implementation of WEA will be similarly low, because Blue Alerts will be delivered over the existing Imminent Threat WEA classification, using WEA in its current configuration.”). See also *Notice*, 35 FCC Rcd at xxx, para. 17.

create the potential for confusion among the public. Further, as discussed above, the benefit of improved public response to WEA messages by removing alert headers that *automatically* identify alerts with federal political offices has been documented in this proceeding,⁸⁰ and we find the evidence of that benefit sufficiently persuasive to justify the minimal costs of this rule.

B. State EAS Plans and SECCs

1. SECC Provisions

21. *Encouragement to Form SECCs or Review their Structures.* Consistent with the NDAA21, we adopt our proposal in the *Notice* to amend the introductory paragraph of section 11.21 of our rules covering State EAS Plans to include language encouraging the chief executive of each state to establish an SECC if the state does not have one,⁸¹ and if the state has an SECC, to review its composition and governance.⁸² To ensure that this encouragement reaches state chief executives, we also adopt our proposal to direct the Bureau to contact the chief executive of any territory lacking a functioning SECC to encourage that state chief executive to form an SECC.⁸³ We observe that there is universal support for these proposals among commenters that addressed them.⁸⁴ The Washington State SECC agrees that “Chief Executives should be a part of these processes,” but observes that “in many states, such as the state of Washington, the responsibilities for public alert and warning lie with a state agency.”⁸⁵ While we recognize that oversight of public warnings may not directly be administered by state executive offices, NDAA21 directs us to address state executives and presumably their offices would involve any state agencies overseeing public alerting as they deem appropriate.⁸⁶

23. We decline to adopt recommendations for SECC membership and/or a model governance structure for SECCs. We observe that several commenters suggested that the Bureau should prepare recommendations for membership and/or model governance structure that could be provided to a state executive to help it more easily create a new SECC.⁸⁷ NWS, for example, discusses the coordinating role it plays with SECCs to ensure proper distribution of weather alerts, adding that “it is essential for an NWS representative to be a member of each SECC.”⁸⁸ The Washington State SECC contends “it would also be

⁸⁰ See NYCEM Comments at 2-4; REC Comments at 1-2; Professor Bean Comments at 1-2.

⁸¹ The Commission’s EAS rules require the filing of a State EAS Plan with the Commission documenting the EAS alert distribution architecture within the state. See 47 CFR § 11.21. These plans are prepared and administered by SECCs, along with associated Local Emergency Communications Committees (LECCs). State EAS Plans must be reviewed and approved by the Chief of the Bureau prior to their implementation “to ensure that they are consistent with national plans, FCC regulations, and EAS operation.” *Id.* The SECCs and LECCs are volunteer organizations composed of state broadcaster associations, EAS Participants, emergency management personnel, and other stakeholders.

⁸² See *Notice*, 35 FCC Rcd at xxx, para. 23; NDAA21 § 9201(b)(1)(A) (directing the Commission to adopt regulations that “encourage the chief executive of each State [] (i) to establish an SECC if the State does not have an SECC; or (ii) if the State has an SECC, to review the composition and governance of the SECC”).

⁸³ See *id.*

⁸⁴ See Washington State SECC Comments at 1; Timm Comments at 3; REC Comments at 4; NYCEM Comments at 4; TDI, et al., Comments at 5; NCTA Comments at 3; DAS Comments at 4; NPR Reply Comments at 5-6.

⁸⁵ Washington State SECC Comments at 1.

⁸⁶ See *Notice*, 35 FCC Rcd at xxx, para. 23. In addition, as we observed in the *Notice*, all states and all but two territories have SECCs, but the Bureau will work with the relevant state agencies, FEMA and our other federal partners, and EAS Participant representative organizations to help facilitate SECC formation or restoration as required. See *id.*

⁸⁷ See *id.* at xxx, para. 26.

⁸⁸ NWS Comments at 1.

beneficial if the Commission encouraged SECC participation to include representatives of all relevant stakeholder groups.”⁸⁹ TDI, et al., urges the Commission “to require that SECCs consult with their State agency for the deaf and hard of hearing, or representatives from the deaf and hard of hearing community, to ensure that needs of individuals with hearing and speech disabilities are considered as SECCs develop and update their State EAS Plans.”⁹⁰ But not all agreed. Timm contends that guidelines are not needed, adding that “SECCs in all 50 States and all but two Territories are working fine without FCC models.”⁹¹ As a general matter, we observe that SECCs may interface with all categories of EAS Participants and often with state, local and federal agencies;⁹² thus, broad representation among these parties within the SECCs seems beneficial. We observe, however, that every state and territory are different, and no single framework may fit the unique needs of each.⁹³ In light of the foregoing, and since we have SECCs in all states and all but two territories, we find that our initial focus should be on helping the two territories that lack SECCs form those organizations, and exploring how we can aid existing SECCs to strengthen their

⁸⁹ Washington State SECC Comments at 2. *See also*, NCTA Comments at 4 (agreeing with Washington State SECC that the Commission should “encourage SECC participation to include representatives of all relevant stakeholder groups,’ including cable operators”); DAS Comments at 4 (contending that the Commission “should make specific mention that participation of EAS Participants (or representatives thereof) should [sic] a significant part of the composition and governance of the SECC”); NYCEM Comments at 4 (contending that it would be beneficial for the Bureau “to analyze how existing SECCs are constructed and propose model governance structures”).

⁹⁰ TDI, et al., Comments at 5.

⁹¹ Timm Comments at 4.

⁹² *See, e.g.*, Washington State SECC Comments at 2 (explaining that its members include “various federal, state and local governments, wireless industry, cable television, Washington State Association of Broadcasters, and amateur radio”).

⁹³ We acknowledge the Washington State SECC’s comment that “[i]t is true that the structure of SECCs is not uniform nationwide,” adding “[i]t would be most helpful if this issue could be corrected.” Washington State SECC Comments at 2. It is unclear, however, whether a uniform SECC structure is either achievable or desirable given the differing factors in play across jurisdictions. The Washington State SECC further commented that “[i]t would be helpful if the Commission’s Rules clarified its scope of authority regarding enforcement of critical aspects of the State EAS Plans.” Washington State SECC Comments at 2. We observe that all State EAS Plans require annual approval of the Bureau Chief before they can be implemented. *See* 47 CFR § 11.21. With respect to SECCs themselves, given the role of state and local government entities as participants in SECCs, as further encouraged by NDAA21, we are also reluctant to impose requirements affecting such governmental entities that are not required by NDAA21. In any event, we do not find any need to explore our enforcement jurisdiction over the State EAS Plans or SECCs beyond that, as this topic is outside the scope of this proceeding.

volunteer organizations, which may lead to broader representation.⁹⁴ We otherwise decline to provide recommendations for SECC membership and/or a model governance structure for SECCs at this time.⁹⁵

24. With respect to encouraging state executives to review the composition and governance of SECCs, we adopt our proposal in the *Notice* that state executives may follow the Commission's requirements for access to the State EAS Plan information on the Alert Reporting System (ARS) to review the composition and governance of their respective SECCs, or else request the information directly from the SECCs.⁹⁶ As we observed in the *Notice*, the composition and governance information for each SECC is required to be included in the State EAS Plans,⁹⁷ and those plans will soon be required to be filed via ARS, to which the access restrictions apply.⁹⁸ In taking this action, we agree with Timm,

⁹⁴ Some commenters suggest that we examine how some existing SECCs are structured and develop and/or establish a mechanism for SECCs to share their best practices. *See, e.g.*, Washington State SECC Comments at 3; NYCEM Comments at 4; Timm Reply Comments at 2. Rudman and Timm both suggested that SECC best practices could be developed in a re-chartered EAS National Advisory Committee or the CSRIC. *See* Rudman Reply Comments at 3; Timm Reply Comments at 2. The Commission examined this same issue when it last modified the State EAS Plan rules and adopted the ARS. *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 33 FCC Rcd 3627, 3644-45, para. 51 (2018) (*State Plan Order*). In that order, the Commission indicated that "it would serve the public interest to provide SECCs with further guidance on their roles and responsibilities," but concluded that FEMA's IPAWS Subcommittee to its National Advisory Council "is best positioned to efficiently and effectively address issues related to SECC governance and best practices." *Id.* Although we are not aware of any completed recommendation from FEMA specifically covering this topic, we observe that FEMA has developed EAS best practices that cover State EAS Plans, among other things. *See* FEMA, An Emergency Alert System Best Practices Guide – Version 1.0, at https://www.fema.gov/pdf/emergency/ipaws/eas_best_practices_guide.pdf. Numerous other guidance materials covering EAS and WEA also are available on FEMA's website. We decline to take up this topic here because it is beyond the scope of this proceeding, however, we encourage commenters seeking to develop SECC best practices to work through FEMA towards that end. For our part, we will continue to monitor the need for additional best practices and continue to work with FEMA on potentially helpful efforts in this regard.

⁹⁵ FEMA proposed that "[SECC] functions be aligned with Statewide Interoperability Coordinator (SWIC) functions and that State EAS Plans be incorporated into Statewide Communication Interoperability Plans." FEMA Comments at 3. NWS suggested that WEA and other public warning systems should be incorporated into State EAS Plans. *See* NWS Comments at 1-2. We observe that these requests are outside the scope of this proceeding and were not raised in the *Notice*. We decline to take them up in the *Further Notice of Proposed Rulemaking* because we lack authority to require that states incorporate State EAS Plans into their Statewide Communications Interoperability Plans, and with respect to including WEA and other alerting systems in the State EAS Plan, the State EAS Plans are limited to the EAS. As Timm points out, "all these alerting systems are not part of EAS and thus do not belong in the State EAS Plan." Timm Reply Comments at 5 (emphasis omitted).

⁹⁶ *See Notice*, 35 FCC Rcd at xxx, para. 24; NDAA21 § 9201(b)(1)(A) (directing the Commission to adopt regulations that "encourage the chief executive of each State . . . to review the composition and governance of the SECC [if the state has an SECC]").

⁹⁷ *See id.* at para. 24 (*citing* 47 CFR § 11.21(a)(7)).

⁹⁸ As explained in the *Notice*, all State EAS Plans will be required to be electronically filed using the ARS within one year from the date notice is published in the Federal Register announcing that ARS is fully operational and that State EAS Plans must be submitted via ARS within one year of that publication date. *See Notice*, 35 FCC Rcd at xxx, para. 24 (*citing State Plan Order*, 33 FCC Rcd at 3645-46, para. 54). On May 25, 2021, the Bureau released a Public Notice announcing that ARS is operational. *Public Safety and Homeland Security Bureau Announces the Alert Reporting System (ARS) is Available for Filing of State Emergency Alert System Plans*, Public Notice, PS Docket No. 15-94, DA 21-593 (PSHSB May 25, 2021). The Commission will publish this Public Notice in the Federal Register. Access to ARS is restricted to other federal entities and state governmental agencies that have confidentiality protection at least equal to that provided by the Freedom of Information Act (FOIA). *See Notice*, 35 FCC Rcd at xxx, para. 24. Requests from state chief executives to the Commission for the composition and governance information residing in ARS would be covered by this policy. Because these administrative

(continued....)

who commented that “the integrity and confidentiality of ARS data should be maintained even for requests by a State Chief Executive, so the Commission is in control of ARS details being released and can vet with whom this data is shared.”⁹⁹ While we acknowledge that a few commenters raise concerns with reliance upon SECCs to disseminate State EAS Plan data, we find that there is insufficient basis in the current record to revise the Commission’s ARS access procedures.¹⁰⁰

25. *SECC Annual Meeting, Certification and Plan Submission.* With respect to the NDAA21’s requirement for regulations requiring SECCs to meet annually to review and update their State EAS Plan, and to certify that such a meeting was completed,¹⁰¹ we adopt our proposal in the *Notice* to amend section 11.21 to include as a required element in the State EAS Plan, a certification by the SECC Chairperson or Vice-Chairperson that the SECC met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update their State EAS Plan.¹⁰² We also adopt our further proposal to incorporate such certification into the ARS.¹⁰³ With respect to NDAA21’s requirement that State EAS Plans be updated annually,¹⁰⁴ although section 11.21 already includes this requirement,¹⁰⁵ which also is incorporated into the ARS,¹⁰⁶ we adopt our further proposal to add clarifying language to section 11.21 to more closely reflect NDAA21’s direction on this point.¹⁰⁷ In taking this action, we agree with Timm, who

requirements only apply to accessing data from ARS, composition and governance information for a given SECC, or any other information in the State EAS Plan, may be more readily obtained directly from that SECC. In addition, some SECCs may make their State EAS Plans available on state websites. The Washington State EAS Plan, for example, can be accessed directly from the Washington Military Department’s website at <https://mil.wa.gov/emergency-alert-system-eas-state-plan>.

⁹⁹ Timm Comments at 3. *See also* Abbott Comments at 1 (agreeing that access to the ARS data by state chief executives should be subject to the access restrictions currently associated with ARS on grounds that the SECC plans “contain specific information about the procedures for issuing activations,” adding that such restrictions “protect[] the integrity and security of the Emergency Alert System”).

¹⁰⁰ Some commenters raise concerns that there could be delays or difficulties in obtaining State EAS Plan data directly from SECCs. *See, e.g.,* REC Comments at 3-4 (arguing that relying on SECCs, LECCs, and State Broadcasters Associations to access State EAS Plan information by EAS Participants required to comply with the plan is inefficient); ACA Comments at 6 (contending that the Commission should ensure that “SECCs share all relevant information on a timely basis with cable operators and other EAS participants that may not participate on these bodies,” and further suggesting “that the Commission ‘encourage SECCs to develop and maintain up-to-date statewide lists of EAS Participants and include these in their State EAS Plans as a resource that State and local authorities can use in contacting EAS participants.’”). We will monitor that process and take appropriate steps if needed, including reviewing our ARS access policy in light of these comments and our communications with SECC chairpersons who worked with us during the ARS development process.

¹⁰¹ *See* NDAA21 §9201(b)(1)(B)(i) (directing the Commission to adopt regulations that would provide that “each SECC, not less frequently than annually, shall [] (I) meet to review and update its State EAS Plan [and] (II) certify to the Commission that the SECC has met [as required under this meeting obligation] . . .”).

¹⁰² *See Notice*, 35 FCC Rcd at xxx, para. 25.

¹⁰³ *See id.*

¹⁰⁴ *See* NDAA21 §9201(b)(1)(B)(i) (directing the Commission to adopt regulations that would provide that “each SECC, not less frequently than annually, shall . . . submit to the Commission an updated State EAS Plan . . .”).

¹⁰⁵ *See* 47 CFR § 11.21(a).

