

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 29, 2007.

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[FR Doc. E7-21597 Filed 11-1-07; 8:45 am]

BILLING CODE 9110-12-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 11

[EB Docket No. 04-296; FCC 07-109]

#### Review of the Emergency Alert System

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) amends its rules in order to ensure the efficient, rapid, and secure transmission of Emergency Alert System (EAS) alerts in a variety of formats (including text, audio, and video) and via different means (broadcast, cable, satellite, and other networks), increasing the reliability, security, and efficacy of the nation's EAS network.

**DATES:** The effective date is December 3, 2007.

**FOR FURTHER INFORMATION CONTACT:** Thomas Beers, Policy Division, Public Safety and Homeland Security Bureau, (202) 418-1170, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order* (Order) in EB Docket No. 04-296, FCC 07-109, adopted May 31, 2007, and released July 12, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. This document may also be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM). Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or calling the Consumer and Governmental Affairs Bureau at (202) 418-0530, TTY (202) 418-0432. This document is also available on the Commission's Web site at <http://www.fcc.gov>.

## Synopsis of the Order

### Next Generation EAS

1. In the *Order*, we reaffirm the obligations of today's EAS Participants to maintain existing EAS and establish the framework for the nation's Next Generation EAS. This Next Generation EAS will include new and innovative technologies and distribution systems that will provide increased redundancy and resiliency for the delivery of emergency alerts. We also take steps to ensure that the upgraded EAS will meet the needs of all Americans, including persons with hearing and vision disabilities and those who do not speak English. Finally, we will continue to harness the benefits of existing EAS while the Next Generation EAS is developed and deployed. The combination of the existing and Next Generation EAS systems will ensure the continuity of EAS while the Next Generation EAS is being implemented, and ensure that EAS alerts reach the largest number of affected people by multiple communications paths as quickly as possible.

2. Below, we describe the four cornerstones of the Next Generation EAS: (1) Maintaining the existing EAS network; (2) utilizing a common messaging protocol, CAP, to be implemented by all EAS Participants following its adoption by FEMA; (3) incorporating new authentication and security requirements; and (4) fostering the deployment of new, redundant EAS delivery systems, including satellite, Internet, and wireline networks.

### Maintaining Existing EAS

3. Although a Presidential alert has never been sent over the EAS, the current EAS network has been used for state, local, and weather-related emergencies. We recognize that in certain emergency situations, battery-powered AM or FM receivers may be the primary source of emergency information for the general public. Broadcast and cable personnel are familiar with current EAS equipment and are trained in its use. In addition, it would be inadvisable to require immediate use of a new system until that system is fully in place and its reliability tested. We therefore do not agree with those commenters who argue that the existing EAS should be wholly abandoned or replaced at this time.

4. Instead, we conclude that broadcast, cable and other current EAS Participants should maintain the existing EAS, particularly since alternative delivery mechanisms, although potentially more robust, have yet to be deployed. We recognize,

however, that EAS currently uses a station-relay message dissemination process that lacks the flexibility and redundancy of certain evolving digital communications systems. Consequently, we also require these current EAS Participants to upgrade their networks to the Next Generation EAS, as discussed below, while maintaining existing EAS.

5. *NOAA Weather Radio*. In addition, we disagree with those commenters who suggest that NWR should replace the existing EAS. We believe, however, that the NWR system should continue to be closely integrated with EAS. NWR is one of the principal sources of alert information, and is likely to continue to be the primary originator of weather-based alerts. We also recognize that voluntary efforts, including CEA's Public Alert™ Certification and Logo Program launched in April 2004, further enhance the value and potential of this proven emergency-alert delivery system. The record demonstrates that redundant alert-delivery systems will enhance the overall reach, efficacy, and reliability of the EAS as a whole. NWR provides an alternative source of emergency alerts, and we expect that it will continue to be an important component of EAS and the overall national public alert and warning system. We nevertheless caution EAS Participants that retransmit NWR alerts to ensure that such retransmission is consistent with our EAS rules and associated protocols.

### Common Alerting Protocol (CAP) for EAS

6. In the *Further NPRM*, the Commission sought comment on the widespread assertion in the record that a common messaging protocol should be adopted to permit a digitally-based alert or warning to be distributed simultaneously over multiple platforms. The Commission noted that the Partnership for Public Warning had endorsed the OASIS Common Alerting Protocol (CAP) for this purpose and that many public and private organizations responsible for alerts believed that CAP offered the most practical means of quickly creating an effective interface between emergency managers and multiple emergency alert distribution platforms. Accordingly, the Commission asked whether CAP should be adopted as the common messaging protocol for any future digital alert system, and particularly for EAS alerts. The Commission also asked whether CAP would allow simultaneous distribution to radio, television, and wireless media such as mobile telephones and personal digital assistants (PDAs), and how it would ensure uniformity of alerts across

multiple platforms. Currently, the EAS and the NWS utilize the SAME protocol, which introduces special digital codes at the beginning and end of messages. SAME provides information concerning the originator of the alert, the event type, the areas affected, the duration of the alert, the time the alert was issued, and the station's call sign. SAME originally was developed to be transmitted over a radio medium with relatively simple devices receiving the message. For the most part, it performs well for the existing EAS and NWR but does not fully utilize the capabilities inherent in digital transmission.

7. The need for a more robust and flexible protocol that can take full advantage of digital technology has long been recognized. In 2000, the U.S. National Science and Technology Council issued its report, *Effective Disaster Warnings*, concluding that a "standard method should be developed to collect and relay instantaneously and automatically all types of hazard warnings and reports locally, regionally, and nationally for input into a wide variety of dissemination systems." In 2001, more than 130 emergency managers and technologists initiated development of a common alert message standard. In 2003, this work became a part of the OASIS standards process of the Emergency Management Technical Committee. A year later, the Emergency Management Technical Committee released CAP version 1.0, which was revised in 2005 as CAP v. 1.1.

8. CAP is an open, interoperable standard that incorporates a language developed and widely used for web documents. Its standardized alert message format—based on the World Wide Web Consortium's ("W3C's") Extensible Markup Language ("XML")—is a text-based format that facilitates data sharing across different distribution systems. As noted by various commenters, the agreed-upon XML format of CAP can be accepted by a wide variety of devices or systems. The format also permits links to voice, audio or data files, images, and multilingual translations of the alert, and to links providing further information.

9. The CAP standard specifies what fields an alert message can contain and what information can be included in the particular fields. A CAP alert provides fields such as message type, scope, incident, event information, event certainty, sender, geographic scope, and the time when an alert becomes effective and expires. Because CAP has standardized alert elements, commenters assert it will facilitate accurate and meaningful message creation and decrease the potential for

operator error. CAP also facilitates interoperability between devices, an attribute essential to establishing an EAS that can operate over multiple platforms.

