

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ <sup>1</sup>	MCAQD <sup>2</sup>	PDEQ <sup>3</sup>	PCAQCD <sup>4</sup>
PPPP	Surface Coating of Plastic Parts and Products	X	X		
QQQQ	Wood Building Products	X	X	X	
RRRR	Surface Coating of Metal Furniture	X	X	X	
SSSS	Surface Coating of Metal Coil	X	X	X	
TTTT	Leather Finishing Operations	X	X	X	
UUUU	Cellulose Products Manufacturing	X	X	X	
VVVV	Boat Manufacturing	X	X	X	
WWWW	Reinforced Plastics Composites Production	X	X	X	
XXXX	Tire Manufacturing	X	X	X	
YYYY	Stationary Combustion Turbines	X	X	X	
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X	X		
AAAAA	Lime Manufacturing Plants	X	X	X	
BBBBB	Semiconductor Manufacturing	X	X	X	
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X	X	X	
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters	X			
EEEEE	Iron and Steel Foundries	X	X	X	
FFFFF	Integrated Iron and Steel	X	X	X	
GGGGG	Site Remediation	X	X	X	
HHHHH	Miscellaneous Coating Manufacturing	X	X	X	
IIIII	Mercury Emissions from Mercury Cell Chlor-Alkali Plants	X	X	X	
JJJJJ	Brick and Structural Clay Products Manufacturing	X	X	X	
KKKKK	Clay Ceramics Manufacturing	X	X	X	
LLLLL	Asphalt Roofing and Processing	X	X	X	
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X	X	X	
NNNNN	Hydrochloric Acid Production	X	X	X	
PPPPP	Engine Test Cells/Standards	X	X	X	
QQQQQ	Friction Products Manufacturing	X	X	X	
RRRRR	Taconite Iron Ore Processing	X	X	X	
SSSSS	Refractory Products Manufacturing	X	X	X	
TTTTT	Primary Magnesium Refining	X	X	X	
WWWWW	Hospital Ethylene Oxide Sterilizers			X	
YYYYY	Area Sources: Electric Arc Furnace Steelmaking Facilities			X	
ZZZZZ	Iron and Steel Foundries Area Sources			X	
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities			X	
CCCCCC	Gasoline Dispensing Facilities			X	
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources			X	
EEEEEE	Primary Copper Smelting Area Sources			X	
FFFFFF	Secondary Copper Smelting Area Sources			X	
GGGGGG	Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium			X	
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources			X	
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources			X	
MMMMMM	Carbon Black Production Area Sources			X	
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds			X	
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources			X	
PPPPPP	Lead Acid Battery Manufacturing Area Sources			X	
QQQQQQ	Wood Preserving Area Sources			X	
RRRRRR	Clay Ceramics Manufacturing Area Sources			X	
SSSSSS	Glass Manufacturing Area Sources			X	
TTTTTT	Secondary Nonferrous Metals Processing Area Sources			X	

<sup>1</sup> Arizona Department of Environmental Quality.  
<sup>2</sup> Maricopa County Air Quality Department.  
<sup>3</sup> Pima County Department of Environmental Quality.  
<sup>4</sup> Pinal County Air Quality Control District.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 10**

[PS Docket No. 07-287; FCC 08-164]

**Commercial Mobile Alert System**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission

(Commission or FCC) complies with section 602(c) of the Warning, Alert and Response Network (WARN) Act by adopting rules that require non-commercial educational (NCE) and public broadcast television station licensees and permittees to install equipment and technologies that will provide these licensees/permittees with the ability to enable the distribution of geo-targeted Commercial Mobile Alert System (CMAS) alerts to participating Commercial Mobile Service (CMS)

providers. The Commission's stated goal is to implement section 602(c) in a manner consistent with the CMAS architecture and technologically neutral rules the Commission adopted in the CMAS First Report and Order. In this document, the Commission also complies with section 602(f) of the WARN Act by adopting rules requiring technical testing for commercial mobile service providers that elect to transmit emergency alerts and for the devices and equipment used by such providers for transmitting such alerts.

**DATES:** Effective October 14, 2008, except for § 10.350 (a)(7) and (b), which contain new or modified information collection requirements that have not been approved by OMB. After OMB has approved them, the Commission will publish a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Goldthorp, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418-1096.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's CMAS Second Report and Order in PS Docket No. 07-287, adopted and released on July 8, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased 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

1. Section 602(c) requires the Commission to require "licensees and permittees of noncommercial educational broadcast stations or public broadcast stations (as those terms are defined in section 397(6) of the Communications Act of 1934 (47 U.S.C. 397(6))) to install necessary equipment and technologies on, or as part of, any broadcast television digital signal

transmitter \* \* \* " Section 397(6) of the Communications Act defines the terms "noncommercial educational broadcast station" and "public broadcast station" to mean a television or radio broadcast station which: (1) Under the rules and regulations of the Commission in effect on November 2, 1978, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (2) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.