¹⁰⁶ *See Notice*, 35 FCC Rcd at xxx, para. 25 (explaining that once a State EAS Plan is approved in ARS, the ARS system sends an email to the SECC Chairperson and Vice-Chairperson 30 days prior to the one-year anniversary of that approval date to notify them that their State EAS Plan must be resubmitted by that one-year anniversary date, and that they have 30 days before that deadline arrives).

¹⁰⁷ *See id.* at xxx, para. 25.

contends that “ARS is the best place for the SECC Chair annual meeting certification,” adding “it is adequate for the certification to be made via an ARS click-box, as opposed to the extra paperwork of needing to generate a certification document to attach in ARS.”¹⁰⁸ Several other commenters supported our proposals.¹⁰⁹ We acknowledge that some may oppose the certification requirement, but because it is statutorily mandated, our inquiry has been focused on the most efficient way to implement it.¹¹⁰

2. State EAS Plan Provisions

26. *60-Day Plan Review and Notice to Chief Executives.* We adopt our proposals in the *Notice* to add language to section 11.21 of our rules requiring that the Bureau approve or reject State EAS Plans submitted for approval within 60 days of receipt.¹¹¹ We also adopt our further proposal that for those instances in which the Bureau finds defects in a submitted plan and the SECC considers and implements the Bureau’s feedback, we will consider that State EAS Plan submission to be temporarily withdrawn, restarting the 60-day review and approval period anew upon resubmission of the corrected plan in ARS.¹¹² Finally, with respect to providing notice to chief executives of these decisions, consistent with the proposals in the *Notice*, we direct the Bureau to list the approval dates of State EAS Plans submitted on ARS on the Commission’s website.¹¹³ We further direct the Bureau to, within 30 days of

¹⁰⁸ Timm Comments at 3.

¹⁰⁹ See Washington State SECC Comments at 2 (“Historically, we have found that cost issues have not been a factor in our case due to active participation and contributions by our members via a conference phone bridge and virtual meeting platforms”); NCTA Comments at 3 (“support[ing] the NPRM’s proposal to require a certification that each SECC has met at least once each year to review and update its state plan”); TDI, et al., Comments at 5; NPR Reply Comments at 5-6.

¹¹⁰ Abbott opposes the proposed certification requirement, contending that it is “an impractical request when there is no substantial definition of the State Emergency Communications Committee, not much information about the role and expectations of the SECC, other than producing the EAS Plan, and not much information at all about the individual roles of the SECC Chair and Vice-Chair.” Abbott Comments at 1. (Gary Timm also requested adoption of an SECC definition and supplied a proposed definition in his comments. See Timm Comments at 2; see also Rudman Reply Comments at 5). We observe that the certification does not state or imply that the SECC has adhered to some standardized process or procedure, or that the SECC represents or is a part of State government; it merely states that the SECC has met—either in person, via conference call, or via any number of IP conferencing software applications—at least once during the prior 12 months to review and update the State EAS Plan. Abbott also contends that “[t]he FCC must clarify whether SECCs and/or the SECC Chair, are required to annually survey each EAS Participant on their plans for providing EAS alert content to non-English speaking populations in order to provide current information in the annual state EAS Plan.” Abbott Comments at 2. There is no requirement that SECCs perform annual surveys of their EAS Participants’ multilingual activities. As set forth in section 11.21(f), EAS Participants are required to inform their SECCs and the Bureau within 60 days of any material change to the information they have previously reported concerning their multilingual activities, and SECCs in turn are required to incorporate such information as amendments to their State EAS Plans on file with the Bureau. See 47 CFR § 11.21(f). At the time that rule was adopted, the ARS did not exist and State EAS Plans were filed in paper or electronic file form. Because State EAS Plans will soon be required to be filed via ARS, and there currently is no amendment process within ARS, such new multilingual information would be incorporated in the next annual update of the plan via ARS.

¹¹¹ See *Notice*, 35 FCC Rcd at xxx, para. 29; NDAA21 §9201(b)(1)(B)(ii)(I) (directing the Commission to adopt regulations that would provide that “not later than 60 days after the date on which the Commission receives an updated State EAS Plan [pursuant to NDAA21 §9201(b)(1)(B)(i)(III)], the Commission shall [] approve or disapprove the updated State EAS Plan . . .”).

¹¹² See *id.* at xxx, para. 30.

¹¹³ See *id.* at xxx, para. 34; NDAA21 §9201(b)(1)(B)(ii)(II) (directing the Commission to adopt regulations that would provide that “not later than 60 days after the date on which the Commission receives an updated State EAS Plan [pursuant to NDAA21 §9201(b)(1)(B)(i)(III)], the Commission shall . . . notify the chief executive of the State of the Commission’s approval or disapproval of such plan, and reason therefor . . .”).

the first plan approval issued via ARS, issue a Public Notice identifying the location on the FCC website of such list. If, after the submission, review, and corrective resubmission process described above, a final decision is made to deny a plan, we direct the Bureau to, not later than 30 days after the date such final decision is made, directly notify the chief executive of the State to which the plan applies of that determination and the reasons for such denial.¹¹⁴

27. We observe that while these procedural proposals were not widely commented on, they were supported by those that did, largely for the reasons we proposed them. Timm “agree[s] that the Congressionally-mandated 60-day clock should only apply to the FCC’s response on submitted plans,” adding that “if SECC-submitted plans have deficiencies, the FCC should consider that plan ‘temporarily withdrawn’ so the SECC can then make the needed corrections on its own timeline . . . [then] [o]nce the corrected plan is resubmitted, the FCC’s 60-day clock should then start anew.”¹¹⁵ Washington State SECC supports these proposals, contending that they “would establish additional structure for the EAS Plan approval process and provide for rapid review of State EAS Plans,” adding “[b]ased on our experience, the approach outlined is clearly a case where the benefits will far exceed any potential costs.”¹¹⁶ Given this support and a lack of objections, we will move forward as proposed in the *Notice*.

28. *State EAS Plan Content Checklist.* With respect to NDAA’s requirement for regulations that establish a State EAS Plan content checklist,¹¹⁷ we adopt as the EAS Plan Content Checklist, the list of information required in the State EAS Plan under section 11.21 of our rules, and direct the Bureau to post the checklist on our website and incorporate it as an appendix in the ARS user manual within [90] days from publication of notice in the Federal Register announcing the availability of the ARS.¹¹⁸ As we observed in the *Notice*, section 11.21 already includes a listing of information required in the State EAS Plan, and the ARS data entry menus mirror these informational requirements (and will not allow a State EAS Plan to be submitted unless all required fields are completed).¹¹⁹ As proposed in the *Notice*, we

¹¹⁴ See *id.*

¹¹⁵ Timm Comments at 5.

¹¹⁶ Washington State SECC Comments at 2-3.

¹¹⁷ See NDAA21 §9201(b)(1)(B)(ii)(I) (directing the Commission to adopt regulations that would “establish a State EAS Plan content checklist for SECCs to use when reviewing and updating a State EAS Plan for submission to the Commission . . .”).

¹¹⁸ See 47 CFR § 11.21; *Notice*, 35 FCC Rcd at xxx, para 34.

¹¹⁹ See *Notice* at xxx, para 34. We observe that those parties commenting on this issue supported our proposal. See Washington State SECC Comments at 3 (supporting the checklist as “a useful tool to help prepare information for submission” using the ARS); Timm Comments at 6 (stating that the required contents for State EAS Plans “already appears in the §11.21 EAS rules, as well as being reflected in the ARS data entry screens, so further clarification of the State EAS Plan requirements within the ARS User Manual would be an ideal location for this Congressionally-mandate checklist – accessed through the ARS Help buttons [on each ARS menu that brings up the ARS user manual section for that menu]”). TDI, et al., supports the Commission creating a checklist “to be available on the Commission’s website, that identifies information required in State EAS Plans,” but contends that “the Commission should expand the checklist to include specific actions taken and methods used to ensure that State EAS Plans account for communication accessibility and to ensure that disabled populations are not overlooked.” TDI, et al., Comments at 6. TDI, et al., also contends that “[i]n addition to requiring EAS alert content be provided in ASL, EAS alert content should be provided in plain language,” and that the Commission should “require EAS provided through the television to include an experienced (i.e., qualified) disaster / emergency response ASL interpreter visible in the alert.” TDI, et al., Comments at 7, 8. To the extent TDI, et al.’s comments were in response to the checklist requirement, we observe that the checklist is constrained to explicating the existing filing requirements in section 11.21. Because TDI, et al.’s, proposals exceed the scope of the existing filing requirements in section 11.21, we do not address them in this proceeding.

direct the Bureau to include in the checklist a corresponding explanation of what each information requirement in section 11.21 entails, as expressed in the *State Plan Order*.¹²⁰

29. *Costs and Benefits.* We find that the proposed amendments to our rules for State EAS plan provisions will achieve the Congressionally mandated changes in a cost-effective manner. With respect to the amendments adopted for State EAS Plan processing, we find that no new costs are introduced to any party, other than *de minimis* costs to the Commission. SECCs already are required to file plans annually, and the costs for doing that via ARS have already been approved by OMB.¹²¹ The rule changes adopted in this item do not change what those SECC obligations are or how those are met. The Commission will bear some additional costs associated with preparing, integrating into the ARS user manual, and posting the State EAS Plan filing checklist; listing ARS State EAS Plan approvals; and notifying the chief executive of States for which a state EAS Plan submitted for Commission approval has been denied.

30. With respect to the amendments adopted that require a certification by the SECC Chairperson or Vice-Chairperson that the SECC has met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update their State EAS Plan, we do not believe the costs to the SECC members will be more than *de minimis*. The costs to SECCs of filing State EAS Plan information via ARS have already been approved by OMB, and while the meeting certification was not among those, we do not believe clicking on a button imposes anything other than *de minimis* costs to those already required to enter data on ARS.¹²² With respect to the SECC having to meet at least once annually, we observe that such activity seems to fall squarely within the normal course for the task of administering an alerting plan covering the entire state. While we appreciate there may be costs to participating, such as phone charges and/or Internet access charges, those presumably are subsumed within the SECC members' regular usage. Further, there is no time expenditure element to the meeting requirement, thus, these meetings may be short. Further, including language in section 11.21 encouraging the chief executive of each state to establish an SECC if the state does not have one, and if the state has an SECC, to review its composition and governance, does not impose costs on any small business. Our decision to directly contact the chief executive of any state lacking a functioning SECC to encourage that state chief executive to form an SECC imposes costs only on the FCC, which is in the normal course.

C. Reporting of False Alerts

31. Consistent with the NDAA21,¹²³ we adopt our proposal to allow FEMA, and state, Tribal, local, and territorial government agencies to voluntarily notify the Commission of any false alerts transmitted over the EAS and WEA by sending an email to the Commission's FCC Operations Center at FCCOPS@fcc.gov, specified in sections 10.520(d)(2) and 11.45(c).¹²⁴ Such emails should include any details that they may have concerning the event.¹²⁵ We further revise section 11.45(b), our pre-existing reporting requirement that applies to EAS Participants, to add the word "shall" to further distinguish between the required reporting by EAS Participants and the voluntary reporting mechanism for

¹²⁰ *Notice*, 35 FCC Rcd at xxx, para 34 (citing *State Plan Order*, 33 FCC Rcd 3637-42, paras. 32-46).

¹²¹ See Federal Communications Commission, "Emergency Alert System; Wireless Emergency Alerts," 84 Fed. Reg. 35334 (July 23, 2019).

¹²² See *id.*

¹²³ NDAA21, § 9201(c) ("Not later than 180 days after the date of enactment of this Act, the Commission... shall complete a rulemaking proceeding to establish a system to receive from the Administrator or State, Tribal, or local governments reports of false alerts under the Emergency Alert System or the Wireless Emergency Alerts Systems...").

¹²⁴ *Notice*, 35 FCC Rcd at xxx, para. 37 and at xxxxx, Appendix A; Final Rules, Appendix A.

¹²⁵ *Id.*

government entities that we adopt today.¹²⁶

32. Most commenters agree that the email system is suitable for voluntary government false alert reporting,¹²⁷ although other commenters prefer a web form system that provides parameters to ensure consistency of false alert reports.¹²⁸ As we stated in the *Notice*, we believe that creation of a web form or electronic filing system would unduly delay the launch of this voluntary false alert notification capability and would make the process more burdensome and time consuming in a way that could dissuade government agencies from sending false alert information.¹²⁹ The majority of commenters agree with this conclusion.¹³⁰

33. Some commenters request that we provide guidance on what information to include in the email notifications, suggesting a list of requested information about the false alert would facilitate better reporting.¹³¹ We encourage government entities to include the time and date of the reported alert event, the geographic location where the alerts were received, the message the alert conveyed, how they became aware of the alert, over what medium the alert was transmitted (e.g., broadcast or cable), whether it was an EAS or WEA event, and who originated the alert (if known).

34. We decline to adopt a strict definition of what constitutes a “false alert” and reject the argument that such a definition would better facilitate reporting.¹³² We agree with commenters who express concern that a strict definition of false alerts would discourage government entities from reporting,¹³³ or that any such definition would be either underinclusive or overinclusive, which could result in fewer useful reports or increased numbers of reports that are of less value.¹³⁴ To facilitate effective reporting, however, we provide guidance on what kinds of reports would be especially helpful to the Commission. We encourage reporting of alerts that warn recipients of events that are not taking place or forecast to take place in the imminent future (such as the Hawaii false ballistic missile alert) and that are not clearly identified as test messages; about events that are taking place in a geographically remote area from where the alert recipient is located (e.g., an alert about a snowstorm in the northeast distributed in Arizona); or about security breaches and hacking instances where the alert is transmitted without authorization. We do not encourage reporting alerts where the incorrect information is de minimis (such as providing the wrong street address of an accident), where there is geographic overshoot within reasonable parameters (warning of flooding in one county received by subscribers or viewers both in that county and in a neighboring county), or warnings that do not materialize as predicted (a tornado warning is issued, but the tornado never touches down). We emphasize that the purpose of this reporting system is not for the Commission to monitor the accuracy of every authorized alert message or second-guess the discretion of authorized government alert originators, but rather for the purpose of recording voluntary

¹²⁶ *Id.* Section 11.45(b) requires EAS Participants to report false EAS alerts to the FCC Operations Center at FCCOPS@fcc.gov. 47 CFR § 11.45(b); *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket No. 15-94, Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 7086, 7094-95, paras. 17-18 (2018) (*Alerting Reliability Order and FNPRM*). Also, in 2018, the Commission sought comment on whether it should establish a system for other entities to report EAS and WEA false alerts. *Alerting Reliability Order and FNPRM*, 33 FCC Rcd at 7103, para. 41.

¹²⁷ See e.g., Washington State SECC Comments at 3; Timm Comments at 6,

¹²⁸ See e.g., NYCEM Comments at 5.