10. Commenters who addressed the issue generally support the use of CAP as a means for standardizing emergency messages; and no parties indicated that CAP-based messages could not be readily accepted and processed by all EAS Participants. The USGS notes its own experience using CAP, and argues that CAP is an effective content standard that can be applied at interfaces between senders, transmitters, and receivers of alerts covering many of the common natural and man-made hazard situations. USGS concludes that CAP should be mandatory for the EAS. NASCIO also recognizes the flexibility of CAP, noting that any EAS initiator can take information from a CAP-based message and translate it into any other standard for distribution over a particular channel, network, or technology. CAP also is supported by individuals with hearing and sight disabilities, because it enables equivalent, multiple text and audio messages to be sent concerning the same event to a variety of devices that are accessible to such individuals.

11. We note that CAP also supports capabilities for a digital signature to authenticate the sender and validate the integrity of the text, and an encryption field that enables the encryption of the CAP message. An EAS initiator may encrypt, address, and otherwise secure a CAP alert, thus in part addressing security concerns that arise due to CAP's open text format. Further, CAP uniquely identifies each specific alert. Finally, CAP has been implemented by several government agencies including the USGS, NOAA NWS, and the Oregon Amber Alert Program. CAP also has been implemented in the Disaster Management Interoperability Services. Several governmental agencies, including FEMA and NOAA HAZCOLLECT, are testing CAP, and other agencies, such as the Center for Disease Control and the Virginia Department of Transportation, have endorsed it. We note that the U.S. Department of Defense and the U.S. Department of the Interior both voted for the adoption of CAP-V1.1.

12. We conclude that all EAS Participants will be required to accept alerts and warnings in the CAP format should that protocol be adopted by FEMA. This requirement applies to an EAS Participant regardless of whether the participant is utilizing existing EAS or the Next Generation EAS established in the *Order*. Although this requirement

requires action by FEMA, we find that adopting it now furthers the prompt development of a state-of-the-art, next-generation national EAS. Significantly, many EAS Participants currently are implementing other revisions to their EAS systems, and they can incorporate CAP into these revisions. Specifically, should FEMA adopt CAP as the common alerting protocol for EAS alerts, EAS Participants must accept CAP-based alerts 180 days after the date that FEMA publishes the applicable technical standards for such CAP alerts. Because most commenters urge the Commission to adopt the CAP format, we find that EAS Participants are already aware that CAP will likely be adopted, and we believe that 180 days will give them adequate time to prepare to receive CAP alerts. EAS Participants have been on notice since November 10, 2005, when the *FNPRM* was issued, that the EAS delivery standards might change. Thus, we find that 180 days will give EAS participants a reasonable period of time in which to implement changes that they should have been expecting for over 18 months since the *FNPRM* was issued. We further find that 180 days is reasonable in light of the significant public interest, to protect life and property, in implementing next generation EAS systems as soon as possible. We also note that EAS Participants will have the time period between the release of the *Order* and FEMA action for preparation.

#### Authentication and Security

13. In the *2004 NPRM*, the Commission noted that security and encryption were not the primary design criteria when EAS was developed and initially implemented, and that emergency managers were becoming more aware of potential vulnerabilities within the system. The Commission expressed concern that the EAS may be subject to unauthorized access, and that a legitimate EAS signal could be subject to hacking or jamming. Although ENDECs currently have the capability for password protection, it is up to each EAS Participant to implement the safeguard, and there is no means to monitor the extent to which EAS Participants employ passwords. Additionally, when facilities are operating unattended, no one is available on-site to intervene should unauthorized use occur. Accordingly, the Commission sought comment on how to improve the security of EAS distribution methods, information, and equipment and how to ensure the security of any public warning system. It also sought comment on the authentication and verification of EAS

alerts. Cox agrees with the FCC that there are legitimate concerns regarding the security of the EAS, and contends that any attacks on EAS or unauthorized use could be devastating. As such, Cox urges the adoption of methods to keep the system secure from intentionally false control or sabotage. Radio stations WTOP(AM), WTOP-FM, and WXTR(AM) (WTOP) contend the security of EAS distribution channels is crucial to the system working properly. WTOP suggests that the security of emergency and test messages can be improved by switching to a system which encrypts messages and guarantees secure delivery with password protection and confirmation of delivery. NAB urges the FCC to coordinate with FEMA and equipment manufacturers to look for technical solutions for ensuring the security of EAS. Contra Costa states that digital technology, particularly the use of the CAP protocol, can protect and verify the security of public warning communication links, and can enable the consistent and comprehensive monitoring of all kinds and levels of warning activity nationwide. Contra Costa states just as the Internet Protocols enable various kinds of computers to work together, CAP can provide the basis for a secure "warning internet" that can leverage all our warning assets to achieve more than any single system can alone.

14. We agree with commenters that all EAS Participants should authenticate the source of, and validate the contents of, EAS alerts. As discussed above, CAP has the capability to allow those who initiate and retransmit EAS alerts to encrypt, authenticate, and validate EAS alerts. We believe that EAS Participants that configure their networks to receive CAP-formatted messages will be able to satisfactorily authenticate and validate EAS alerts in consultation with FEMA. Accordingly, should FEMA adopt CAP as the common alerting protocol for EAS alerts, all EAS Participants must configure their systems to incorporate CAP security functions within 180 days after FEMA publishes the standards for authentication and validation of CAP-formatted alerts. We expect EAS Participants to cooperate with FEMA in its efforts to develop policies, plans, and procedures that meet FEMA's requirements for the new delivery systems and CAP protocol adopted by FEMA.

#### Next Generation Distribution Systems

15. Recent experience demonstrates that natural disasters and terrorist incidents can adversely impact terrestrial telecommunications

infrastructure. To achieve the Commission's goals of enhancing the redundancy, reliability and security of EAS, we enable the use of diverse EAS distribution platforms. Our actions today also will ensure that the Secretary of Homeland Security can implement the President's directive to provide "as many communications pathways as practicable" to reach the American people during crises.

16. The development of alternative distribution systems is already underway. For example, we note that the Association of Public Television Stations ("APTS") has proposed a hybrid, satellite/DTV broadcast system that was an integral part of FEMA's Digital Emergency Alert System (DEAS) National Capital Region Pilot. On July 12, 2006, FEMA and APTS announced the successful completion of Phase II of the DEAS pilot, and that the new DEAS would be operational in the Gulf Coast and Atlantic regions by the end of 2006, and will be deployed nationally by the end of 2007.