2. In the CMAS NPRM (73 FR 546, January 3, 2008) the Commission sought comment on the scope of section 602(c). The Commission noted that although the caption of section 602(c) refers to digital television transmissions, it mandates that the Commission impose any equipment requirements on licensees and permittees of NCE and public broadcast stations as those terms are defined under section 397(6) of the Communications Act. That provision references both radio and television broadcast stations. The Commission sought comment on this definition as it relates to section 602(c) of the WARN Act, and further asked whether it was a fair reading of the language to conclude that this section applies only to licensees and permittees of NCE and public broadcast television stations. The Association of Public Television Stations (APTS) noted in its comments that datacasting and the equipment required for it depends on the "unique capabilities of digital television," and that accordingly, the section applies only to digital television transmission. DataFM asserted that section 602(c) requires installation of equipment at all NCE and public broadcast stations.

3. The Commission concluded that Congress intended the equipment requirements set forth in section 602(c) of the WARN Act to apply only to licensees and permittees of NCE and public broadcast television stations and not radio stations. Section 602(c) requires that the Commission complete a proceeding to require licensees and permittees of NCE or public broadcast stations to install necessary equipment and technologies "on, or as part of, any broadcast television digital signal transmitter" (emphasis added) to enable the distribution of geographically targeted alerts by CMS providers. This language clearly shows that Congress intended that these equipment requirements apply only to NCE and

public broadcast television stations. The use of the term "any" indicates that if a station lacks a television transmitter—e.g., if the station is a radio broadcast station—there is no installation requirement. Additionally, APTS has indicated that its ability to perform the functions contemplated by section 602(c), enabling the distribution of geographically targeted alerts by participating CMS providers, is dependent on capabilities unique to digital television. For these reasons, the Commission disagreed with DataFM's conclusion that section 602(c) requires installation of equipment at all NCE and public broadcast stations.

### Section 602(c)—Necessary Equipment to Support CMS Provider Geo-Targeting

4. In the CMAS NPRM the Commission sought comment regarding the equipment required by section 602(c) of the WARN Act. Specifically, the Commission asked how this digital television-based system would interface with the CMAS. The Commission also asked how the requirement regarding the geo-targeting of CMAS alerts would fit into a centrally administered CMAS as envisioned by the Commercial Mobile Service Alert Advisory Committee (CMSAAC). Further, the Commission sought comment regarding how the digital television-based system would implement the message formats defined by the "C" interface.

5. Apart from APTS, no commenters addressed the specific type of equipment that would need to be installed to satisfy section 602(c) of the WARN Act. In its comments and reply comments, APTS argued that by including section 602(c) in the WARN Act, Congress required that datacasting, and the equipment necessary for its implementation, be part of the CMAS. APTS further noted that datacasting equipment would not be inconsistent with the CMAS as recommended by the CMSAAC, but rather would be "one component of a comprehensive alert and warning system that includes necessary redundancies to ensure that the public receives essential information under any circumstances." Such redundancies, argued APTS, would enhance the effectiveness and security of the CMAS.

6. APTS listed four types of equipment it says NCE/public broadcast television stations would need to install in order to transmit geo-targeted alerts to participating CMS providers. In listing this equipment, APTS contemplated that the Public Broadcasting System (PBS) would receive CMAS alerts directly from the Alert Gateway and transmit the CMAS

alert data via national satellite feed to NCE/public broadcast television stations. NCE/public broadcast television stations would then transmit the geo-targeted CMAS alerts via their digital television transmitters to CMS Provider Gateways located in their television service areas, providing a redundant, alternate method of delivery of CMAS alerts to CMS Provider Gateways. APTS described the equipment needed as follows:

- “Geo-targeting Systems.” According to APTS, this equipment would have the capability to activate those NCE and public broadcast digital television transmitters necessary to transmit the CMAS alert to areas in which CMS Provider Gateways are located, while all other NCE and public broadcast digital television transmitters would ignore the CMAS alert transmission.

- “Groomers.” APTS stated that this equipment (also referred to as “dynamic bitrate capability”) would automatically adjust a selected program’s video bitrate to make room for CMAS alert data when those data are present. APTS stated that such a capability would allow the licensee to have full use of its transmission capability when CMAS alert data are not present. APTS argued that installation of this equipment is necessary for each licensee’s master control (with redundancy) as well as at each licensee’s remote transmitter sites (also with redundancy).