¹²⁹ *Notice*, 35 FCC Rcd at xxxx, para. 38.

¹³⁰ See e.g., Timm Comments at 6; see also Washington State SECC Comments at 3.

¹³¹ See Washington State SECC Comments at 3; NYCEM Comments at 5-6.

¹³² See Abbott Comments at 4; NYCEM Comments at 6.

¹³³ See Washington State SECC Comments at 3; Timm Comments at 6.

¹³⁴ See Washington State SECC Comments at 3; Timm Comments at 6.

false alert reports made by the reporting government entity and examining the causes to help promote more effective alerting.¹³⁵

35. Finally, NYCEM asks the Commission to work with FEMA to require participating CMS providers to report false alerts as a condition of their Memorandums of Understanding (MoU) with FEMA.¹³⁶ We decline to address this request. The Commission is not a party to FEMA's MoUs with participating CMS providers, and we defer to FEMA about what requirements should be included in those agreements. Of course, participating CMS providers are free to report WEA false alert events to the Commission by email to FCCOPS@fcc.gov.¹³⁷

D. Repeating EAS Messages for National Security

36. *Enabling Alert Repetition by Alert Originators.* In the *Notice*, we proposed meeting the NDAA21's direction to enable alert repetition¹³⁸ by keeping the current EAS rules governing alert (re)transmission intact, but adding language to section 11.33(a) clarifying how to issue repeat alerts.¹³⁹ We adopt a modified version of our proposal by instead adding a new section 11.44 that specifies how alert originators can repeat their alert transmissions.¹⁴⁰ As described below, we revise our proposal to account for concerns raised in the comments. In taking this action, we observe that most commenters addressing this issue supported our proposal, and the modified version we adopt here is consistent with that approach.¹⁴¹

37. We agree with the Washington State SECC and other commenters that “the requirement to repeat EAS messages can be addressed under the existing Rules, as outlined by the Commission, and that the flexibility of the current system to generate repeat alerts is not universally understood.”¹⁴² As the Washington State SECC further observes, “clarification of the Rules regarding how alert originators can

¹³⁵ NDAA21, § 9201(c).

¹³⁶ NYCEM Comments at 6.

¹³⁷ See *Alerting Reliability Order and FNPRM*, 33 FCC Rcd 7103, para. 41. We note that the question of CMS provider false alert reporting was raised in the *FNPRM* portion of this, still open, proceeding.

¹³⁸ See NDAA21 §9201(d)(1)(B)(ii)(I) (directing the Commission to “complete a rulemaking proceeding to modify the Emergency Alert System to provide for repeating Emergency Alert System messages while an alert remains pending that is issued by--(A) the President; (B) the Administrator; or (C) any other entity determined appropriate under the circumstances by the Commission, in consultation with the Administrator”).

¹³⁹ *Notice*, 35 FCC Rcd at xxx, para 43.

¹⁴⁰ See *id.* See also Appendix A, section 11.44.

¹⁴¹ See Washington State SECC Comments at 4; ACA Comments at 3; NAB Comments at 4; NCTA Comments at 5; Timm Comments at 7; Walker Comments at 1; Sage Comments at 1; DAS Comments at 2. We note that FEMA recommends that “the FCC consider methods to update the EAS to support persistent display of alert information and/or persistent notification for emergencies that require immediate public protective actions to mitigate loss of life.” FEMA Comments at 4. We seek comment on this recommendation in the *Further Notice of Proposed Rulemaking infra*.

¹⁴² Washington State SECC Comments at 4. See also ACA Comments at 3 (supporting the proposal as “a reasonable approach for implementing [NDAA21] Section 9201(d)(1),” agreeing that “the capability exists already within the EAS to repeat EAS messages, but this capability ‘may not be fully understood within the alert originator community’”); NAB Comments at 3-4 (agreeing that the Commission’s approach “fulfills the legislation’s requirements,” and calling it “an efficient proposal that fits within the existing regulatory scheme, leverages the current architecture of EAS, and is not expected to require costly upgrades to broadcasters’ existing EAS equipment and system”); NCTA Comments at 5; Rudman Reply Comments at 4; NPR Reply Comments at 3.

repeat their alert transmissions would be beneficial.”¹⁴³ Timm states that “[t]his is the most efficient and least burdensome solution to provide for repeating alerts, by leveraging the versatility already built into the EAS through a very minimal Part 11 rule update outlined in [the *Notice*].”¹⁴⁴ Timm also observes that this approach “gives the alert originator total control of the repetition rate, and the opportunity to incorporate any updated information.”¹⁴⁵

38. A few commenters, while supporting our proposed approach, contend that adding clarification language to section 11.33(a)(10) is misplaced on grounds that, in the context of EAS, changing the time stamp creates a new alert and therefore semantically is not repeating a prior alert but rather issuing a new alert for the same emergency event. Sage, for example, agrees with our approach,¹⁴⁶ but contends that the “duplicate detection described in the [proposed modification language to section 11.33(a)(10)] is already included in the general rules of duplicate detection,” and “would not extend or change the current method of duplicate detection.”¹⁴⁷ Sage adds that “[i]f the intent is to remind originators that reissuing an alert with a different JJJHMM [time stamp code] is a permitted method of getting an alert on the air a second time, it should be done in a more direct manner, and not as a redundant addition to [section 11.33].”¹⁴⁸ Similarly, DAS agrees that “the FCC should keep the current EAS rules governing alert (re)transmission intact,” but contends that “the proposed added text to 11.33 is unnecessary—and potentially confusing.”¹⁴⁹

39. We acknowledge that the language clarifying alert repetition we proposed to include in section 11.33(a)(10) is implied by the existing language in that section. We are persuaded by the commenters that a more direct approach to clarifying alert repetition is sensible and would also allow us to address concerns raised by commenters regarding alert fatigue that might result from over-repeating alerts.¹⁵⁰ Accordingly, we amend Part 11 by adding language clarifying alert repetition to section 11.44

¹⁴³ Washington State SECC Comments at 4. Washington State SECC also recommended that the Commission and/or FEMA develop training materials for alert originators, EAS Participants and the public. *See* Washington State SECC Reply Comments at 1. We observe that a wide range of training materials can be found on FEMA’s website at <https://www.fema.gov/emergency-managers/practitioners>.

¹⁴⁴ Timm Comments at 7.

¹⁴⁵ Timm observed that this approach “gives the alert originator total control of the repetition rate, and the opportunity to incorporate any updated information.” Timm Comments at 6-7.

¹⁴⁶ Sage Comments at 1 (“We agree with the FCC’s approach to repeating alerts: reminding originators that they can repeat or update any alert they issue by simply re-issuing it (with prudence and consideration of over-alerting), and not making changes to the existing EAS implementation”).

¹⁴⁷ Sage Comments at 3.

¹⁴⁸ Sage Comments at 3. Sage suggests that “[a] better place to discuss procedures for use by originators would be 11.55.” *Id.* *See also* Walker Comments at 1 (contending that “modification of 11.33(a)(10) seems to be ... unnecessary,” adding “[i]nstructions to alert originators on how to create and send a separate message regarding the same event would be better suited for an EAS Handbook”).

¹⁴⁹ DAS Comments at 2. DAS contends “that the most appropriate mechanism to enable the repetition of emergency alerts is via the alert originator acting to send a second alert message.” *Id.* DAS also observed that “semantically, we wish to clarify that the alert itself is not “repeated” for purposes of EAS message processing (including duplicate detection),” adding “[i]nstead, [a]n entirely new message would be originated, with a new timestamp, that would contain the same textual and audio content, if the alert originator so chooses.” *Id.* at 1. DAS further observes that “[a]ny alert message with an identical header, including an identical JJJHMM value, is already defined as a duplicate and therefore may not be eligible for transmission[, and] [a]ny message with a header value that differs, including a JJJHMM value that differs by 1 minute or more, is already defined as a distinctly unique message, which is honored for transmission by the EAS Participant.” *Id.* at 2.

¹⁵⁰ *See, e.g.*, ACA Comments at 4 (observing the “potential for ‘alert fatigue’ if repetition of such alerts becomes the norm at the State and local level,” adding “the Commission should encourage State and local authorities to exercise

(continued....)

(previously reserved) that largely tracks the language proposed in the *Notice* for modifying section 11.33(a)(10), but also addresses keeping the valid time period consistent; providing a repeat interval sufficient to account for alert propagation; and the need to be aware that repeating alerts routinely may cause alert fatigue among the public. We find that this approach meets the NDAA's requirements¹⁵¹ and more accurately reflects the record in this proceeding.¹⁵²

40. We also observe that the record suggests that alert repetition can be integrated into alert origination software and IPAWS as an automated function, allowing the alert originator to program how, when, and for which EAS event codes it will apply automated repetition.¹⁵³ We believe this capability addresses concerns that re-sending a message is infeasible or burdensome to alert originators. For example, while NYCEM acknowledges that "alert originators can, today, simply re-send the same message every minute," it asserts that such action "is an operationally infeasible and unreasonable interpretation of the statute."¹⁵⁴ According to NYCEM, alert originators facing an emergency of national significance that has occurred or is imminent "have multitudes of immediate priorities they must concurrently [address]," and thus cannot "re-issue the message continuously and manually to ensure the public is reached."¹⁵⁵ We acknowledge that managing crisis situations involves multiple factors and time-sensitive decisions. We agree with Sage, however that meeting the alert repetition requirements in NDAA21 is best satisfied "at the origination side, where the necessary information on the importance of the alert, how often it should be repeated, when it should be updated, and when it should end, resides."¹⁵⁶ Further, as NYCEM itself observes, "upgrades to software packages and/or software changes to IPAWS could automate the repeating function for alert origination purposes," thus, alert originators should be in a position to automate alert repetition in their alert management systems to meet their requirements.¹⁵⁷ In sum, we agree with Timm that our approach "is the most efficient and least burdensome solution to

care and discretion in issuing repeat messages, and to err against repetition barring exceptional circumstances"); NCTA Comments at 6 (observing "widespread repetition of state and local alerts could cause alert fatigue among the public," adding "we urge alert originators making use of this capability to ensure that repeated alerts are truly necessary"); Washington State SECC Comments at 4 (observing that "EAS originators need to be cautious about immediately re-issuing warnings since this can cause 'alert fatigue', which may impact the effectiveness of the alerting system"); Walker Comments at 2 (contending that widespread alert repeating would cause alert fatigue, and "for particularly impactful events," would interrupt more informational and robust news coverage of the event by broadcasters, thus "potentially do[ing] more harm than good"); DAS Comments at 2; Rudman Reply Comments at 4.

¹⁵¹ See NDAA21, § 9201(d). Several commenters agreed that our proposed approach on alert repetition in the *Notice* met NDAA21's requirements. See, e.g., DAS Comments at 2; ACA Comments at 3-4; NAB Comments at 3; Timm Comments at 7. The modification to that proposal of codifying the clarifying language on repeating alerts in section 11.44 instead of 11.33(a)(10) does not materially change that approach.

¹⁵² See, e.g., DAS Comments at 2 (objecting to inserting clarifying language on repeating alerts into section 11.33(a)(10). See also Sage Comments at 3; Walker Comments at 1. See also Sage Comments at 2-3 (observing that "EAS has always given any originator the ability to repeat information by simply sending an additional alert at least one minute after the first," but adding that "[t]his facility is most effective if sufficient time is allowed for the initial message to move through the system before a second message is sent").

¹⁵³ See DAS Comments at 2 (confirming that automated alert repetition could be added into DAS alert origination products); NYCEM Comments at 4 (agreeing that "upgrades to software packages and/or software changes to IPAWS could automate the repeating function"); NAB Comments at 4; REC Reply Comments at 1.

¹⁵⁴ NYCEM Comments at 7.

¹⁵⁵ NYCEM Comments at 7.

¹⁵⁶ Sage Comments at 3.

¹⁵⁷ NYCEM Comments at 7.

provide for repeating alerts,”¹⁵⁸ while maintaining our long-held position that alert originators are best suited to manage their alerts consistent with the underlying situation to which they pertain.¹⁵⁹

41. *National Security Originator and Event Codes.* We decline to adopt a new national security-related originator code or event code.¹⁶⁰ We observe that FEMA did not indicate support for the codes we proposed and instead proposed different codes.¹⁶¹ Given FEMA’s lack of support for the codes proposed in the *Notice*, we agree with Sage and others that new originator or event codes are not required at this time,¹⁶² and their function within the EAS can be served by existing codes.¹⁶³ Further, the record suggests that adding new codes will introduce costs to EAS Participants that are difficult to justify if the codes are not necessary.¹⁶⁴ Sage, for example, observes that adding these codes “would add complexity to each EAS participant’s device setup, reducing the chance that an event with new codes would get on the air,”¹⁶⁵ adding “older devices that are no longer supported could reject any unknown event code . . . [and] might therefore be detrimental.”¹⁶⁶ Sage also observes that incorporating the new codes into deployed EAS devices would require “install[ing] a software update, and modify[ing] [device] settings to relay the new combination of originators and/or event codes.”¹⁶⁷ DAS also indicates that “[a]ny such new codes can be added to the deployed base of EAS devices via software update.”¹⁶⁸ Even if these updates

¹⁵⁸ Timm Comments at 7. *See also* Timm Reply Comments (opposing NYCEM’s position on the same grounds explicated here).

¹⁵⁹ *See, e.g., Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking*, EB Docket No. 04-296, Order, 31 FCC Rcd 2414, 2428, para. 28 (*subsequent history omitted*).

¹⁶⁰ *See Notice*, 35 FCC Rcd at xxx, para. 46. The originator code would encompass FEMA, and other entities determined appropriate under the circumstances by the Commission, in consultation with the Administrator of FEMA, while the event code would encompass “warnings of national security events, meaning emergencies of national significance, such as a missile threat, terror attack, or other act of war or threat to public safety.” *See id.* (*citing* NDAA21, § 9201(d)(2)(A)).

¹⁶¹ FEMA Comments at 2. We observe that we seek comment on the originator and event codes proposed by FEMA in the attached *Further Notice of Proposed Rulemaking*.

¹⁶² Sage Comments at 3.

¹⁶³ *See* Timm Comments at 8 (opposing adoption of a new originator and/or event codes for a national security alert as unnecessary, observing that “[f]ootnote 106 [in the *Notice*] offers existing codes that could be used”).

¹⁶⁴ On this point, REC contends that “[r]epeating messages must be done in a manner that does not require EAS equipment manufacturers to make any kind of firmware or software updates to decoders, which would give them justification to pass the costs to stations, especially LPFM and small full-service stations that are financially struggling, especially in the wake of the COVID-19 pandemic.” REC Comments at 5.

¹⁶⁵ Sage Comments at 3.