17. We agree with commenters that satellite-based alert distribution could be a valuable complement to the existing EAS station-relay distribution method. The vast coverage area of satellite signal footprints would allow immediate alerting of substantial portions of the country with appropriate equipment. Satellite systems also are generally immune from natural disasters and therefore may provide critical redundancy in the event that terrestrial wireline or wireless infrastructure is compromised. We also agree with commenters that Internet-based systems may enhance the resiliency of the EAS distribution network. The Internet is a robust, packet-switched network with intelligent routing, and is designed to provide alternative routes to reach almost all users. Moreover, the Internet is ubiquitous and can enhance the geographic reach of EAS. The open design of the Internet also means that EAS applications can be designed to meet the specific needs of EAS without limitation by the network.

18. We conclude that the distribution architecture of the existing EAS should be enhanced. The record underscores that EAS could be improved by authorizing the delivery of alerts through the existing EAS coupled with new redundant, distribution systems for EAS. We conclude, however, that FEMA is best positioned to determine the types of additional EAS systems that should be accommodated by EAS Participants. We expect that EAS Participants will collaborate closely with FEMA and other governmental entities to fully implement such requirements.

Accordingly, should FEMA announce technical standards for any Next Generation EAS alert delivery system, EAS Participants must configure their networks to receive CAP-formatted alerts delivered pursuant to such delivery system, whether wireline, Internet, satellite or other, within 180 days after the date that FEMA announces the technical standards for such Next Generation EAS alert delivery.

#### CAP and Next Generation EAS: Better Serving the Needs of Persons With Disabilities and Non-English Speakers

19. *Serving the needs of persons with disabilities.* President Bush's Executive Order mandates that the Secretary of Homeland Security "include in the public alert and warning system the capability to alert and warn all Americans, including those with disabilities and those without an understanding of the English language." We believe that CAP could provide an important tool for helping to accomplish this goal.

20. CAP should facilitate the provision of functionally equivalent EAS alerts and warnings to persons with disabilities. Using CAP, the original format of warning messages could be converted into various formats, including text, video, and audio. Critical information graphically portrayed, scrolled, or crawled on the screen also could be accompanied by an audio description. Persons with hearing disabilities would be able to read the entire emergency message instead of a brief summary. Audio and visual formats are both important and could contain the same information. Moreover, a CAP-formatted message could be converted to synthesized speech, as is done by NWS weather alerts, for visually impaired persons. Accordingly, in the *Order*, we promote the delivery of audio, video, and text messages to persons with disabilities by requiring EAS Participants to accept CAP-formatted alerts and warnings, should CAP be adopted by FEMA.

21. While CAP is promising, however, it may not be the whole answer for making EAS alerts accessible to persons with disabilities, and it does not address the broader question of making emergency and public safety information available to persons with disabilities. For example, Section 79.2 of the Commission's rules requires video programming distributors to make the audio portion of emergency information accessible to persons with hearing disabilities using closed captioning or other methods of visual presentation. Video programming

distributors also must ensure that emergency information provided in the video portion of a regularly scheduled newscast, or a newscast that interrupts regular programming, is accessible to persons with visual disabilities through aural description in the main audio, such as open video description. Emergency information is defined as information about a current emergency that is intended to further the protection of life, health, safety, and property, i.e. critical details regarding the emergency and how to respond to the emergency.

22. We are issuing a *Further Notice of Proposed Rulemaking* to re-examine the best way to make EAS and other emergency information accessible to persons with disabilities. We will invite comment on: (1) Presentation of the audio feed in text format, and vice-versa; (2) making emergency information available to various devices commonly used by persons with disabilities; and (3) providing emergency messages in multiple formats to meet the needs of persons with disabilities.

23. *Serving non-English Speakers.* We also affirm our commitment that non-English speakers should have access to EAS alerts as soon as the simultaneous transmission of multilingual messages is practicable. We believe that the first step toward more effectively serving non-English speakers, consistent with the Secretary of Homeland Security's responsibility to enable alerting of "those without an understanding of the English language" is to require the use of CAP, conditional on its adoption by FEMA. Requiring EAS Participants to be able to receive CAP-formatted alerts will facilitate more accurate and detailed multilingual alerts. At the same time, we also expect that EAS participants will simultaneously transmit multilingual CAP-formatted messages by EAS Participants as soon as such transmission is practicable. For example, this could happen either as a result of the development of comprehensive, nation-wide Next Generation EAS under FEMA's auspices, or pursuant to the earlier development of CAP-based transmission systems at the state level per coordination between state planners and FEMA. This requirement will ensure that the initiator of any EAS alert has the technological capability to deliver simultaneously messages in English and any other language determined to be appropriate for a given alert.

24. The rules we adopt provide the groundwork for transmission of multilingual EAS alerts and warnings. CAP, however, may not be a complete answer for making EAS alerts available

to non-English speakers, and is not a comprehensive solution for making general emergency and public safety information available to non-English speakers. Indeed, we believe that Petitioners' request is broader than the formal EAS structure and raises important questions about the availability of emergency information to the non-English speaking audience. We initiate today a Further Notice to seek additional comment on these proposals. Although we hope that the stakeholders will work together, under our auspices, to reach a resolution prior to the conclusion of our proceeding on these issues, we are prepared to issue an order addressing these issues within six months.

25. In order to begin focusing on these issues quickly, we direct the Public Safety and Homeland Security Bureau to convene a discussion (or a series of discussions) at the Commission among stakeholders as soon as possible, and to place a report describing the results in the public docket within 30 days of release of the *Order*.

#### *Expanding the Base of EAS Participants*

26. *Wireline Video Participation in EAS.* We agree with commenters that Wireline Video Providers should be considered Participants under our EAS rules. The EAS plays a critical role in providing vital public safety information. The long-term resilience of the EAS could be significantly increased by careful implementation that could better accommodate, and even harness, the innate flexibility of IP-based networks that can route around damaged nodes. Moreover, a viewer's reasonable expectation regarding the availability of alerts over television programming is identical, whether the programming is over-the-air broadcasting, cable, DBS, or a new wireline video service. By adopting a technologically neutral EAS obligation today, the Commission is enabling these emerging service providers to integrate EAS at an early developmental stage.

