

U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

This rule, proposing to approve the redesignation of the Warren County SO<sub>2</sub> nonattainment areas to attainment, and to approve the associated maintenance plan, and to change the status of Mead Township and Clarendon Borough in Warren County from unclassifiable to attainment, does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 1, 2004.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 11

[EB Docket No. 04-51; FCC 04-46]

#### Amendment of the Commission's Rules Regarding the Emergency Alert System

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes revisions to the Commission's rules regarding the Emergency Alert System (EAS) and seeks comment on these proposed revisions to the Commission's rules, some of which were set forth in a petition for rulemaking filed by the Wireless Cable Association International, Inc. (WCA). The proposed revisions are intended to reduce burdens on EAS participants and improve the overall performance of the EAS.

**DATES:** Comments are due May 10, 2004, and reply comments are due May 24, 2004.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Gay, Enforcement Bureau, Office of Homeland Security, at (202) 418-1228, or via the Internet at [bonnie.gay@fcc.gov](mailto:bonnie.gay@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, in EB

Docket No. 04-51, FCC 04-46, adopted March 4, 2004, and released March 12, 2004. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's Web site at <http://www.fcc.gov>.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to EB Docket No. 04-51. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is EB Docket No. 04-51. Parties may also submit an electronic comment by Internet e-mail. To get filing instruction for e-mail comments, commenters should send an e-mail to [ecfshelp@fcc.gov](mailto:ecfshelp@fcc.gov), and should include the following words in the regarding line of the message: "get form<your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail).

For hand deliveries, the Commission contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 2002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings

must be addressed to the Commission Secretary, Office of the Secretary, Federal Communications Commission.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. The Commission also strongly encourages that parties track the organization set forth in this *NPRM* in order to facilitate the Commission's internal review process.

### Synopsis of the Notice of Proposed Rulemaking

1. In this *NPRM*, the Commission proposes revisions to part 11 of the Commission's rules regarding the EAS and seeks comment on these proposed revisions to part 11 of the Commission's rules, some of which were set forth in a petition for rulemaking filed by the WCA.

2. The Commission's EAS rules are designed to ensure that individual TV viewers, including viewers of wireless cable TV systems, receive all EAS alerts, no matter what channel the viewer may be watching. Section 11.11(a) of the Commission's rules requires wireless cable providers serving more than 5,000 subscribers to install special equipment sufficient to display the audio and video EAS message on every channel in their systems. Systems serving fewer than 5,000 subscribers are required to display the audio and video EAS message only on one channel, but must provide a video interrupt and an audio alert on every channel. Under the WCA proposal, a wireless cable operator would install EAS equipment for one channel only at the headend of the system. In the event of an EAS alert, the system would automatically force each subscriber set-top box to tune to the channel carrying the EAS alert. WCA argues that "force tuning" would allow wireless cable providers to deliver EAS alerts to all viewers in a more technologically and economically efficient manner. As proposed, the rule revision would provide the greatest economic benefit to systems with over 5,000 subscribers by obviating the need for special signal conversion for all channels, but also would provide a benefit to those systems with fewer than 5,000 subscribers.

3. Under WCA's proposed software based "force tune" solution, the video/audio output of the EAS equipment will be connected to an encoder for a channel selected to carry EAS messages. Upon EAS activation, the EAS equipment will send a trigger signal to the system headend which then forwards the trigger to the subscriber's set-top box as part of the control data included in every multiplexed program stream transmitted by the system. The software in the set-top box will recognize the trigger and "force tune" the set-top box to the selected EAS message channel. WCA represents that a reasonable cost estimate for this alternative is \$46,000.00 or about 2% of the cost of channel by channel implementation.

4. The Commission proposes to amend part 11 of the rules to allow wireless cable television systems to comply with the Commission's EAS requirements by installing only one set of EAS equipment at the headend of their systems. Under this proposed rule revision, wireless cable television providers will be able to "force tune" all channels in their systems to the channel carrying an EAS alert. Small wireless cable systems serving fewer than 5,000 subscribers currently are required to display audio and video EAS messages on one channel, and video interrupt and audio alert on all other channels. The Commission seeks comment on how the proposal would affect these systems.