¹⁶⁶ Sage Comments at 4. Sage further observes that “[t]he addition of new originator or event codes for national security events would require changes to 11.54 and/or 11.55, as this new type of alert falls outside the current definitions of National Level Emergency (which is tied to EAN and NPT [National Periodic Test]), and State/Local emergency.” *Id.*

¹⁶⁷ Sage Comments at 4. In addition, Sage observes that “[s]tate plans would need to be updated to give guidance as to relaying those new events.” *Id.* *See also* Timm Comments at 8 (stating that “creating a new Originator Code and/or Event Code goes far beyond the intent of the legislation, and forces unjustified upgrades to EAS Participant devices as well as requiring burdensome SECC updates to all State EAS Plans”).

¹⁶⁸ DAS Comments at 3.

were provided free of charge, there would be some costs borne by EAS Participants to install them.¹⁶⁹ While the new codes could provide the imprimatur of a federal source warranting full attention, as NAB observes, “any new event code would still lack specificity as to the actual threat and possibly impose a cost on EAS Participants[,] and could create confusion when used for events that currently fall under other event codes.”¹⁷⁰

42. Washington State SECC states that “creation of a new NCA [National Command Authority] originator code would enhance the viability of any messages by underscoring that the originator is at a Federal level,” adding that “creating an NSE [National Security Event] event code would also enhance citizen awareness regarding the national level significance of the event.”¹⁷¹ DAS similarly supports “the creation of a new originator code, particularly if new national security-related event codes were to be created,” as well as “the addition of a code like NSE for events that may not be predictable, but also suggest the FCC consider the addition of specific codes for defined events like a missile warning.”¹⁷² For the reasons stated above, we are persuaded by the record that, on balance, new event or originator codes are not justified at this time given the complexity and cost associated with their adoption.

43. *Automated Alert Repeating by the EAS Participant Devices.* We are persuaded by the commenters who addressed this topic that requiring automated repetition of alerts by EAS Participants’ EAS devices would result in substantial burdens that are unnecessary, and that this functionality is better implemented on the alert origination end of the EAS alert distribution chain.

44. We observe that several commenters identified significant burdens and obstacles to automating alert repetition in EAS devices. Sage, for example, contends that incorporating automated alert repetition into EAS “would be hard, several industry segments would need to be involved, protocol extensions would need to be defined, some older hardware would become non-conformant, and the process would be a multi-year effort.”¹⁷³ Sage further contends that “any automatic system of repetitions could make the overall system more fragile,” observing that there is no way to cancel an alert set to repeat once started.¹⁷⁴ NAB contends that modifying EAS encoder/decoder devices broadcasters currently use

¹⁶⁹ See, e.g., *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 31 FCC Rcd 7915, 7924, para. 23 (2016); *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 32 FCC Rcd 10812, 10824-25, para. 25 (2017).

¹⁷⁰ NAB Comments at 4, n.11.

¹⁷¹ Washington State SECC Comments at 4. See also NYCEM Comments at 7; Kenyon Comments at 1; Rudman Reply Comments at 4.

¹⁷² DAS Comments at 3. DAS recommended that we “change the textual meaning of [the PEP (Primary Entry Point) originator code] to something more useful for the general public’s consumption, and also examine the creation of a new originator code ... for national security event-related alerts.” *Id.* See also Kenyon Comments at 1 (recommending that we “consider adopting a replacement organization code” for the PEP code).

¹⁷³ Sage Comments at 2. See also Timm Comments at 8 (observing that “the Commission itself in Paragraphs 50-54 [of the *Notice*] sets forth the numerous roadblocks and complications of attempting to have EAS Participant devices do automated repetition of alerts,” adding “[t]he FCC here presents the best justifications for not pursuing this option”); Walker Comments at 2 (contending that “implementing automated repetition of alerts at the EAS endpoint devices would be so significantly burdensome to be nearly, if not entirely, infeasible”); Walker Comments at 3 (asserting that “[a]ttempting to implement message repetition at EAS endpoints (read: broadcasters) would involve updating tens of thousands of CAP and EAS devices (typically designed to store 120 seconds of audio) to store an unknown amount of data for an unknown number of messages with audio of unknown, open-ended duration and repeat it at unknown intervals as indicated by an unknown specification not available in FCC’s Part 11 EAS guidance, Common Alerting Protocol v1.2, IPAWS Profile v1.0, or ECIG CAP EAS Implementation Guide – all of which would need to be modified”).

¹⁷⁴ Sage Comments at 2.

“to enable automated repeats of EAS messages is likely a complex, potentially costly endeavor.”¹⁷⁵ NAB further states that automated repetition of EAS alerts is not mandated by NDAA21,¹⁷⁶ would “exacerbate” alert fatigue,¹⁷⁷ and thus “is neither necessary nor beneficial at this time.”¹⁷⁸ DAS observes that implementing automated alerting in its products is “technologically feasible,” but adds “we cannot assure the Commission that such modification would be ‘achievable with minimal changes to such software packages.’”¹⁷⁹ We agree with these commenters that the potential disruption and costs associated with implementing automated repeating in EAS devices is likely to be significant, and could yield unintended consequences detrimental to EAS operations. While there may be some benefit to alert originators in having such functionality available, we conclude this would be more efficiently and effectively implemented at the alert origination end of the EAS alert distribution chain.

45. We also conclude, consistent with our tentative conclusion in the *Notice*, that requiring EAS equipment to automatically repeat EAN alerts would impair the President’s ability to issue such alerts, which is inconsistent with NDAA21’s provisions.¹⁸⁰ We observe at the outset that the significant burdens, obstacles and unintended consequences identified above for automating alert repetition in EAS Participants’ EAS devices would apply to such repetition of EAN alerts—and would be exacerbated by the unlimited duration and priority status of such alerts. As NAB observes, requiring automated repetition of EAN alerts by EAS participants “would likely necessitate significant programming changes to many models of encoder/decoder boxes,” and “[t]iming issues could also impede the President’s ability to repeat an EAN alert, given the lack of synchronicity between alerts issued through the legacy EAS system and those formatted in the Common Alerting Protocol and issued through IPAWS.”¹⁸¹ NAB also agrees that “imposing a specific repeat interval for EAN messages would be impractical and possibly undermine the President’s ability to react to an unfolding emergency.”¹⁸² DAS contends that “alert originators are the most appropriate entities to initiate a new (repeat) message—particularly in the case of an EAN—and that the burden of repeating a message should not fall upon the EAS Participant for numerous reasons, regardless of the technical feasibility of doing so.”¹⁸³

46. We observe that our decision to clarify how alert originators can repeat (or re-originate) alerts imposes no costs. As Walker put it, “if implemented at the IPAWS alert aggregation or Alert Originator level with ‘repeat’ functionality accomplished by reissuance of alerts, no EAS device should

¹⁷⁵ NAB Comments at 4. *See also* NCTA Comments at 6, n.17 (“We ... support the Commission’s tentative conclusion that requiring EAS Participants’ equipment to automatically repeat the Presidential alert presents technical impediments”); NYCEM Comments at 8 (stating “NYCEM appreciates that automatic repeating of messages, even if limited to the President and/or his or her authorized designee, introduces complexities to legacy EAS devices,” and recommending that the Commission “examine the prevalence of these legacy devices and update the record”); NPR Reply Comments at 4.

¹⁷⁶ NAB Comments at 4. *See also* DAS Comments at 2 (stating that “[w]e agree with the FCC’s reading of the NDAA21 legislation as not specifically directing the adoption of rules requiring or enabling automated repetition of alerts related to national security events”); ACA Comments at 4, n.8.

¹⁷⁷ NAB Comments at 4-5.

¹⁷⁸ NAB Comments at 5.

¹⁷⁹ DAS Comments at 2. DAS also states, “we are concerned that automated alert repetition could place the burden, responsibility, and potential liability on EAS Participants regarding the determination whether alerts should be repeated, or not, and when.” *Id.*

¹⁸⁰ *See Notice*, 35 FCC Rcd at xxx, para. 50 (*citing* NDAA21, § 9201(d)(3)). The EAN’s functionality is discussed *supra* at note 15 and *infra* at note 190.

¹⁸¹ NAB Comments at 5. *See also* NCTA Comments at 6, n.17; NPR Reply Comments at 4.

¹⁸² NAB Comments at 5.

¹⁸³ DAS Comments at 3-4.

need to be updated and no additional costs should be imposed.”¹⁸⁴

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

47. As noted above, the NDAA21 requires the Commission to consult with the FEMA Administrator in fulfillment of its responsibilities under the statute.¹⁸⁵ In this regard, FEMA filed comments in the record of this proceeding¹⁸⁶ in which it makes recommendations that it indicates are necessary for IPAWS to provide maximum effectiveness now and in the future given the requirements outlined in the NDAA21.¹⁸⁷ We seek comment on them here.

A. Deleting the National Information Center Code

48. FEMA recommends deleting the term National Information Center (NIC) in our rules.¹⁸⁸ FEMA indicates that [t]here is no longer a National Information Center (NIC) in the federal and national emergency response plans” and thus the term is no longer needed.¹⁸⁹ We seek comment on this request. While we see no need to maintain this term given that the NIC is no longer in part of the federal and national emergency response plans, we ask commenters to address any ramifications of deleting the term.

B. Redefining or Replacing the EAS Event Code for Emergency Action Notifications

49. FEMA also recommends the Commission either modify the definition for the EAN event code from “Emergency Action Notification (National Only),”¹⁹⁰ to “Emergency Alert, National,” or replace the EAN event code with a new event code called “NEM,” defined as “National Emergency Message.”¹⁹¹ FEMA explains that such change is necessary because the term “Emergency Action Notification” has no meaning or significance to the public and may create confusion, delaying the public taking protective actions to mitigate the impact of the impending emergency event.¹⁹² We seek comment on whether the EAN event code should be modified or replaced as FEMA urges. For the public, is the current definition for the EAN code, “Emergency Action Notification (National Only),” distracting or confusing as FEMA suggests? Are the options (i.e., modify the definition of EAN or replace it with a new event code) suggested by FEMA appropriate? If so, which is the preferred approach? Would changing the EAN code to NEM suggest that the alert was originated from any entity other than the President? We observe that replacing the EAN code with a new event code such as “NEM” would

¹⁸⁴ Walker Comments at 3. *See also* Sage Comments at 1 (“not making changes to the existing EAS implementation . . . greatly reduces the cost to all stakeholders that changes of this level to EAS would cause”).

¹⁸⁵ *See* NDAA21, §§ 9201(a)(2), § 9201(b)(2), 9201(c), 9201(d)(1).

¹⁸⁶ FEMA Comments at 1-4.

¹⁸⁷ FEMA Comments at 2.

¹⁸⁸ *See* 47 CFR § 11.31(e); FEMA Comments at 2-3.

¹⁸⁹ FEMA Comments at 2-3.

¹⁹⁰ FEMA Comments at 2. As set forth in section 11.2(a) of our rules, “Emergency Action Notification is the notice to all EAS Participants and to the general public that the EAS has been activated for a national emergency. EAN messages that are formatted in the EAS Protocol (specified in § 11.31) are sent from a government origination point to broadcast stations and other entities participating in the PEP system and are subsequently disseminated via EAS Participants.” 47 CFR §11.2(a). Our rules provide that “[n]ational activation of the EAS for a Presidential message with the Event code EAN...must take priority over any other message and preempt it if it is in progress.” 47 CFR §11.2(a) (definition of Emergency Action Notification - EAN). *See also* § 11.33(a)(11). EAS Event codes are specified in section 11.31(e) of our rules, 47 CFR §11.31(e).

¹⁹¹ FEMA Comments at 2.

¹⁹² *Id.*

require changes to EAS devices and any operational plans and protocols that address EAN alerts.¹⁹³ We seek comment on whether such a change could be effectuated in EAS devices via a software update. Could such change be effectuated in all EAS device models, and at what cost? Would such a change have any impact on EAN processing? How could the change-over from EAN to NEM be phased into operation? Would the ECIG Implementation Guide have to be amended to accommodate this change?¹⁹⁴ What changes would be required to Part 11 of our rules to accommodate this request? Would such a change have any impact on cable equipment standards? Would there be any impact on consumer emergency radios? Would the value of implementing either of these options exceed whatever costs might be imposed by them? Would retaining the EAN and revising its definition be less costly than replacing it with a new code such as “NEM”? Or does revision of the EAN definition incur similar costs as a new code due to necessary technical and operational plan changes?

C. Renaming the EAS Originator Code for Primary Entry Point Systems

50. FEMA suggests changing the EAS originator code¹⁹⁵ for the “Primary Entry Point System,” from “PEP,” to “NAT,” which would stand for “National Authority” to “better serve the effectiveness of the NPWS [National Public Warning System].”¹⁹⁶ FEMA explains that “PEPs are not originators,” adding “[u]sing PEP as an originator code in accordance with the current EAS rules requires EAS video participants to scroll a message that begins with *‘The Primary Entry Point System has issued an’*”¹⁹⁷ According to FEMA, “[t]he public does not recognize the term PEP which may create confusion in the public.”¹⁹⁸ We seek comment on whether the PEP originator code should be changed as FEMA requests. Does use of the PEP code potentially cause confusion to the public as FEMA suggests? Is changing the code to NAT (for “National Authority”) an appropriate remedy? Could such a change be effectuated in EAS devices via a software update? Could such change be effectuated in all EAS device models, and at what cost? Would such change have any impact on EAN processing? Would the ECIG Implementation Guide have to be amended to accommodate this change? Would the benefit of implementing this change exceed whatever costs might be imposed by implementing it? Would this change suggest that the alert using the EAN code or the National Emergency Message code could be coming from any entity other than the President?

D. “Persistent” Alerts

51. We seek comment on FEMA’s recommendation that “the FCC consider methods to update the EAS to support persistent display of alert information and/or persistent notification for

¹⁹³ See, e.g., 47 CFR §§11.2(a) (Definitions), 11.15 (EAS Operating Handbook), 11.21(a)(4) (State and Local Area plans and FCC Mapbook); 11.51(m)&(n) (EAS code and Attention Signal Transmission requirements); 11.52(e) (EAS code and Attention Signal Monitoring requirements); 11.54(a) (EAS operation during a National Level emergency).

¹⁹⁴ See *supra* note 20.

¹⁹⁵ The ORG field in the EAS protocol “is the Originator code and indicates who originally initiated the activation of the EAS.” 47 CFR § 11.31(c). The ORG codes are specified in section 11.31(d) of our rules. 47 CFR § 11.31(d). In the *Notice* we sought comment on whether to add a new originator code and a new event code to reflect more accurately the scope of NDAA21 with respect to repeating alerts, but did not seek comment generally on changing the PEP originator code to National Authority. *Notice*, 35 FCC Rcd at XXX, para. 46.