27. Under section 624(g) of the Act and the Commission's EAS regulations, providers of "cable systems" must participate in EAS. Section 624(g) of the Act provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations." The Commission imposed EAS regulations on cable operators pursuant to this mandate in

1994, concluding that cable "is invaluable in the dissemination of information during emergencies." The term "cable operator" means a person "who provides cable service over a cable system," including "a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act \* \* \* to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services." Thus, section 624(g) expressly authorizes the imposition of EAS requirements on Wireline Video Providers to the extent that they qualify as "cable operators" under the Act.

28. To the extent that Wireline Video Providers do not qualify as "cable operators" under the Act, we require that they participate in EAS pursuant to our Title I ancillary jurisdiction and in connection with our specific responsibilities under sections 624(g) and 706. As a general matter, the Commission has discretion to use ancillary jurisdiction when the Commission has Title I subject matter jurisdiction over the service and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities." Wireline Video Providers fall within the scope of the Commission's jurisdiction because they provide "interstate \* \* \* communication by wire." At least some of their services involve transmission across state lines, meeting the definition of "interstate communication," and they are "wire communication," which is "transmission of \* \* \* pictures \* \* \* and sounds \* \* \* by aid of wire, cable, or other like connection." Thus, the Commission has subject matter jurisdiction over these services. We also find that imposing an EAS requirement is reasonably ancillary to the effective performance of our responsibilities. Wireline Video Providers' participation in the EAS will advance the animating purpose of section 624(g) by ensuring that their video subscribers have access to the same emergency information as broadcast and cable television viewers. Indeed, we believe that their EAS participation is necessary to preserve and advance the goals of section 624(g), as Wireline Video Providers offer competitive alternatives to the video programming available through broadcast and cable television, and are likely to reach increasingly large portions of the American public as they deploy their services. Moreover, requiring Wireline Video Providers to participate in EAS also will further our core public safety mission under Title I,

which requires us to take steps to “promot[e] safety of life and property,” and section 706, and is consistent with prior Commission actions. Accordingly, we conclude that we have ancillary jurisdiction to require even those Wireline Video Providers that may not be cable operators under the Act to participate in EAS.

29. As a policy matter, we believe that the reasonable expectations of viewers should guide our efforts to encourage the development of a more comprehensive EAS system. We reaffirm that our long-term goal is to incorporate as many communications technologies as possible into a comprehensive, flexible, and redundant system to deliver EAS alerts quickly to the largest number of consumers.

30. Wireline Video Providers should be subject to the same EAS requirements as providers of Digital Cable Systems. We therefore amend our EAS rules to specifically include Wireline Video Providers. Wireline Video Providers are EAS Participants, however, only to the extent they provide video services; our EAS rules do not impose mandatory EAS obligations on wireline telephone companies providing traditional landline telephone services at this time.

#### Wireless Participation in EAS

31. Because the WARN Act directs the Commission to initiate a rulemaking regarding the establishment of an alerting system for commercial mobile service (CMS) providers that voluntarily elect to transmit emergency alerts, and the schedule set by the WARN Act precludes initiation of such rulemaking until a later date, we do not address commercial wireless carrier participation in EAS in the *Order*.

#### State Level and Geographically Targeted EAS Alerts

32. *Receipt of State-Level Messages*  
We believe that voluntary participation by cable and broadcast EAS Participants in accommodating state and local level alerting in the existing EAS has been generally successful. Nevertheless, we conclude there are compelling policy reasons to order EAS Participants to receive CAP-formatted EAS alerts activated by state governors or their designees. First, we again note that EAS use to date has been overwhelmingly related to weather and state and local alerts. We also believe that states will be more inclined to deploy the necessary resources to upgrade to Next Generation EAS, including the ability to simultaneously transmit multiple and differentiated CAP-formatted messages, if the states have a particular—and FCC-enforceable—stake in the EAS during

state and local emergencies. We conclude, therefore, that all EAS Participants within a state are required to be prepared to receive state-level messages delivered to the participant by the state’s governor (or the governor’s designee) within 180 days from the date FEMA adopts CAP, so long as such delivery is explicitly described in a state EAS plan that is submitted to and approved by the Commission. In addition, we believe that other public officials may, in appropriate circumstances, activate EAS alerts. We seek comment in the attached Further NPRM about which officials should be permitted to activate EAS alerts and under what circumstances.

33. We recognize that requiring EAS Participants to receive emergency alerts directly from state political subdivisions, such as counties and cities, could be unduly complex and costly and would create the potential for some alerts to reach those who may not be affected by a particular emergency. Accordingly, we will only require EAS Participants to receive CAP-formatted EAS messages delivered to them by a state governor (or the governor’s designee), or by FEMA (or its designee) on behalf of a state. We find that requiring EAS Participants to receive CAP-formatted EAS messages delivered by a state governor of any state in which they provide service falls within the scope of our Title I subject matter jurisdiction as well as our public interest authority to grant licenses for radio communication under Title III of the Act. “[P]romoting safety of life and property through the use of wire and radio communication” is a core mission of the FCC under Title I, Title III authorizes the FCC to grant radio licenses in the public interest, and the Commission is authorized to “make such rules and regulations \* \* \* as may be necessary in the execution of its functions,” and to “[m]ake such rules and regulations \* \* \* not inconsistent with law, as may be necessary to carry out the provisions of this Act \* \* \*.” Developing and maintaining an effective, reliable, integrated, flexible, and comprehensive EAS system is a fundamental and longstanding FCC mission under the Communications Act.

34. Requiring EAS Participants to receive state-level alerts delivered pursuant to, and upon adoption by FEMA of CAP advances the Commission’s policy objectives and serves the public interest by ensuring the ability of state governors to disseminate emergency information via EAS facilities. State governments play an essential role in providing emergency information to the public. The

Commission’s EAS regulations always have accounted for the importance of state-level alerts, but we now conclude that mandating receipt of state-level EAS messages will further our core public safety mission.

35. Exercising ancillary jurisdiction to require EAS participants to receive messages delivered to them by a state governor also furthers other statutory goals. Section 615 requires the Commission to “encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs,” while section 706 grants specific, communications-related powers to the President in time of war or national emergency. In such event, the President may, for example, take control of, or suspend or amend the rules and regulations applicable to, any or all cable and radio and television broadcast stations within the Commission’s jurisdiction. Commission authority to regulate participation by cable systems in the emergency alerting process stems primarily from section 624(g) of the Act. That provision requires the Commission to ensure that cable viewers are afforded the same access to emergency communications as broadcast viewers and listeners. Additionally, the Americans with Disabilities Act strives to make all facets of our society fully accessible to individuals with disabilities. Finally, in light of the President’s 2006 *Executive Order*, which directs the Commission to adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system, we note that our action today is consistent with that Presidential directive as well as with emergency preparedness goals expressed by Congress in other statutes.