5. The Commission also proposes to expand WCA's proposal to allow "force tuning" for systems with more than 5,000 subscribers, which currently are required to place EAS messages on all program channels. The Commission seeks comment on whether it should adopt "force tuning" for all wireless cable systems, or whether "force tuning" should be limited to systems of a certain size and, if so, what size would be appropriate. The Commission seeks comment on the pros and cons of "force tuning," as proposed by WCA and the *NPRM*, and whether there is another approach which is a better alternative, technically and/or financially, than the one proposed, or whether compliance with the current requirements is most appropriate. Information is requested from system operators, industry associations, equipment suppliers and all other interested parties.

6. The Commission notes that it requires certification of EAS equipment in accordance with the procedures set forth in subpart J of part 2 of the Commission's rules. It appears that the WCA proposal is software driven, that it requires the use of approved EAS equipment at the headend, and that no

changes to approved equipment are required. For these reasons, the Commission does not propose new authorization standards for equipment used to implement the proposed "force tune" procedure. Rather, the Commission proposes to require that the operators of systems using this "force tune" technology develop procedures to ensure that the process works and that subscriber equipment, such as set-top boxes, does, in fact, tune to the EAS alert/message channel when instructed to do so by the headend equipment. The Commission seeks comment on its proposal not to require new equipment authorization. The Commission also requests recommendations as to procedures to be followed by operators to ensure that required EAS notices are delivered to subscribers. Finally, the Commission invites comment on what effects the proposals and issues addressed in this *NPRM* may have on consumer equipment.

### Initial Regulatory Flexibility Analysis

7. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix A. As required by section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared an IRFA of the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* specified in paragraph 9 of the *NPRM*. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

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

8. In this *NPRM*, the Commission solicits comment on a petition for rulemaking filed by the Wireless Cable Association International, Inc. requesting revisions to the part 11 rules governing the Emergency Alert System ("EAS"). The requested revisions are intended to reduce burdens on EAS participants and improve the overall performance of the EAS.

### Legal Basis

9. Authority for the actions proposed in this *NPRM* may be found in sections 1, 4(i), 4(j), 4(o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 303(r), 544(g) and 606.

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

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. 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). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The arts, entertainment, and recreations sector had 96,497 small firms.

11. *Multipoint Distribution Systems.* The proposed rules would 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, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees.

12. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, Cable and Other Subscription Programming, which includes all such companies generating \$12.5 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, the Commission finds that there are approximately 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 proposed herein.

13. *Instructional Television Fixed Service.* The proposed 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, the Commission does 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, the Commission tentatively concludes that at least 1,932 ITFS are small businesses and may be affected by the proposed rules.

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

14. There are no reporting or recordkeeping requirements proposed in this *NPRM*. The proposals set forth in the *NPRM* are, for the most part, intended to enhance the performance of the EAS while reducing the burden on digital wireless cable systems. The Commission emphasizes that participation in state and local EAS activities remains voluntary and that it does not wish to impose additional costs or burdens on entities that choose not to participate in state and local area EAS plans. The *NPRM* seeks comment on proposed implementation of new equipment capabilities and new policies with regard to method of delivery of EAS messages to viewers for all EAS alerts, national, state and local. These proposals would lessen cost and operational burdens on digital wireless cable system EAS participants.

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

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (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 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 small entities.

16. In setting forth the proposals contained in this *NPRM*, the Commission has attempted to minimize the burdens on all entities. The Commission seeks comment on the impact of its proposals on small entities and on any possible alternatives that would minimize the impact on small entities.

### Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

### Ex Parte Rules

18. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

### Ordering Clauses

19. Accordingly, pursuant to the authority contained in sections 1, 4(i), 4(j), and 4(o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 154(o), 303(r), 544(g) and 606, notice is hereby given of the proposals described in this *Notice of Proposed Rulemaking*.

20. The Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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