¹⁹⁶ FEMA Comments at 2. The PEP is a private or commercial radio broadcast station that cooperatively participates with FEMA to provide EAS alerts to the public and are the primary source of initial broadcast for a Presidential Alert. 47 CFR § 11.18(a). FEMA administers the PEP system for legacy EAS and interfaces with the White House on the administration of the Presidential Alert.

¹⁹⁷ FEMA Comments at 2.

¹⁹⁸ FEMA Comments at 2. DAS also recommends that we “change the textual meaning of [the PEP (Primary Entry Point) originator code] to something more useful for the general public’s consumption....” DAS Comments at 3.

emergencies that require immediate public protective actions to mitigate loss of life.”¹⁹⁹ FEMA notes that these types of emergency alerts “should persist on EAS until the alert time has expired or is cancelled by the alert originator.”²⁰⁰ FEMA contends that it “does not agree that repeating an EAS message fully addresses the problem identified in after-action reports related to the mistaken [Hawaii missile alert], or fully addresses the intent of Congress expressed in the NDAA21 language.”²⁰¹ According to FEMA, “[e]mergency alert information needs to be persistent on EAS sources for the period of the alert so that people can receive, review, and collaborate, whenever they ‘tune in,’ with emergency information received previously from another emergency alert information source.”²⁰² FEMA also indicates that “any message of a persistent nature shall not interfere with the President or FEMA Administrator’s ability to alert the public of a nationally significant emergency, as defined in section 1756 of NDAA20, Integrated Public Alert and Warning System (6 United States Code (U.S.C.) sec. 321o-1.”²⁰³

52. Under our current rules, the EAS header code tones and attention signal, the audio message and, for visual services like cable and television, the visual scroll, constitute the alert information and notification to the public that an emergency event is impending.²⁰⁴ Further, although Common Alerting Protocol-formatted alerts can deliver a wide range of information to the EAS Participant that receives it, the legacy EAS only delivers audio (the visual scroll is created from the EAS header codes). State and local EAS alerts are required to be broadcast within 15 minutes of receipt,²⁰⁵ and state and local alert messages themselves are in practice limited to a duration of two minutes.²⁰⁶ Currently, only Presidential alerts, which use the event code EAN, and are required to be carried by EAS Participants, are of unlimited duration.²⁰⁷

53. As an initial matter, we seek comment on the technical feasibility of FEMA’s request and whether the changes necessary to implement persistent alerts can be done without interfering with existing EAS operations. We would expect that implementing such changes would require modifications to EAS devices, downstream processing equipment, cable equipment standards, and other equipment operated in the EAS ecosystem. We seek comment on this observation and on what specific technical or other changes would be necessary in this regard. For example, how would multiple or overlapping alerts be transmitted if one were already persistently active? Can these changes be implemented in all deployed EAS device models via software changes or are there limitations to deployment? What impact would assigning “persistence” to a state or local alert have on other state or local alerts? Is it likely that EAS Participants, who process and transmit state and local alerts on a voluntary basis, would agree to process and transmit state and local alerts that were persistently active? We seek commenters’ views on whether processing and transmission of such “persistent alerts” should be implemented on a voluntary or mandatory basis.

54. We seek comment on what specific Commission rule changes would be necessary to effectuate this recommendation. Under our current rules, only alerts using an EAN code must remain

¹⁹⁹ FEMA Comments at 4.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ See 47 CFR § 11.31(a).

²⁰⁵ See, e.g., 47 CFR §11.51(n).

²⁰⁶ See 47 CFR § 11.33(a)(9) (allowing EAS participants to set their EAS devices to automatically cut off a state or local alert after two minutes or longer; in practice, all EAS Participants set this reset function to two minutes).

²⁰⁷ See, e.g., 47 CFR §§ 11.33(a)(9).

active beyond the EAS decoder automatic reset value.²⁰⁸ Would a proposed rule to keep the “display of alert information and/or persistent notification” for the duration of the alert’s valid time period in the current EAS architecture effectively require running the visual scroll and playing the audio message (and in the case of force-tuned cable systems, a constant “blue screen” with the scroll data and audio running) continuously until the valid time period of the alert expired, which could be several hours or longer? Would a proposed rule to achieve persistent “display of alert information and/or persistent notification” for the duration of the alert’s valid time period look more like a small picture-in-picture notification in one corner of a TV display or blinking channel number wherein viewers could tune to access such information that might be enabled in a next generation EAS? How would such notification be made persistent for audio services, like radio and satellite radio services? Are there aspects of the “persistent” functionality, particularly as enabled in end user “smart” devices as might be effectuated via ATSC 3.0 and Xperi Holding Corporation’s HD Radio broadcasting technologies,²⁰⁹ that render FEMA’s “persistence” concept more readily achievable and effective in a next generation EAS? While FEMA proposes that the alert originator could cancel the alert, there is no mechanism in the EAS to cancel a legacy EAS alert.²¹⁰ Would a proposed rule to effectuate alert cancellation necessarily require changing the EAS Protocol or some other facet of the EAS architecture?²¹¹ Would persistent alerts, as described by FEMA, introduce new security vulnerabilities into the EAS? We observe that FEMA requests that we require persistent alerts for “emergencies that require immediate public protective actions to mitigate loss of life.”²¹² We seek comment on what event types would qualify under that definition, or if an alternative definition is more appropriate. Commenters should also consider whether effectuating such a change for severe weather events would require changes to NWS and NWR processes, operations, and/or equipment, including consumer NWR radios. We also ask commenters to consider what changes would be necessary to the ECIG Implementation Guide.

55. We seek comment on the costs and benefits of implementing these changes. For example, what costs would be entailed for modifying EAS devices and, if applicable, other systems in the EAS ecosystem, including downstream processing equipment? Would the benefit of getting the alert to those who might have otherwise missed it be lessened by that alert’s persistently active status? Specifically, would a persistent alert prevent access to local, network and cable news programming covering the same emergency event, which might have more detailed and current information? Would the benefit of enhancing the public’s access to the alert information be more effectively achieved by repeating (re-originating) the alert at regular intervals? On the other hand, would keeping an alert persistent (continuously looping the audio message and visual scroll) during its valid time period ensure that no one accessing an EAS Participant transmission during that period would miss the alert? FEMA indicates that people take alerts more seriously when they can compare alerts from multiple sources, and that making alerts persistent is necessary to enable such collaboration.²¹³ Would a persistent EAS alert benefit the public by encouraging the collaboration of alerts from other sources as FEMA suggests?²¹⁴ Would making alerts persistent be the most cost effective and operationally efficient way to achieve these potential collaborative benefits? What benefits beyond those noted by FEMA might result from a persistent alert? What are commenters’ views on the Commission’s legal authority to adopt FEMA’s

²⁰⁸ See 47 CFR §§ 11.33(a)(9).

²⁰⁹ See, e.g., Xperi Holding Corporation Comments at 7-11.

²¹⁰ See FEMA Comments at 4. A CAP-formatted EAS alert cannot be canceled once the alert is acquired from the IPAWS EAS server and converted into a legacy alert by the EAS Participant.

²¹¹ See 47 CFR § 11.31.

²¹² FEMA Comments at 4.

²¹³ See FEMA Comments at 4.

²¹⁴ FEMA Comments at 4.

proposal?

V. PROCEDURAL MATTERS

56. *Ex Parte Rules.*—This proceeding shall be treated as “permit-but-disclose” proceedings in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

57. *Comment Filing Procedures.*—Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.
- During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

58. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

59. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²¹⁵ requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”²¹⁶ Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning potential rule and policy changes contained in this document. The FRFA is set forth in Appendix B. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities in the Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix C.

60. *Paperwork Reduction Act Analysis.* This Report and Order adopts modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). These modified requirements will be submitted to OMB for review under Section 3507(d) of the 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, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

61. In this present document, we have assessed the effects of revisions to current Parts 10 and 11 reporting, recordkeeping, or compliance requirements as set forth in this Report and Order, and do not expect these revisions to alter the recordkeeping burden of any EAS Participants to any appreciable degree. There are no results specific to businesses with fewer than 25 employees.

62. This Further Notice of Proposed Rulemaking may contain potential new or revised information collection requirements. Therefore, we seek comment on potential new or revised information collections subject to the Paperwork Reduction Act of 1995.²¹⁷ If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the Federal Register inviting the general public and the Office of Management and Budget to comment on the information collection requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

63. *Congressional Review Act.* The Commission will submit this draft Report & Order and Further Notice of Proposed Rulemaking to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether the Report and Order’s rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report & Order and Further Notice of proposed Rulemaking to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

64. *Further Information.* For further information regarding the Further Notice of Proposed Rulemaking, contact Christopher Fedeli, Attorney Advisor, Public Safety and Homeland Security Bureau at 202-418-1514 or Christopher.Fedeli@fcc.gov.

²¹⁵ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²¹⁶ *Id.* § 605(b).

²¹⁷ Public Law 104-13.

VI. ORDERING CLAUSES

65. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), and 606, as well as by sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. §§ 1202(a),(b),(c), (f), 1203, 1204 and 1206, Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010, as amended, 47 U.S.C. § 613, and the National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388, § 9201, 47 U.S.C. §§ 1201, 1206, that this Report and Order and Further Notice of Proposed Rulemaking in PS Docket Nos. 15-94 and 15-91 IS HEREBY ADOPTED.

66. IT IS FURTHER ORDERED that the rules in Appendix A ARE ADOPTED effective thirty (30) days after the date of their publication in the Federal Register. The new or revised portions of sections 10.11(b), 10.520(d)(2), 11.21, 11.21(a), 11.45(c), and 11.21(a)(8) at Appendix A contain new or modified information collection requirements that require OMB review under the PRA. The Commission directs the Public Safety and Homeland Security Bureau (Bureau) to announce the compliance dates for these rules after OMB has reviewed and approved those information collections in a document published in the Federal Register, delegates authority to the Bureau to cause the July 31, 2022 deadline in section 10.11(b) to be revised accordingly as necessary if more time is needed to secure OMB's review, and delegates authority to the Bureau to revise sections 10.11(c), 10.520(d)(3), 11.21(g), and 11.45(d) once OMB review has been obtained. The compliance dates that the Bureau announces for the new or revised portions of section 11.21(a) at Appendix A shall supply sufficient time to comply with the Section 11.21 rule revisions adopted in the *State Plan Order*.²¹⁸

67. 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²¹⁸ In the *State Plan Order*, the Commission adopted the section 11.21(a) currently in effect, but stated that compliance with that section would not be required "within [the] one year [after] . . . publication in the *Federal Register* of a Public Notice announcing (i) OMB approval of ARS information collection requirements or (ii) the availability of the ARS to receive such information, whichever is later." See *State Plan Order*, 33 FCC Rcd 3627, 3645-46, para. 54. On July 23, 2019, notice of OMB's approval of the information collection requirements was published in the *Federal Register*. See Federal Communications Commission, Emergency Alert System; Wireless Emergency Alerts, 84 Fed. Reg. 35334 (July 23, 2019). Accordingly, compliance with the amended section 11.21(a) in Appendix A will not be required until one year after publication in the *Federal Register* of a Public Notice announcing the availability of the ARS to receive submissions of State EAS Plans.

Appendix A

Final Rules

Part 10 – WIRELESS EMERGENCY ALERTS

The authority citation for part 10 is revised to read as follows:

Authority: [TO BE INSERTED PRIOR TO FEDERAL REGISTER PUBLICATION: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, 1202(a),(b),(c), (f), 1203, 1204, and 1206.]

Section 10.11 is amended by redesignating the paragraph as paragraph (a) and by adding paragraphs (b) and (c) to read as follows:

§ 10.11 WEA implementation timeline.

(a) * * *

(b) If a Participating CMS Provider’s network infrastructure would generate and display WEA headers with the text “Presidential Alert” to subscribers upon receipt of a National Alert, or include the text “Presidential Alert” in a mobile device’s settings menus, then by July 31, 2022, that Participating CMS Provider’s network infrastructure shall either generate and display WEA headers and menus with the text “National Alert,” or no longer display those headers and menu text to the subscriber. Network infrastructure that is technically incapable of meeting this requirement, such as situations in which legacy devices or networks cannot be updated to support header display changes, are exempt from this requirement.

(c) *Compliance date(s)*. Paragraph (b) of this section contains an information-collection and recordkeeping requirement. Compliance with paragraph (b) 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 compliance date(s) with this paragraph and revising this paragraph accordingly.

Section 10.320 is revised by amending paragraph (e)(3) to read as follows:

§ 10.320 Provider alert gateway requirements.

* * * * *

(e) * * *

(3) *Prioritization*. The CMS provider gateway must process an Alert Message on a first in-first out basis except for National Alerts, which must be processed before all non-National Alerts.

* * * * *

Section 10.400 is revised by amending paragraph (a) as follows:

§ 10.400 Classification.

* * * * *

(a) *National Alert*. A National Alert is an alert issued by the President of the United States or the President’s authorized designee, or by the Administrator of FEMA. National Alerts may be either nationwide or regional in distribution.

* * * * *

Section 10.410 is revised as follows:

§ 10.410 Prioritization.

A Participating CMS Provider is required to transmit National Alerts upon receipt. National Alerts preempt all other Alert Messages. A Participating CMS Provider is required to transmit Imminent Threat Alerts, AMBER Alerts and Public Safety Messages on a first in-first out (FIFO) basis.

Section 10.420 is revised as follows:

§ 10.420 Message elements.

A WEA Alert Message processed by a Participating CMS Provider shall include five mandatory CAP elements — Event Type; Area Affected; Recommended Action; Expiration Time (with time zone); and Sending Agency. This requirement does not apply to National Alerts.

Section 10.500 is revised by amending paragraph (f) as follows:

§ 10.500 General requirements.

* * * * *

(f) Presentation of alert content to the device, consistent with subscriber opt-out selections. National Alerts must always be presented.

* * * * *

Section 10.520 is revised by redesignating paragraph (d) as paragraph (d)(1) and by adding paragraphs (d)(2) and (d)(3) to read as follows:

§ 10.520 Common audio attention signal.

* * * * *

(d)(1) * * *

(d)(2) If the Administrator of the Federal Emergency Management Agency (FEMA) or a State, local, Tribal, or territorial government entity becomes aware of transmission of a WEA false alert to the public, they are encouraged to send an email to the Commission at the FCC Ops Center at FCCOPS@fcc.gov, informing the Commission of the event and of any details that they may have concerning the event.

(d)(3) *Compliance date(s)*. Paragraph (d)(2) of this section contains an information-collection and recordkeeping requirement. Compliance with paragraph (d)(2) 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 compliance date(s) with this paragraph and revising this paragraph accordingly.