36. Accordingly, we reject as without merit NAB’s argument that the Commission lacks authority to mandate participation in state-level EAS alerts. NAB points out that section 706 concerns Presidential communications, and the executive orders delegating authority to the FCC pursuant to section 706 largely concern the development of a national-level communications capability to serve Presidential needs, rather than state or local needs. Section 706 is not the only source of FCC authority to impose EAS requirements, however. The Commission’s core public safety mission under Title I is not limited to national emergencies, nor is our Title III authority to grant radio licenses in the public interest so limited. Indeed, the *Executive Order* broadly affirms that “[i]t is the policy of

the United States to have an effective, reliable, integrated, flexible, and *comprehensive system* to alert and warn the American people \* \* \*, *taking appropriate account of \* \* \* all levels of government in our Federal system* \* \* \*.” We could not ensure a “comprehensive” system without taking state governments into account. The FCC’s past reliance on voluntary state-level EAS participation reflects a policy judgment, rather than a lack of authority, as NAB suggests.

37. NAB also argues that the Commission cannot rely on section 1 because requiring state-level EAS participation implicates programming content. The only support that NAB offers for this argument is the D.C. Circuit’s statement in *Motion Picture Ass’n of America, Inc. v. FCC* that “[o]ne of the reasons why section 1 has not been construed to allow the FCC to regulate programming content is because such regulations invariably raise First Amendment issues.” NAB’s reliance on this statement is misplaced. In the *MPAA* decision, the Commission was relying on Title I alone to regulate programming content in the face of a statutory provision regarding video descriptions that the court interpreted as limiting FCC authority. Here, in contrast, we rely on Title III as well as Title I to mandate the carriage of emergency information. Requiring the carriage of emergency information also is a longstanding function of the Commission. NAB fails to explain how requiring state-level EAS participation implicates programming content in a manner different from the longstanding requirement of national-level EAS participation, which NAB does not challenge.

38. In addition to the source of our legal authority to require participation in state-level EAS, we also must consider the facilities and architecture of the various EAS Participants in determining how best to implement a state-level EAS requirement. We note that the existing EAS network architecture is based on a broadcast model of localized receipt and distribution by radio, television, and cable service providers using ENDEC units situated throughout their service areas. We recognize that certain other EAS Participants may have organized their service infrastructure on a national, not regional, basis. For example, the Commission recognized in the *First Report and Order* that SDARS “is by nature a national service and that as a result the development of methods to ensure receipt of state and local alerts by SDARS licensees is likely to be challenging.” Requiring these carriers to

establish monitoring capability in every state where they do business could prove to be unduly burdensome. Satellite carriers, in particular, have expressed a need for a single receive point for EAS alerts that would complement their organizational structure.

39. We do not require SDARS and DBS providers to accommodate state-level alerts given the national nature of their broadcast area. We note that SDARS and DBS cannot accommodate state-level alerts at present and might not be able to do so even after the full implementation of Next Generation EAS. In the United States, there are two licensed SDARS operators: Sirius Satellite Radio, Inc. (“Sirius”) and XM Radio, Inc. (“XM”). Both licensees transmit their programming via satellite directly to subscribers’ receivers on a nationwide basis. In the *First Report and Order*, the Commission required the SDARS licensees to transmit national level EAS messages on all channels on their systems. In the *Further NPRM*, the Commission sought comment on how technologies like SDARS, which are designed to receive and deliver national programming, could deliver state and local alerts. Although some potential, developing functionalities may enable SDARS to support geo-targeting, such as state-level alerts, in the future, XM expressed concerns that its current system cannot support geographical targeting of even state-level alerts to affected subscribers. XM states that there are two impediments for SDARS to transmit state or local alerts—a satellite radio provider does not have an ENDEC unit located in every area where a local alert might originate, and a satellite radio provider’s programming reaches subscribers nationwide. Because SDARS providers face technical difficulties in distributing even state-level alerts to their subscribers, we will not at this time require SDARS to provide geographically-targeted alerts, including state-level alerts.

40. Likewise, DBS satellite service providers, such as EchoStar (Dish Network) and DIRECTV, transmit video programming on a nationwide basis to subscribers over a wide area. DIRECTV and PanAmSat state that currently DBS systems cannot distribute state and local alerts without interrupting programming across a wide area. DIRECTV also states that its system currently does not have the capability to receive, sort, and disseminate state and local EAS messages only to the subscribers in the affected areas. Because DBS providers also face technical difficulties in distributing alerts to portions of their subscribers, we will not at this time

require DBS to provide geographically-targeted alerts, including state-level alerts.

### **Geographically Targeted Alerts at Less Than State-Level**

41. Although we are limiting the requirement that EAS Participants receive state level messages to messages received from state governors (or their designees) pursuant to CAP, we do not seek to restrict state use of the EAS network to only emergency messages that require statewide distribution. A governor could, for example, determine that certain emergencies warrant use of the EAS network to deliver a geographically-targeted alert to particular regions. Employing CAP will facilitate such geo-targeting, at least in connection with some technologies. Accordingly, we also require EAS Participants to deliver emergency alerts to areas smaller than a state. In order to transmit such targeted alerts, however, EAS Participants must be provided with CAP-formatted messages containing appropriate codes. Further, EAS Participants may comply with this requirement by utilizing geographic-specific alerts such as subscripts utilizing localized information. Expanding our state-level alert transmission requirement to include geographically targeted alerts will afford each state governor the ability to determine the types and geographic scope of emergency alerts provided to residents via the EAS network, in coordination with the ability of EAS Participants in his or her state to accommodate such alerts. Importantly, however, in adopting this requirement, we note that terrestrial broadcasters may not presently have the technical ability to restrict delivery of a targeted alert solely to the affected portion of their service area. This type of restriction is not necessary in order to comply with the requirements established in this Order.

### **Coordination With State and Local Governments**

42. For nearly half a century, the Commission has encouraged state and local participation in the EAS (and its predecessor, the EBS), and we take additional steps in the Order that will ensure the effective and efficient participation by states and local jurisdictions in the EAS. We note that the SECCs, industry participants, and state and local officials have worked closely with Commission staff to ensure the efficacy of the EAS, resulting in EAS plans for all 50 states. The Commission has reviewed and approved EAS plans for a number of states, and continues to

have a cooperative, highly effective relationship with the SECCs.

43. As a result of the actions we take today to ensure that state governors have a robust and reliable EAS network at their disposal, states will likely need to revise their EAS plans to specify how and what types of EAS alerts they will transmit to EAS Participants. Such information will enable the Commission, FEMA, affected EAS Participants, and other interested parties to ensure that these plans are implemented successfully. While we do not dictate specific plan revisions other than those set forth herein for implementing mandatory state-level alerts, we encourage states to include information regarding redundant distribution of EAS alerts. Since state EAS plans will be required to contain information concerning our new requirement that EAS Participants must distribute EAS alerts delivered by state governors, plans should specify how the governor's CAP-formatted EAS messages will be transmitted to all EAS Participants who provide services in the state. We also encourage states to submit an electronic data file specifying monitoring assignments and the paths for the Emergency Action Notification (EAN) from the NP to each station in their plans. We believe that such an electronic submission would facilitate the Commission's revision of the EAS "Map Book" required under the EAS rules. We also urge states to provide detailed information identifying the monitored and monitoring broadcast stations.

44. In order to ensure that the Commission has sufficient notice of revised EAS plans, we will require state and local entities to file modified plans with the Commission at least 90 days before the effective date of any revision to their EAS plans or their EAS designations. In addition, we will require state and local entities to annually confirm their plans and designations.

45. We also agree with commenters and the specific recommendation of the Independent Panel that the Commission should proactively provide EAS training to interested parties. We agree with Contra Costa that education to public safety and citizens is critical in making any type of infrastructure successful. We also believe that the Alaska Broadcasters Association and the State Emergency Communications Committee (Joint Parties) in our EAS proceeding are correct in recommending that training be provided for emergency managers as well as subject broadcasters, cable systems and other media operators. We take particular note of the argument of

the Ohio Association of Broadcasters that proper training (and retraining) is a critical component of EAS, and supports training programs at the local level. OAB believes the Federal government also should be responsible for providing guidance to ensure that an appropriate minimum level of training of emergency management personnel is provided. According to OAB, a national training standard would ensure that training of persons who administer and activate EAS is uniform throughout local communities, states, and among federal, state and local government agencies. Accordingly, we hereby instruct the Commission's Public Safety and Homeland Security Bureau to coordinate with FEMA on the appropriate requirements for and resources to conduct EAS training programs to ensure states and other interested parties can implement the Next Generation EAS.

#### Assessing EAS Operation

46. In the *Further Notice*, we asked whether performance standards are necessary to ensure that Next Generation technologies deliver alerts to the American public in a timely and accurate fashion. We noted that proposed standards could include the length of time it takes to receive a message and the accuracy of the message.

47. It is vital that the EAS operates as designed in an emergency. We intend to examine several potential mechanisms to ensure that is the case. In the *Further Notice of Proposed Rulemaking*, we seek comment on several options, including: (1) Additional testing; (2) station certification of compliance; and (3) assessments of EAS performance after an alert has been triggered. We will revisit the issue of performance standards if it appears that they are warranted.

#### I. Procedural Matters

##### A. Paperwork Reduction Act Analysis

48. This *Second Report and Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA.

##### B. Congressional Review Act

49. The Commission will send a copy of this *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), see 5 U.S.C. 801(a)(1)(A).

#### II. Final Regulatory Flexibility Analysis

50. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Further Notice of Proposed Rulemaking* in EB Docket 04-296 ("*First Report and Order and FNPRM*"). The Commission sought written public comment on the proposals in the *EAS NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

##### Need for, and Objectives of, the Rules

51. The *Second Report and Order* adopts rules that set the framework for a Next Generation EAS. In the *Order*, we take the following actions to establish service requirements for a Next Generation EAS, and establish schedules by which industry segments must transition to the new system: (1) Require EAS Participants to configure their systems to accept EAS alerts formatted in the Common Alerting Protocol ("CAP") format no later than 180 days after FEMA announces the technical standards and requirements for CAP-formatted messages; (2) require EAS Participants to configure their systems to authenticate and validate EAS alerts formatted in the CAP format no later than 180 days after FEMA announces the standards for authentication and validation of CAP-formatted messages; (3) require EAS Participants to receive and transmit state-level messages delivered to the Participant by the state's governor (or the governor's designee) within 180 days from the date FEMA adopts CAP, so long as such delivery is explicitly described in a state EAS plan that is submitted to and approved by the Commission; (4) require wireline common carriers that provide video programming service to receive and distribute EAS messages; and (5) delegate authority to the Chief, Public Safety and Homeland Security Bureau to perform actions that will facilitate proper implementation of our rules and resolution of issues as set forth herein.

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

52. There were no comments filed that specifically addressed the IRFA.

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

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



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

54. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

55. *Television Broadcasting.* The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having \$13 million or less in annual receipts. Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.” According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations 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. There are also 2,127 low power television stations (“LPTV”). Given the nature of this service, we will presume that all LPTV

licensees qualify as small entities under the SBA size standard.

56. *Radio Stations.* The revised rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has \$6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95 percent) of 11,410 commercial radio stations have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

57. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution, which consists of all such firms having \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

58. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. We have estimated that there were 1,065 cable operators who qualified as small cable system operators at the end of 2005. Since then, some of those companies

may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,065 small entity cable system operators that may be affected by the rules and policies proposed herein.

59. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, (“Act”) 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 1 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.” The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 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. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,065. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Act.

60. *Multipoint Distribution Systems.* The established rules apply to Multipoint Distribution Systems (“MDS”) operated as part of a wireless cable system. The Commission has defined “small entity” for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

61. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other



subscription programming, which includes all such companies generating \$13.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of \$11 million annually. Therefore, we estimate that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

62. *Instructional Television Fixed Service*. The established rules would also apply to Instructional Television Fixed Service ("ITFS") facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 are small businesses and may be affected by the established rules.

63. *Incumbent Local Exchange Carriers ("LECs")*. We have included small incumbent LECs in this present IRFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate

size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

64. *Competitive (LECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed rules.

65. *Satellite Telecommunications and Other Telecommunications*. The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273

firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

66. The second category—*Other Telecommunications*—includes "establishments primarily engaged in \* \* \* providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." Of this total, 424 firms had annual receipts of \$5 million to \$9,999,999 and an additional 6 firms had annual receipts of \$10 million to \$24,999,999. Thus, under this second size standard, the majority of firms can be considered small.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

67. In this Second Report and Order, we have taken steps to advance our public safety mission by establishing a framework for the Next Generation of EAS and by expanding the base of EAS participants to include wireline telephone companies that provide programming in competition with broadcast and cable television.