* * * * *

Part 11 – EMERGENCY ALERT SYSTEM (EAS)

The authority citation for part 11 is revised to read as follows:

Authority: [TO BE INSERTED PRIOR TO FEDERAL REGISTER PUBLICATION: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, 1206].

Section 11.21 is revised by amending the introductory paragraph, and paragraph (a), and adding paragraphs (a)(8) and (g) as follows:

§ 11.21 State and Local Area plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR). State and local plans contain unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS). The plans also include information on actions taken by EAS Participants, in coordination with state and local governments, to ensure timely access to EAS alert content by non-English speaking populations. The plans must be reviewed and approved by the Chief, Public Safety and Homeland Security Bureau (Bureau), prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation. The plans are administered by State Emergency Communications Committees (SECC). The Commission encourages the chief executive of each State to establish an SECC if their State does not have an SECC, and if the State has an SECC, to review the composition and governance of the SECC. The Bureau will review and approve plans, including annual updated plans, within 60 days of receipt, provided that no defects are found requiring the plan to be returned to the SECC for correction and resubmission. If a plan submitted for approval is found defective, the SECC will be notified of the required corrections, and the corrected plan may be resubmitted for approval, thus starting the 60-day review and approval period anew. The approval dates of State EAS Plans will be listed on the Commission's website.

(a) State EAS Plans contain guidelines that must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The Plans include information on actions taken by EAS Participants, in coordination with state and local governments, to ensure timely access to EAS alert content by non-English speaking populations. State EAS Plans must be updated on an annual basis. State EAS Plans must include the following elements:

* * *

(8) Certification by the SECC Chairperson or Vice-Chairperson that the SECC met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update the plan.

* * *

(g) *Compliance date(s)*. The introductory paragraph and paragraphs (a) and (a)(8) of this section contain information-collection and recordkeeping requirements adopted in the Report and Order and Further Notice of Proposed Rulemaking, *Amendment of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket Nos. 15-91 and 15-94, FCC-[INSERT] (DATE, 2021). Compliance with the introductory paragraph and paragraphs (a) and (a)(8) 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 compliance date(s) with those paragraphs and revising those paragraphs accordingly.

* * * * *

Section 11.44 is amended by revising the section heading and the section to read as follows:

§ 11.44 Alert Repetition.

An alert originator may “repeat” an alert by releasing the alert anew—i.e., re-originating the alert—at least one minute subsequent to the time the message was initially released by the originator, as reflected in the repeat alert’s JJHHMM header code. Because alerts take time to activate across the EAS alert distribution chain, alert originators should consider an interval between the original and re-originated alert that is long enough to account for this process. If the re-originated alert is intended to reflect a valid time period consistent with the original, the valid time period code (the +TTTT header code identified in section 11.31(c)) set for the re-originated alert should be adjusted to account for the elapsed time between the original and re-originated alerts. Alert originators should be aware that repeating alerts routinely may cause alert fatigue among the public.

Section 11.45 is revised by amending paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 11.45 Prohibition of false or deceptive EAS transmissions.

* * * * *

(b) No later than twenty-four (24) hours of an EAS Participant’s discovery (i.e., actual knowledge) that it has transmitted or otherwise sent a false alert to the public, the EAS Participant shall send an email to the Commission at the FCC Ops Center at FCCOPS@fcc.gov, informing the Commission of the event and of any details that the EAS Participant may have concerning the event.

(c) If the Administrator of the Federal Emergency Management Agency or a State, local, Tribal, or territorial government entity becomes aware of transmission of an EAS false alert to the public, they are encouraged to send an email to the Commission at the FCC Ops Center at FCCOPS@fcc.gov, informing the Commission of the event and of any details that they may have concerning the event.

(d) *Compliance date(s)*. Paragraph (c) of this section contains an information-collection and recordkeeping requirement. Compliance with paragraph (c) 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 compliance date(s) for this paragraph and revising this paragraph accordingly.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*) released in March 2021. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²

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

2. In today's Report and Order (*Order*), the Commission adopts rules to improve the way the public receives emergency alerts on their mobile phones, televisions, and radios via the Wireless Emergency Alerts (WEA) system and the Emergency Alert System (EAS), in response to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.³ WEA and EAS ensure that the public is quickly informed about emergency alerts issued by federal, state, local, Tribal, and territorial governments and delivered over the radio, television, and mobile wireless devices. These announcements keep the public safe and informed and have increased in importance in the wake of the emergencies and disasters experienced by Americans in the past few years. Congress has determined that WEA and EAS rule changes are necessary to increase oversight over the distribution of state and local EAS alerts within states, increase the likelihood that the public will receive full alerts pertaining to national security, and increase false alert reporting capabilities to help ameliorate confusion or other harmful effects resulting from false alerts. Consistent with the congressional directives in the NDAA21, the Commission amends its WEA and EAS rules to ensure that more people receive relevant emergency alerts, to enable EAS and WEA participants to report false alerts when they occur, and to improve the way states plan for emergency alerts.

3. Specifically, the Commission amends its rules to (i) replace WEA's existing Presidential Alert class with a National Alert class that would ensure that WEA-enabled mobile devices could not opt-out of receiving WEA alerts issued by the President (or the President's authorized designee) or by the Administrator of the Federal Emergency Management Agency (FEMA); (ii) require participating Commercial Mobile Service (CMS) providers that use WEA header displays that read "Presidential Alert" to change those alert headers to read "National Alert" or to remove such headers altogether; (iii) encourage chief executives of states to form State Emergency Communications Committees (SECC) if none exist in their states, or if they do, to review their composition and governance, update their State EAS plans annually, and certify that they have met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update the plan; (iv) incorporate certain processing actions concerning SECCs' and the FCC's administration of State EAS Plans; (v) enable false EAS and WEA alert reporting by the FEMA Administrator as well as state, local, Tribal, and territorial governments; and (vi) provide for repeating EAS alerts issued by the President, the Administrator of FEMA and any other entity determined appropriate under the circumstances by the Commission, in consultation with the Administrator of FEMA.

4. The rules adopted in the *Order* are intended to increase participation by state, local, Tribal, and territorial governments in the administration of State EAS Plans, enhance administration of EAS alerting, hasten corrective action when any false alerts are issued, and better enable alert originators

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 604.

³ National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388 (2021) (NDAA21).

to repeat alerts. They will benefit the public by strengthening national, state, local, Tribal, and territorial alerting activities, minimizing confusion and disruption caused by false alerts, increasing the chances for the public to receive critical alert messages, and will facilitate the further development of a robust and redundant system for distributing vital alert information to all Americans.

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

5. 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

6. 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.⁴

7. 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

8. 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.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ 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.⁸

9. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions may, over time, 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.⁹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.7 million businesses.¹¹

⁴ 5 U.S.C. § 604(a)(3).

⁵ 5 U.S.C. § 604(a)(4).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ See 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, “What’s New With Small Business,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept. 2019).

¹¹ *Id.*

10. 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.”¹² Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹³ 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.¹⁴

11. 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.”¹⁵ U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number there were 36,931 General purpose governments (county¹⁷, municipal and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments – independent school districts¹⁹ with enrollment

¹² 5 U.S.C. § 601(4).

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁵ 5 U.S.C. § 601(5).

¹⁶ See U.S. Census Bureau, 2017 Census of Governments—Organization, Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ See *id* at Table 5, County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township)

¹⁸ See *id* at Table 6, Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

¹⁹ See *id* at Table 10, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State_Census Years 1942 to 2017.

of less than 50,000.²⁰ 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.”²¹

8. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.²² The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts.²³ Economic Census data for 2012 show that 2,849 radio station firms operated during that year.²⁴ Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.²⁵ Therefore, based on the SBA’s size standard the majority of such entities are small entities.

9. In addition to the U.S. Census Bureau’s data, based on Commission data we estimate that there are 4,560 licensed AM radio stations, 6,704 commercial FM radio stations and 8,339 FM translator and booster stations.²⁶ The Commission has also determined that there are 4,196 noncommercial educational (NCE) FM radio stations.²⁷ The Commission however does not compile and does not otherwise have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities under the SBA size standard.

10. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.²⁸ The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation.²⁹ We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of

²⁰ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²² See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

²³ See 13 CFR § 121.201, NAICS code 515112.

²⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515112, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

²⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁶ See Broadcast Station Totals as of September 30, 2020, FCC News Release (rel. Oct. 2, 2020) (Sept. 30, 2020 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-367270A1.pdf>.

²⁷ See *id.*

²⁸ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 CFR § 121.103(a)(1).

²⁹ 13 CFR § 121.102(b).

a small business on these bases, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

11. *FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.³⁰ This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.³¹ Programming may originate in their own studio, from an affiliated network, or from external sources.³² The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$38.5 million dollars or less.³³ U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.³⁴ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.³⁵ Therefore, based on the SBA’s size standard we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

12. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included.³⁶ Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity would not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

13. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”³⁷ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³⁸ These establishments also produce or transmit visual programming to affiliated broadcast

³⁰ See U.S. Census Bureau, *2017 NAICS Definitions, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

³¹ *Id.*

³² *Id.*

³³ See 13 CFR § 121.201, NAICS Code 515112.

³⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.:2012*, NAICS Code 515112, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

³⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁶ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 CFR § 121.103(a)(1).

³⁷ See U.S. Census Bureau, *2017 NAICS Definitions, “515120 Television Broadcasting,”* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

³⁸ *Id.*

television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.³⁹ The 2012 Economic Census reports that 751 firms in this category operated in that year.⁴⁰ Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999.⁴¹ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

14. The Commission has estimated the number of licensed commercial television stations to be 1,368.⁴² According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, and therefore these licensees qualified as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 390.⁴³ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,246 low power television stations, including Class A stations (LPTV), and 3,543 TV translator stations.⁴⁴ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

15. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations⁴⁵ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

16. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature

³⁹ See 13 CFR § 121.201, 2012 NAICS Code 515120.

⁴⁰ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515120, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴² See *Broadcast Station Totals* as of September 30, 2020, FCC News Release (rel. Oct. 2, 2020) (Sept. 30, 2020 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-367270A1.pdf>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

(e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.⁴⁶ The SBA size standard for this industry establishes as small, any company in this category which receives annual receipts of \$41.5 million or less.⁴⁷ According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year.⁴⁸ Of that number, 319 operated with annual receipts of less than \$25 million a year and 48 firms operated with annual receipts of \$25 million or more.⁴⁹ Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

17. *Cable System Operators (Rate Regulation Standard)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.⁵⁰ Industry data indicate that there are 4,600 active cable systems in the United States.⁵¹ Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard.⁵² In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁵³ Commission records show 4,600 cable systems nationwide.⁵⁴ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁵⁵ Thus, under this standard as well, we estimate that most cable systems are small entities.

18. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate

⁴⁶ See U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and other Subscription Programming,"* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

⁴⁷ See 13 CFR 121.201, NAICS Code 515210.

⁴⁸ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab & Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515210&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁴⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁰ 47 CFR § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁵¹ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, www.fcc.gov/coals (last visited Oct. 25, 2016).

⁵² S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com/> (Dec 2019). The five cable operators all had more than 400,000 basic cable subscribers.

⁵³ 47 CFR § 76.901(c).

⁵⁴ See *supra* note 51.

⁵⁵ *Id.*

exceed \$250,000,000.”⁵⁶ As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States.⁵⁷ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁵⁸ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁵⁹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁶⁰ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁶¹ Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules.⁶² For this category, U.S. Census Bureau data for 2012 show that there was a total of 333 firms that operated for the entire year.⁶³ Of this total, 299 firms had annual receipts of less than \$25 million.⁶⁴ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

20. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁶⁵ 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

⁵⁶ 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 76.901(e).

⁵⁷ S&P Global Market Intelligence, *U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2019, U.S. Cable MSO Industry Total*, *see also U.S. Multichannel Industry Benchmarks, U.S. Cable Industry Benchmarks, Basic Subscribers 2019Y*, <https://platform.marketintelligence.spglobal.com>.

⁵⁸ 47 CFR § 76.901(e).

⁵⁹ S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com>. The five cable operators all had more than 486,460 basic cable subscribers.

⁶⁰ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. *See* 47 CFR § 76.910(b).

⁶¹ *See* U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁶² *See* 13 CFR § 121.201, NAICS Code 517410.

⁶³ *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012>.

⁶⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁵ *See* U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

to, and receiving telecommunications from, satellite systems.⁶⁶ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁶⁷ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁶⁸ For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year.⁶⁹ Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁷⁰ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

21. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁷¹

22. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁷² The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard).⁷³ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

23. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁷⁴ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See 13 CFR § 121.201, NAICS Code 517919.

⁶⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁷⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷¹ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

⁷² 47 CFR § 21.961(b)(1).

⁷³ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1500 or fewer employees.

⁷⁴ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁷⁵ Auction 86 concluded in 2009 with the sale of 61 licenses.⁷⁶ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

24. *EBS*—Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of 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 telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.⁷⁷ The SBA’s small business size standard for this category is all such firms having 1,500 or fewer employees.⁷⁸ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.⁷⁹ Of this total, 3,083 operated with fewer than 1,000 employees.⁸⁰ Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission’s Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁸¹

25. *Direct Broadcast Satellite (“DBS”) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the category of “Wired Telecommunications Carriers.”⁸² The Wired Telecommunications Carriers industry comprises 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 telecommunications networks.⁸³ Transmission facilities may be based on a single technology or combination of technologies.

⁷⁵ *Id.* at 8296, para. 73.

⁷⁶ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

⁷⁷ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁸ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁷⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517110*, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

⁸⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸¹ The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁸² See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸³ *Id.*

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 VoIP services, wired (cable) audio and video programming distribution; and wired broadband Internet services.⁸⁴ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁸⁵ The SBA size standard considers a wireline business is small if it has fewer than 1,500 employees.⁸⁶ U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year.⁸⁷ Of that number, 3,083 operated with fewer than 1,000 employees.⁸⁸ Based on that data, we conclude that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.⁸⁹ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

26. *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.⁹⁰ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁹¹ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁹² Of this total, 955 firms had employment of 999 or fewer employees, and 12 firms had employment of 1,000 employees or more.⁹³ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

⁸⁴ See *id.* Examples of this category are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); CCTV services; VoIP service providers, using own operated wired telecommunications infrastructure; DTH services; telecommunications carriers (wired); satellite television distribution systems; and MMDS.

⁸⁵ *Id.*

⁸⁶ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁸⁷ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

⁸⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁹ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

⁹⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹¹ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁹² See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁹³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

27. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)).* For the AWS-1 bands,⁹⁴ the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS-2 and AWS-3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.⁹⁵

28. *Narrowband Personal Communications Services.* Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁹⁶ Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses.⁹⁷ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.⁹⁸

29. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁹⁹ For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁰⁰ These standards defining

⁹⁴ The service is defined in section 90.1301 *et seq.* of the Commission’s Rules, 47 CFR § 90.1301 *et seq.*

⁹⁵ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, Appx. B (2003), modified by *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058, Appx. C (2005); *Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, Appx. B (2005); *Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, Appx. (2007).