#### *Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

68. The RFA requires an agency to describe any significant alternatives that it has considered in developing 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

69. The *First Report and Order* and *FNPRM* sought comment on a number of alternatives to the imposition of EAS obligations on the digital communications technologies discussed in this Second Report and Order that are increasingly being used by the American public. The Commission has considered each of the alternatives and in this Second Report and Order imposes minimal regulation on small

entities to the extent consistent with our goal of advancing our public safety mission by adopting rules that expand the reach of EAS. The affected service providers have generally expressed their willingness to cooperate in a national warning system, and we anticipate that this addition of new providers to EAS can be accomplished swiftly and smoothly.

70. The benefits of requiring additional carriers to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that is able to provide effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. Most commenters contend, and we agree, that the EAS should remain an important component of any future alert and warning system. Further, in most cases, the digital platforms affected by this Second Report and Order either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with minimal cost.

71. Likewise, most commenters agreed that CAP is best-suited to deliver Next Generation EAS. By requiring EAS participants to adopt CAP, we believe that this will best serve our goal of protecting the life and property of all Americans. We acknowledge that compliance with the rules adopted in the order may impose cost burdens on small entities. However, given the great public interest benefits of the rules, we find that the public interest benefits outweigh the economic burdens, if any. In the Initial Regulatory Flexibility Analysis, we sought comment on these rules and no commenter proposed an alternative version that would serve these benefits while lessening the economic burdens. Accordingly, we find that we have discharged our duty to consider burdens imposed on small entities.

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

### III. Ordering Clauses

73. 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 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, that the Second Report and Order in EB Docket No. 04–296 is adopted, and that part 11 of the Commission's rules, 47 CFR part 11, is amended. The Order shall become effective December 3, 2007, or 60 days after Congress's receipt of a Congressional Review Act report, whichever is later, except that new or modified information collection requirements will not become effective prior to OMB approval.

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

#### List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

#### PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Section 11.1 is revised to read as follows:

##### § 11.1 Purpose.

This part contains rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. The rules in this part describe the required technical standards and operational procedures of the EAS for analog AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireline video systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and

other participating entities. The EAS may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.

■ 3. Add § 11.2 to read as follows:

##### § 11.2 Definitions.

The definitions of terms used in part 11 are:

(a) *Primary Entry Point (PEP) System.* The PEP system is a nationwide network of broadcast stations and other entities connected with government activation points. It is used to distribute the EAN, EAT, and EAS national test messages and other EAS messages. FEMA has designated 34 of the nation's largest radio broadcast stations as PEPs. The PEPs are designated to receive the Presidential alert from FEMA and distribute it to local stations.

(b) *Local Primary One (LP-1).* The LP-1 is a radio station that acts as a key EAS monitoring source. Each LP-1 station must monitor its regional PEP station and a back-up source for Presidential messages.

(c) *EAS Participants.* Entities required under the Commission's rules to comply with EAS rules, e.g., analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems.

(d) *Wireline Video System.* The system of a wireline common carrier used to provide video programming service.

(e) *Participating National (PN).* PN stations are broadcast stations that transmit EAS National, state, or local EAS messages to the public.

(f) *National Primary (NP).* Stations that are the primary entry point for Presidential messages delivered by FEMA. These stations are responsible for broadcasting a Presidential alert to the public and to State Primary stations within their broadcast range.

(g) *State Primary (SP).* Stations that are the entry point for State messages, which can originate from the Governor or a designated representative.

■ 4. Section 11.11 is amended by revising paragraph (a) and (e) to read as follows:

##### § 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; analog television broadcast stations including

Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which

may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in 47 CFR 25.701(a) (including certain Ku-band Fixed-Satellite Service Direct to Home providers); SDARS, as defined in 47 CFR 25.201; participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels.

These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates listed above and in the following tables:

#### ANALOG AND DIGITAL BROADCAST STATIONS

EAS equipment requirement	AM & FM class A TV <sup>4</sup>	Digital AM & FM	TV	DTV	FM class D <sup>1</sup>		LPTV <sup>2</sup>	LPFM <sup>3</sup>
Two-tone encoder <sup>5</sup> .....	Y <sup>6</sup>	Y 12/31/06	Y	Y 12/31/06	N	N	N	Y
EAS decoder .....	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
EAS encoder .....	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	N	N	N	Y
Audio message .....	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
Video message .....	N/A	N/A	Y 1/1/97	Y 12/31/06	N/A	Y 1/1/97	N/A	Y

<sup>1</sup> Effective December 31, 2006, digital FM Class D stations have the same requirements.

<sup>2</sup> LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment. Effective December 31, 2006, digital LPTV stations have the same requirements.

<sup>3</sup> LPFM stations must install a decoder within one year after the FCC publishes in the **Federal Register** a public notice indicating that at least one decoder has been certified by the FCC. Effective December 31, 2006, digital LPFM stations have the same requirements.

<sup>4</sup> Effective December 31, 2006, digital Class A TV stations have the same requirements.

<sup>5</sup> Effective July 1, 1995, the two-tone signal must be 8–25 seconds.

<sup>6</sup> Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.

#### Analog Cable Systems

[A. Analog cable systems serving fewer than 5,000 subscribers from a

headend must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002, or

comply with the following EAS requirements. All other analog cable systems must comply with B.]

#### SYSTEM SIZE AND EFFECTIVE DATES

B. EAS equipment requirement	≥5,000 but < 10,000 sub-scribers	≥10,000 sub-scribers	<5,000 sub-scribers
Two-tone signal from storage device <sup>1</sup> .....	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS decoder <sup>3</sup> .....	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder <sup>2</sup> .....	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels .....	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels, <sup>3</sup> Audio and Video EAS message on at least one channel.	N	N	Y 10/1/02

<sup>1</sup> Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.

<sup>2</sup> Analog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

<sup>3</sup> The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data such as interactive games.

#### Wireless Cable Systems (BRS/EBS STATIONS)

[A. Wireless cable systems serving fewer than 5,000 subscribers from a

single transmission site must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002,

or comply with the following EAS requirements. All other wireless cable systems must comply with B.]

#### SYSTEM SIZE AND EFFECTIVE DATES

B. EAS equipment requirement	≥5,000 sub-scribers	<5,000 sub-scribers
EAS decoder .....	Y 10/1/02	Y 10/1/02

## SYSTEM SIZE AND EFFECTIVE DATES—Continued

B. EAS equipment requirement	≥5,000 sub-scribers	<5,000 sub-scribers
EAS encoder <sup>1 2</sup> .....	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels <sup>3</sup> .....	Y 10/1/02	N
Video interrupt and audio alert message on all channels; <sup>4</sup> Audio and Video EAS message on at least one channel .....	N	Y 10/1/02

<sup>1</sup> The two-tone signal is used only to provide an audio alert to an audience prior to an EAS emergency message or to the Required Monthly Test (RMT) under § 11.61(a)(1). The two-tone signal must be 8–25 seconds in duration.