⁹⁶ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456 (2000).

⁹⁷ *Id.*

⁹⁸ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

⁹⁹ See *Amendment of Parts 20 and 24 of the Commission’s Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission’s Cellular/PCS Cross-Ownership Rule*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (*PCS Report and Order*); see also 47 CFR § 24.720(b).

¹⁰⁰ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

“small entity”, in the context of broadband PCS auctions, have been approved by the SBA.¹⁰¹ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D-, E-, and F-Blocks.¹⁰² On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.¹⁰³ Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

30. On January 26, 2001, the Commission completed the auction of 422 C- and F-Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.¹⁰⁴ Subsequent events concerning Auction No. 35, including judicial and agency determinations, resulted in a total of 163 C- and F-Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.¹⁰⁵ On May 21, 2007, the Commission completed an auction of 33 licenses in the A-, C-, and F-Blocks in Auction No. 71.¹⁰⁶ Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.¹⁰⁷ On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.¹⁰⁸ Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.¹⁰⁹

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.¹¹⁰ The SBA has approved these small business size standards.¹¹¹ In the Commission’s auction for geographic area licenses in the WCS there

¹⁰¹ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, FCC, (Dec. 2, 1998) (*Alvarez Letter 1998*).

¹⁰² See *D, E and F Block Auction Closes*, Public Notice, DA 97-81, 1 (Jan. 15, 1997) 1997 WL 20711.

¹⁰³ See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768, para. 46 (1998).

¹⁰⁴ See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

¹⁰⁵ See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

¹⁰⁶ See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

¹⁰⁷ *Id.*

¹⁰⁸ See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

¹⁰⁹ *Id.*

¹¹⁰ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

¹¹¹ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.¹¹²

32. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹¹³ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹¹⁴ The SBA has established a small business size standard for this industry of 1,250 employees or less.¹¹⁵ U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year.¹¹⁶ Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees, and 6 establishments operated with 2,500 or more employees.¹¹⁷ Based on this data, we conclude that a majority of manufacturers in this industry are small.

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

33. The *Order* imposes additional reporting, recordkeeping and/or other compliance obligations on certain small, as well as other, entities that process WEA alerts and manufacture mobile devices that receive such alerts, and could impose additional reporting, recordkeeping and/or other compliance obligations on small, as well as other entities that administer State EAS Plans, process and transmit EAS alerts, and manufacture equipment designed to process EAS alerts. While the Commission is not in a position to determine whether small entities will have to hire professionals to comply with the our decisions and cannot quantify the cost of compliance for small entities, as discussed in the *Order*, the approaches we have taken to implement the requirements of NDAA21 have minimal or *de minimis* cost implications for impacted entities.

34. In the *Order*, the Commission adds a national alert category to WEA that WEA-enabled mobile device users can not opt-out of receiving. The national alert category changes the name of the current Presidential Alerts category to National Alerts and includes alerts from both the President and the FEMA Administrator. Participating CMS providers that use WEA header displays and settings menus that currently display "Presidential Alert" will have to change the display to read "National Alert" or discontinue their voluntary use of WEA header displays.

35. The *Order* also requires that each updated State EAS Plan submitted annually to the Commission for approval include a certification by the SECC Chairperson or Vice-Chairperson that the

¹¹² See *WCS Auction Closes; Winning Bidders in the Auction of 128 Wireless Communications Licenses; FCC Form 600s Due May 12, 1997*, 12 FCC Rcd 21653, DA-97-886, Report No. AUC-997-14-E (Auction No.14) (April 28, 1997).

¹¹³ See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹¹⁴ *Id.*

¹¹⁵ See 13 CFR § 121.201, NAICS Code 334220.

¹¹⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

¹¹⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

SECC has met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update their State EAS Plan. The certification requirement will be included in the rules governing State EAS Plans and will be incorporated into the Alert Reporting System (ARS). The certification requirement can be met via an on-screen ARS click-box, rather than requiring SECCs to complete extra paperwork to generate a certification document to attach in ARS.

36. To address the NDAA21's requirements for reporting by government entities on false EAS or WAS alerts, the *Order* revises the Commission's WEA and EAS rules to provide for voluntary reporting by the FEMA Administrator, State, local, Tribal, or territorial governments using an email reporting system. The rules provide guidance on the types of false alerts that are suitable to report—discouraging reporting alerts where the incorrect information is de-minimis. The Commission also provides guidance on the types of information in a report that it would find helpful, such as the time and date of the reported alert event, the geographic location where the alerts were received, the message the alert conveyed, how they became aware of the alert, over what medium the alert was transmitted (e.g., broadcast or cable), whether it was an EAS or WEA event, and who originated the alert (if known). In addition.

37. To satisfy the alert repetition requirements in the NDAA21 the *Order* modifies the EAS rules to add a new section, 11.44 “Alert Repetition,” specifying that an alert originator may “repeat” an alert by releasing the alert anew—i.e., re-originating the alert—at least one minute subsequent to the time the message was initially released by the originator, as reflected in the repeat alert's JJJHHMM header code to meet its alert repetition obligation.

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

38. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its 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) and exemption from coverage of the rule, or any part thereof, for such small entities.”¹¹⁸

39. The actions taken by the Commission in the *Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the *Order* to minimize any significant economic impact on small entities and some alternatives that were considered.

40. The rules adopted creating a WEA National Alert class which adds the FEMA Administrator as an authorized originator of these alerts in addition to the President of the United States, does not create any costs for small entities. Renaming the existing Presidential Alert class to National Alerts and allowing for use of the existing WEA handling code and other infrastructure already in place for Presidential Alert was the least costly way possible to implement the NDAA21 requirement to ensure that subscribers may not opt out of receiving FEMA Administrator alerts. This change requires few, if any, technical changes to be made to participating CMS provider networks or the mobile devices of their subscribers. With respect to the amendment requiring participating CMS provider handset display updates to discontinue the display of “Presidential Alert,” we provide participating CMS providers flexibility in the approach they use to ensure compliance, allowing the requirement to be satisfied by any approach that ensures that “Presidential Alert” is not displayed on a user's mobile device, either by

¹¹⁸ 5 U.S.C. § 604(a)(6).

changing the displayed header or not displaying the header at all. We note that no commenting party disputed our estimate that these costs would be minimal to the industry. We also reduce the burden on participating CMS providers by exempting from the requirement any network infrastructure that is technically incapable of meeting this requirement, such as legacy devices or networks that cannot be updated to support this functionality.

41. With respect to the amendments involving SECCs and State EAS Plan provisions, we declined to adopt recommendations for SECC membership and/or a model governance structure for SECCs. There are SECCs currently operating in all 50 states and all, but 2 territories and each state and territory is different with unique needs that no single framework may fit. Regarding the requirement for certification by the SECC Chairperson or Vice-Chairperson that the SECC has met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update their State EAS Plan, we do not believe the costs to the SECC members will be more than *de minimis*. We allow for virtual meetings, which lessens the cost and burden of meeting in person. Further, as mentioned in the previous section, we allow the meeting certification to be effectuated by clicking a button on the ARS online menu, which is significantly less burdensome for small entities than having to make some other showing, such as a paper filing.

42. The amendments we adopted to create a system for false alert reporting by government entities minimize any impact of compliance for small entities and others by virtue of the reporting system being a voluntary reporting process. For government entities that choose to report false alerts, they can do so by simply sending the relevant information to the Commission via email to the FCC Operations Center. As mentioned above, we declined to require a list of elements that must be reported, which could make the process unduly burdensome and deter government entities from filing false alert reports. We also declined to adopt a definition of what constitutes a false alert which could be too limited and burdensome for reporting government entities. Instead, we offer guidance on the type of information about false alerts that would be meaningful to the Commission, and note that the voluntary reporting process adopted in the *Order* does not alter the meaning of false alerts that has been applied in other parts of the Commission rules, including sections 11.45(a) and (b).¹¹⁹

43. With respect to the process for enabling Alert Originators to repeat EAS alerts for national security, the requirement to repeat EAS messages can be addressed under the Commission's existing rules. We therefore kept the current EAS rules governing alert (re)transmission intact and added a new section 11.44 that clarifies how alert originators can repeat their alert transmissions. Our decision to clarify how alert originators can repeat (or re-originate) EAS alerts does not impose any additional costs, as such repetition has been a function available to alert originators from the inception of the EAS.

44. Finally, we note two additional actions we take that minimizes the significant economic impact of the *Order* on small entities. We declined to adopt a new national security-related originator code or event code in light of the record which suggests that adding new codes will introduce costs to EAS Participants that are difficult to justify given the complexity and costs associated with their adoption. We also declined to adopt a requirement for implementation of automated repetition of alerts by EAS Participants' EAS devices. To do so would result in substantial burdens that are unnecessary, and the potential disruption and costs associated with implementing automated repeating in EAS devices is likely to be significant and could yield unintended consequences detrimental to EAS operations.

Report to Congress

45. The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹²⁰ In addition, the Commission will send a

¹¹⁹ See 47 CFR §§ 11.45(a) and (b).

¹²⁰ See 5 U.S.C. § 801(a)(1)(A).

copy of this *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.¹²¹

¹²¹ See 5 U.S.C. § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. In the *Notice*, the Commission seeks comment on proposed changes to the Emergency Alert System (EAS) rules suggested by the Federal Emergency Management Agency (FEMA).⁴ FEMA indicates the changes are needed to ensure that the Integrated Public Alert and Warning System (IPAWS) Open Platform for Emergency Networks that it manages is able to provide maximum effectiveness now and in the future in light of the requirements outlined in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA21).⁵ Specifically, the Commission seeks comment on FEMA's proposed rule changes recommending: (i) deleting the National Information Center (NIC) event code from part 11 of the Commission's rules; (ii) replacing the EAS originator code for the "Primary Entry Point System," from "PEP," to "NAT," which would stand for "National Authority"; (iii) either modifying the definition for the Emergency Action Notification (EAN) event code from "Emergency Action Notification (National Only)," to "Emergency Alert, National," or replacing the EAN event code with a new event code called "NEM," defined as "National Emergency Message"; and (iv) considering methods to update the EAS to "support persistent display of alert information and/or persistent notification for emergencies that require immediate public protective actions to mitigate loss of life." FEMA asserts that the NIC is no longer in use, and changing the PEP and EAN codes would prevent public confusion about their meaning if included in the visual scroll or audio message elements of an actual EAS alert. FEMA states that keeping alert information persistent would ensure that the public received the alert.

B. Legal Basis

3. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), and 606, as well as by sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. §§ 1202(a),(b),(c), (f), 1203, 1204 and 1206, Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010, as amended, 47 U.S.C. § 613, and the National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388, § 9201, 47 U.S.C. §§ 1201, 1206.

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See FEMA Comments at 1-4.

⁵ See National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388 (2021) (NDAA21).

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

4. 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 proposed rules, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ 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.⁹

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, 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.¹⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹¹ These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.7 million businesses.¹²

6. 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.”¹³ Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ 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.¹⁵

⁶ 5 U.S.C. § 603(b)(3).

⁷ 5 U.S.C. § 601(6).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ 15 U.S.C. § 632.

¹⁰ See 5 U.S.C. § 601(3)-(6).

¹¹ See SBA, Office of Advocacy, “What’s New With Small Business,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept. 2019).

¹² *Id.*

¹³ 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁵ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO

(continued....)

7. 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.”¹⁶ U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number there were 36,931 General purpose governments (county¹⁸, municipal and town or township¹⁹) with populations of less than 50,000 and 12,040 special purpose governments – independent school districts²⁰ with enrollment of less than 50,000.²¹ 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.”²²

8. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”²³ The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts.²⁴ Economic Census data for 2012 show that 2,849 radio station firms operated during that year.²⁵ Of that number,

BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁶ 5 U.S.C. § 601(5).

¹⁷ See U.S. Census Bureau, 2017 Census of Governments—Organization, Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁸ See *id* at Table 5, County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township)

¹⁹ See *id* at Table 6, Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁰ See *id* at Table 10, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State_Census Years 1942 to 2017.

²¹ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²³ See U.S. Census Bureau, 2017 NAICS Definition, “515112 Radio Stations,” <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

²⁴ See 13 CFR § 121.201, NAICS Code 515112.

²⁵ See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515112,

(continued....)

2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.²⁶ Therefore, based on the SBA's size standard the majority of such entities are small entities.

9. In addition to the U.S. Census Bureau's data, based on Commission data we estimate that there are 4,560 licensed AM radio stations, 6,704 commercial FM radio stations and 8,339 FM translator and booster stations.²⁷ The Commission has also determined that there are 4,196 noncommercial educational (NCE) FM radio stations.²⁸ The Commission however does not compile and does not otherwise have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities under the SBA size standard.

10. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.²⁹ The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation.³⁰ We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these bases, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

11. *FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.³¹ This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.³² Programming may originate in their own studio, from an affiliated network, or from external sources.³³ The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$38.5 million dollars or less.³⁴ U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.³⁵ Of

<https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁷ See Broadcast Station Totals as of September 30, 2020, FCC News Release (rel. Oct. 2, 2020) (Sept. 30, 2020 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-367270A1.pdf>.

²⁸ *See id.*

²⁹ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both." 13 CFR § 121.103(a)(1).

³⁰ 13 CFR § 121.102(b).

³¹ See U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations,"* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

³² *Id.*

³³ *Id.*

³⁴ See 13 CFR § 121.201, NAICS Code 515112.

³⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.:2012*, NAICS Code 515112,

(continued....)

that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.³⁶ Therefore, based on the SBA's size standard we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

12. We note again, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included.³⁷ Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of "small business" is that an entity would not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

13. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."³⁸ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³⁹ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.⁴⁰ The 2012 Economic Census reports that 751 firms in this category operated in that year.⁴¹ Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999.⁴² Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

14. The Commission has estimated the number of licensed commercial television stations to be 1,368.⁴³ According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television

<https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

³⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁷ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both." 13 CFR § 121.103(a)(1).

³⁸ See U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

³⁹ *Id.*

⁴⁰ See 13 CFR § 121.201, NAICS Code 515120.

⁴¹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series—Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515120, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁴² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴³ See *Broadcast Station Totals* as of September 30, 2020, FCC News Release (rel. Oct. 2, 2020) (Sept. 30, 2020 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-367270A1.pdf>.

Database (BIA) on November 16, 2017, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, and therefore these licensees qualified as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 390.⁴⁴ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,246 low power television stations, including Class A stations (LPTV), and 3,543 TV translator stations.⁴⁵ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

15. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations⁴⁶ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

16. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.⁴⁷ The SBA size standard for this industry establishes as small, any company in this category which receives annual receipts of \$41.5 million or less.⁴⁸ According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year.⁴⁹ Of that number, 319 operated with annual receipts of less than \$25 million a year and 48 firms operated with annual receipts of \$25 million or more.⁵⁰ Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

⁴⁷ See U.S. Census Bureau, *2017 NAICS Definition, “515210 Cable and Other Subscription Programming,”* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

⁴⁸ See 13 CFR 121.201, NAICS Code 515210.

⁴⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab & Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515210&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁵⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

17. *Cable System Operators (Rate Regulation Standard)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.⁵¹ Industry data indicate that there are 4,600 active cable systems in the United States.⁵² Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard.⁵³ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁵⁴ Commission records show 4,600 cable systems nationwide.⁵⁵ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁵⁶ Thus, under this standard as well, we estimate that most cable systems are small entities.

18. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁵⁷ As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States.⁵⁸ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁵⁹ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁶⁰ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁶¹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are

⁵¹ 47 CFR § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁵² The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, www.fcc.gov/coals (last visited Oct. 25, 2016).

⁵³ S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com>. The five cable operators all had more than 400,000 basic cable subscribers.

⁵⁴ 47 CFR § 76.901(c).

⁵⁵ See *supra* note 52.

⁵⁶ *Id.*

⁵⁷ 47 U.S.C. § 543(m)(2); see also 47 CFR § 76.901(e).

⁵⁸ S&P Global Market Intelligence, *U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2019, U.S. Cable MSO Industry Total, see also U.S. Multichannel Industry Benchmarks, U.S. Cable Industry Benchmarks, Basic Subscribers 2019Y*, <https://platform.marketintelligence.spglobal.com>.

⁵⁹ 47 CFR § 76.901(e).

⁶⁰ S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com>. The five cable operators all had more than 486,460 basic cable subscribers.

⁶¹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁶² Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules.⁶³ For this category, U.S. Census Bureau data for 2012 show that there was a total of 333 firms that operated for the entire year.⁶⁴ Of this total, 299 firms had annual receipts of less than \$25 million.⁶⁵ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

20. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁶⁶ 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.⁶⁷ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁶⁸ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁶⁹ For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year.⁷⁰ Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁷¹ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

21. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel

⁶² See U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications,”* <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁶³ See 13 CFR § 121.201, NAICS Code 517410.

⁶⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePrevIew=false&vintage=2012>.

⁶⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁶ See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications,”* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See 13 CFR § 121.201, NAICS Code 517919.

⁷⁰ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePrevIew=false>.

⁷¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁷²

22. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁷³ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard).⁷⁴ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

23. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁷⁵ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁷⁶ Auction 86 concluded in 2009 with the sale of 61 licenses.⁷⁷ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

24. *EBS*—Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of 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 telecommunications networks.

⁷² *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

⁷³ 47 CFR § 21.961(b)(1).

⁷⁴ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1500 or fewer employees.

⁷⁵ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁷⁶ *Id.* at 8296, para. 73.

⁷⁷ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

Transmission facilities may be based on a single technology or a combination of technologies.”⁷⁸ The SBA’s small business size standard for this category is all such firms having 1,500 or fewer employees.⁷⁹ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.⁸⁰ Of this total, 3,083 operated with fewer than 1,000 employees.⁸¹ Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission’s Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁸²

25. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the category of “Wired Telecommunications Carriers.”⁸³ The Wired Telecommunications Carriers industry comprises 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 telecommunications networks.⁸⁴ Transmission facilities may be based on a single technology or 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 VoIP services, wired (cable) audio and video programming distribution; and wired broadband Internet services.⁸⁵ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁸⁶ The SBA size standard considers a wireline business is small if it has fewer than 1,500 employees.⁸⁷ U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year.⁸⁸ Of that number, 3,083 operated with fewer than 1,000

⁷⁸ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁹ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁸⁰ See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517110,* <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

⁸¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸² The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). [5 U.S.C. §§ 601\(4\)-\(6\)](#).

⁸³ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸⁴ *Id.*

⁸⁵ See *id.* Examples of this category are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); CCTV services; VoIP service providers, using own operated wired telecommunications infrastructure; DTH services; telecommunications carriers (wired); satellite television distribution systems; and MMDS.

⁸⁶ *Id.*

⁸⁷ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁸⁸ See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012, NAICS Code 517110,* <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

employees.⁸⁹ Based on that data, we conclude that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.⁹⁰ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

26. *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.⁹¹ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁹² For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁹³ Of this total, 955 firms had employment of 999 or fewer employees, and 12 firms had employment of 1,000 employees or more.⁹⁴ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

27. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3))*. For the AWS-1 bands,⁹⁵ the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS-2 and AWS-3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.⁹⁶

⁸⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁰ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

⁹¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹² See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁹³ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁵ The service is defined in section 90.1301 *et seq.* of the Commission’s Rules, 47 CFR § 90.1301 *et seq.*

⁹⁶ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, Appx. B (2003), modified by *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058, Appx. C (2005); *Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd

(continued....)

28. *Narrowband Personal Communications Services.* Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁹⁷ Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses.⁹⁸ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.⁹⁹

29. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.¹⁰⁰ For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁰¹ These standards defining “small entity”, in the context of broadband PCS auctions, have been approved by the SBA.¹⁰² No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D-, E-, and F-Blocks.¹⁰³ On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.¹⁰⁴ Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

30. On January 26, 2001, the Commission completed the auction of 422 C- and F-Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small

19263, Appx. B (2005); *Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, Appx. (2007).

⁹⁷ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456 (2000).

⁹⁸ *Id.*

⁹⁹ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

¹⁰⁰ See *Amendment of Parts 20 and 24 of the Commission’s Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission’s Cellular/PCS Cross-Ownership Rule*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (*PCS Report and Order*); see also 47 CFR § 24.720(b).

¹⁰¹ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

¹⁰² See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, FCC, (Dec. 2, 1998) (*Alvarez Letter 1998*).

¹⁰³ See *D, E and F Block Auction Closes*, Public Notice, DA 97-81, 1 (Jan. 15, 1997) 1997 WL 20711.

¹⁰⁴ See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768, para. 46 (1998).

business status.¹⁰⁵ Subsequent events concerning Auction No. 35, including judicial and agency determinations, resulted in a total of 163 C- and F-Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.¹⁰⁶ On May 21, 2007, the Commission completed an auction of 33 licenses in the A-, C-, and F-Blocks in Auction No. 71.¹⁰⁷ Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.¹⁰⁸ On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.¹⁰⁹ Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.¹¹⁰

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.¹¹¹ The SBA has approved these small business size standards.¹¹² In the Commission’s auction for geographic area licenses in the WCS there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.¹¹³

32. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹¹⁴ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹¹⁵ The SBA has established a small business size standard for this industry of 1,250 employees or less.¹¹⁶ U.S. Census Bureau data for 2012 shows that 841 establishments operated in

¹⁰⁵ See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

¹⁰⁶ See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

¹⁰⁷ See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

¹⁰⁸ *Id.*

¹⁰⁹ See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

¹¹⁰ *Id.*

¹¹¹ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

¹¹² See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

¹¹³ See *WCS Auction Closes; Winning Bidders in the Auction of 128 Wireless Communications Licenses; FCC Form 600s Due May 12, 1997*, 12 FCC Rcd 21653, DA-97-886, Report No. AUC-997-14-E (Auction No.14) (April 28, 1997).

¹¹⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,”

<https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹¹⁵ *Id.*

¹¹⁶ See 13 CFR § 121.201, NAICS Code 334220.

this industry in that year.¹¹⁷ Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees, and 6 establishments operated with 2,500 or more employees.¹¹⁸ Based on this data, we conclude that a majority of manufacturers in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

33. FEMA's recommendations proposing changes for which comment is sought in the *Notice*, if adopted, would impose additional reporting, recordkeeping or other compliance obligations on certain small, as well as other, entities required to distribute EAS alerts to the public (i.e., "EAS Participants"), and that manufacture EAS equipment. At this time the Commission is not currently in a position to determine whether, if adopted, the FEMA's proposed changes will require small entities to hire attorneys, engineers, consultants, or other professionals to comply and cannot quantify the cost of compliance with the potential rule changes and compliance obligations raised for comment in the *Notice*. In our request for comments on FEMA's proposals, we have requested information on the cost of implementing the proposed changes as well as potential alternatives to the proposed recommendations, particularly less costly alternatives that should be considered.

34. As proposed by FEMA, its recommendation to replace the EAS originator code for the "Primary Entry Point System," from "PEP," to "NAT," which would stand for "National Authority," and to modify the definition for the EAN event code from "Emergency Action Notification (National Only)," to "Emergency Alert National," or replace the EAN event code with a new event code called "NEM," defined as "National Emergency Message,"¹¹⁹ would require EAS equipment manufacturers to develop software updates to implement the new codes in deployed EAS equipment and EAS equipment in production. EAS Participants would also be required to acquire and install a software update to change the codes in their EAS devices. Some EAS device models currently in deployment might not be capable of being updated to reflect the new codes, and those devices will have to be replaced. Updating or replacing deployed devices to reflect these proposed FEMA code changes would be at the expense of EAS Participants.

35. FEMA has also recommended that the Commission consider methods to update the EAS to "support persistent display of alert information and/or persistent notification for emergencies that require immediate public protective actions to mitigate loss of life."¹²⁰ Updating the EAS to support persistent alerts would likely require extensive modifications to the EAS. To comply with such a requirement if adopted, EAS equipment manufacturers would likely be required to develop software and/or firmware changes to implement such functionality in deployed EAS equipment and EAS equipment in production. Similar to FEMA's code change proposal recommendations, such changes would require EAS Participants to acquire and install the software/firmware update to enable the functionality in their EAS devices, and devices currently deployed with EAS capabilities that are not be capable of being updated to reflect such functionality will have to be replaced. It is also possible that such functionality will require modifications to non-EAS equipment that receive and process the EAS device alert content output and

¹¹⁷ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

¹¹⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁹ FEMA Comments at 2.

¹²⁰ FEMA Comments at 4.

convert it into a visual scroll. EAS Participants would also bear the expenses to update or replace deployed devices to enable this proposed EAS functionality.

36. To help the Commission more fully evaluate the cost of compliance if we were to adopt FEMA's proposals, in the *Notice* we request comments on the cost implications to implement the proposed recommendations and ask whether there are more efficient and less burdensome alternatives that might achieve the same results. We expect the information we receive in comments including cost and benefit analyses, to help the Commission identify and evaluate relevant matters for small entities, including compliance costs and other burdens that may result if the proposed recommendations in the *Notice* were adopted.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

37. 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) and exemption from coverage of the rule, or any part thereof, for such small entities.”¹²¹

38. In the *Notice*, the Commission took the steps and raised for consideration the alternatives we discuss herein which could minimize any significant economic impact on small entities of FEMA's recommended EAS proposed rules changes. Regarding FEMA's recommended event code rule changes, we ask for comments on whether the proposed FEMA changes should be adopted. Where FEMA has presented two options in a recommendation, we ask whether the proposed options are appropriate, and if so, what is the preferred approach? We also inquire about the implications for EAS and other equipment, for other EAS and related Commission rules, and for technical and operation plans and protocols relating to EAS alerts. Further, we inquire whether the proposed FEMA recommendations can be implemented for all EAS device models and at what costs, and whether the benefit of implementing the proposed changes exceed whatever costs might be incurred to implement them.

39. The FEMA recommendation to change the EAS originator code for “Primary Entry Point System,” from “PEP,” to “NAT” and to either modify the definition for the EAN event code from “Emergency Action Notification (National Only),” to “Emergency Alert, National,” or replace the EAN event code with a new event code called “NEM” would require EAS equipment manufacturers to develop software updates to implement the new code in deployed EAS equipment and EAS equipment in production. Such action also would require EAS Participants to acquire and install a software update to change the code in their EAS device. The Commission believes a software update imposes minimal costs for small and other entities, and the costs of such an action can be done in the normal course of business. We are aware that some EAS device models in deployment might not be capable of being updated to reflect the new codes, and those devices would have to be replaced.¹²² As a possible alternative to a code change for EAN, we ask for example, whether retaining the EAN and revising its definition would be less costly than replacing it with a new code such as “NEM”, or whether the revision of the EAN definition produce similar costs as a new code due to necessary technical and operational plan changes. The Commission also believes that should EAS event code changes be adopted, it may be possible to coordinate the implementation timeframe to allow a sufficient period of time for EAS Participants to complete the required installation in the normal course of the device's regularly scheduled maintenance

¹²¹ 5 U.S.C. §§ 603(c)(1)-(4).

¹²² We note that any EAS device requiring replacement to enable such a code change may already be out of compliance with the Commission's part 11 rules, and any such devices should be replaced regardless of this potential action.

and which would help minimize the cost of the software update.

40. The FEMA recommendation for the Commission to examine methods to update the EAS to “support persistent display of alert information and/or persistent notification for emergencies that require immediate public protective actions to mitigate loss of life” does not propose any particular methods or define the types of emergency events that would qualify, therefore the potential costs & burdens cannot be quantified. It is likely however, that any action required to effectuate this recommendation would require extensive modifications to the EAS. Therefore, as an initial matter we seek to identify what EAS event types would or would not qualify and what updates would be required to the EAS to accommodate the “persistent display of alert information and/or persistent notification” that FEMA requests. Further, within its recommendation FEMA proposes that alert originators can cancel an alert, however, there is no mechanism in the EAS to cancel a legacy EAS alert, and we therefore seek comment on whether a proposed rule to effectuate alert cancellation would necessarily require changing the EAS protocol or some other facet of the EAS architecture which could increase the costs for small and other impacted entities. We expect that implementing FEMA’s persistent alert changes would require significant modifications to EAS devices, downstream processing equipment, cable equipment standards, and other equipment operated in the EAS ecosystem and we ask for information on the technical feasibility of FEMA’s request. In addition, we seek information on the costs that would be incurred and by whom, in implementing the proposed changes, on what, if any ancillary costs would be associated with modifying downstream equipment, and whether the costs of implementing FEMA’s proposal be would be outweighed by any benefit of keeping the alert available to the public.

41. In the alternative, we ask commenters to consider whether there are less obtrusive means to achieve FEMA’s proposal, such as relying on alert originators to repeat (re-originate) alerts they deem significant enough to warrant such treatment. Significantly, we raise as alternatives for comment whether FEMA’s proposal on keeping the alert information or notification persistent is more appropriately configured in a next generation EAS, and whether FEMA’s recommendation is more appropriately addressed in the *Notice of Inquiry* in this proceeding seeking comment on Internet related updates and improvements to the EAS.

42. Throughout the *Notice*, the Commission has raised and requested comment on various issues relating to the technical feasibility, costs, benefits and the potential impact of implementing FEMA’s proposed EAS rule changes. This information will assist with the Commission’s evaluation of the economic impact on small entities, and to determine if the proposed FEMA rule changes are adopted, how to minimize any significant economic for small entities and will help identify potential alternatives not already considered. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and reply comments filed in response to the *Notice*. Moreover, the Commission’s evaluation of the comments will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities, if any of the proposed FEMA recommendations are adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

43. None.