<sup>2</sup> Wireless cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

<sup>3</sup> All wireless cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

<sup>4</sup> The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data services such as Internet.

**Digital Cable Systems and Wireline Video Systems**

[A. Digital cable systems and Wireline Video Systems serving fewer than 5,000

subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing by December 31,

2006, or comply with the following EAS requirements. All other digital cable systems and Wireline Video Systems must comply with B.]

## SYSTEM SIZE AND EFFECTIVE DATES

B. EAS equipment requirement	≥5,000 sub-scribers	<5,000 sub-scribers
Two-tone signal from storage device <sup>1</sup> .....	Y 12/31/06	Y 12/31/06
EAS decoder <sup>3</sup> .....	Y 12/31/06	Y 12/31/06
EAS encoder <sup>2</sup> .....	Y 12/31/06	Y 12/31/06
Audio and Video EAS Message on all channels <sup>4</sup> .....	Y 12/31/06	N
Video interrupt and audio alert message on all channels <sup>3</sup> Audio and Video EAS message on at least one channel .....	N	Y 12/31/06

<sup>1</sup> Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.

<sup>2</sup> Digital cable systems and Wireline Video Systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

<sup>3</sup> The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

<sup>4</sup> All digital cable systems and Wireline Video Systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

Note: Programmed channels do not include channels used for the transmission of data such as interactive games or the transmission of data services such as Internet.

## SDARS AND DBS

EAS equipment requirement	SDARS	DBS
Two-tone signal <sup>1</sup> .....	Y 12/31/06	Y 5/31/07
EAS decoder .....	Y 12/31/06	Y 5/31/07
EAS encoder .....	Y 12/31/06	Y 5/31/07
Audio message on all channels <sup>2</sup> .....	Y 12/31/06	Y 5/31/07
Video message on all channels <sup>2</sup> .....	N/A	Y 5/31/07

<sup>1</sup> Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.

<sup>2</sup> All SDARS and DBS providers may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages or by any other method that ensures that viewers of all channels receive the EAS message.

\* \* \* \* \*

(e) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Public Safety and Homeland Security Bureau or their State Emergency Communications Committee for information and guidance.

■ 5. Section 11.21 is revised to read 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 must be reviewed and approved by the Chief, Public Safety and Homeland Security Bureau, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

(a) The State plan contains procedures for State emergency management and other State officials, the NWS, and EAS Participants' personnel to transmit emergency information to the public

during a State emergency using the EAS, including mandatory messages initiated by a state governor or his/her designee. The State plan must specify how state-level and geographically targeted EAS messages initiated by a state governor or his/her designee will be transmitted to all EAS Participants who provide services in the state, and must include specific and detailed information describing how such messages will be aggregated, designated as mandatory, and delivered to EAS Participants. State EAS plans should include a data table, in computer readable form, clearly showing monitoring assignments and the specific primary and backup path for the emergency action notification ("EAN") from the PEP to each station in the plan.

(b) The Local Area plan contains procedures for local officials or the NWS to transmit emergency information to the public during a local emergency using the EAS. Local plans may be a part of the State plan. A Local Area is a geographical area of contiguous communities or counties that may include more than one state.

(c) The FCC Mapbook is based on the above plans. It organizes all broadcast stations and cable systems according to their State, EAS Local Area, and EAS designation.

■ 6. Section 11.47 is amended by revising paragraph (b) to read as follows:

**§ 11.47 Optional use of other communications methods and systems.**

\* \* \* \* \*

(b) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Public Safety and Homeland Security Bureau or their State Emergency Communications Committee for information and guidance.

**§ 11.51 EAS code and Attention Signal Transmission requirements.**

■ 7. Section 11.51 is amended by revising paragraphs (g) introductory text and (h) introductory text to read as follows:

\* \* \* \* \*

(g) Analog cable systems and digital cable systems with fewer than 5,000 subscribers per headend and wireline video systems and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention signal may be produced from a storage device. Additionally, these analog cable

systems, digital cable systems, and wireless cable systems:

\* \* \* \* \*

(h) Analog cable systems and digital cable systems with 10,000 or more subscribers; analog cable and digital cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and wireline video systems and wireless cable systems with 5,000 or more subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

\* \* \* \* \*

■ 8. Section 11.55 is amended by revising paragraph (a) introductory text to read as follows:

**§ 11.55 EAS operation during a State or Local Area emergency.**

(a) All EAS Participants within a state (excepting SDARs and DBS providers) must receive and transmit state-level and geographically targeted EAS messages, as aggregated and delivered by the state governor or his/her designee, or by FEMA on behalf of such state governor, upon approval by the Commission of an applicable state plan providing for delivery of such alerts no sooner than 180 days after adoption of CAP by FEMA. Examples of natural emergencies which may warrant activation are: Tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc.

Man-made emergencies may include: toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

\* \* \* \* \*

■ 9. Add § 11.56 to read as follows:

**§ 11.56 EAS Participants receive CAP-formatted alerts**

Notwithstanding anything herein to the contrary, all EAS Participants must be able to receive CAP-formatted EAS alerts no later than 180 days after FEMA publishes the technical standards and requirements for such FEMA transmissions.

[FR Doc. E7-21137 Filed 11-1-07; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Parts 571 and 585

[Docket No. NHTSA 2007-0010]

RIN 2127-AK03

### Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Fuel System Integrity

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; response to petitions.

**SUMMARY:** In a final rule published in August 2006, NHTSA amended its safety standard on occupant crash protection to establish the same 56 km/h (35 mph) maximum speed for frontal barrier crash tests using belted 5th percentile adult female test dummies as it had previously adopted for tests using belted 50th percentile adult male dummies. The agency adopted the amendment to help improve crash protection for small statured occupants. In this document, in response to petitions for reconsideration of that rule, we are adjusting the phase-in requirements to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, *i.e.*, beginning on September 1, 2008.

We are also making technical corrections regarding special phase-in provisions for small volume manufacturers included in the August 2006 rule, as well as in several other regulations.

**DATES:** *Effective Date:* This final rule is effective January 2, 2008.

*Petitions for Reconsideration:* If you wish to submit a petition for reconsideration of this rule, your petition must be received by December 17, 2007.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section V; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Ms. Carla Cuentas, Office of Crashworthiness Standards (Telephone: 202-366-1740) (Fax: 202-366-2739).