- “Data Receivers.” APTS asserted that this equipment is necessary for the stations to receive the CMAS data from PBS. APTS proposed that each master control and each remote transmitter have redundant receivers. APTS also proposed that small satellite receive antennas be installed for each remote transmitter should the licensee’s data distribution via its studio-to-transmitter links be unavailable.

- PBS Equipment. Additionally, according to APTS, PBS will require equipment to route the CMAS data around its other functions. APTS reported that PBS will receive the CMAS data from appropriate origination point(s), process and bridge the data around the master control systems, and transmit the data via satellite to all licensees, remote transmitters, and other selected receive locations. APTS stated that PBS will install redundant systems at both its main Network Operations Center (NOC) and its Disaster Recover Site (DRS), as well as install both data security and physical security at both locations.

- Back-up Power Equipment. Finally, APTS recommended that licensees of NCE and public broadcast television

stations be required to install back-up power equipment.

7. In order for NCE/public broadcast television station licensees/permittees to enable geo-targeting by participating CMS providers, they must be able to interface with the CMAS in a manner consistent with the rules adopted in the CMAS First Report and Order (73 FR 43099, July 24, 2008). According to the Commission, the most appropriate way for them to do this would be to install equipment that will allow them to receive CMAS alerts from the Alert Gateway over an interface and then to transmit such alerts to participating CMS providers. Under such an approach, licensees and permittees of NCE/public broadcast television stations would provide a redundant path by which participating CMS providers could receive geo-targeted alerts. Accordingly, the Commission required licensees and permittees of NCE/public broadcast television stations to install necessary equipment and technologies at, or as part of, their digital television transmitters that will provide them with the capability to receive CMAS alerts sent from the Alert Gateway over a secure interface and to transmit the alerts to the CMS Provider Gateways of participating CMS providers.

8. As noted above, APTS contemplated that licensees and permittees of NCE/public broadcast television stations will use datacasting technology to receive and deliver CMAS alerts to participating CMS providers. While the Commission believed that datacasting technology and the associated equipment described above is one way of meeting this requirement, it did not want to foreclose other DTV transmitter-based technologies that may exist in the future. Accordingly, in keeping with the technologically neutral policy articulated in the CMAS First Report and Order, the Commission’s rules will allow, but not require, the use of datacasting to fulfill the requirements of section 602(c) and the Commission’s rules, as long as NCE and public broadcast television station licensees and permittees do so in a manner consistent with the Commission’s CMAS rules, including the CMAS architecture previously adopted in the CMAS First Report and Order. The Commission also recognized APTS’s proposed use of datacasting assumes that PBS will provide a feed from the Alert Gateway to the NCE/public broadcast station digital television transmitters and associated receivers. For purposes of this Order, the Commission assumed that PBS or a similarly situated entity will provide the interface feed between the Alert

Gateway and the NCE/public broadcast television stations. PBS or a similarly situated entity must work with the Alert Gateway Administrator to establish the necessary interface by which CMAS alerts will be sent to NCE and public broadcast television stations.

9. The Commission further noted that section 606(b) of the WARN Act provides that NCE and public broadcast station licensees and permittees shall be compensated by the Assistant Secretary of Commerce for Communications and Information for reasonable costs incurred in complying with the requirements imposed pursuant to section 602(c) of the WARN Act. The Commission noted that some, if not all, NCE and public broadcast television stations may need this funding to comply with the equipment requirements the Commission adopted in the CMAS Second Report and Order. Accordingly, the Commission required NCE and public broadcast television station licensees and permittees to install the required equipment no later than 18 months from the date of receipt of the funding permitted under section 606(b) of the WARN Act or 18 months from the effective date of these rules, whichever is later. The Commission concluded that this should give NCE and public broadcast television stations adequate time to obtain any necessary funding, determine the specific equipment needed and acquire and install that equipment.

10. According to the Commission, this approach satisfies section 602(c) and serves the public interest in that it requires NCE and public broadcast television station licensees and permittees to install necessary equipment on, or as part of, their digital television transmitters to enable geo-targeting by participating CMS providers. The Commission concluded that its approach also ensures that NCE and public broadcast television station licensees and permittees fulfill this requirement in a way that complements the CMAS architecture envisioned by the CMSAAC and rules the Commission adopted in the CMAS First Report and Order. In adopting these rules in this Second Report and Order, the Commission provides participating CMS providers with a redundant, alternate distribution path by which they may choose to receive geo-targeted CMAS alerts from the Alert Gateway. As such, this action will provide an increased level of redundancy to the CMAS architecture.

#### *Section 602(f)—Testing*

11. Section 602(f) of the WARN Act states that the Commission “shall

require by regulation technical testing for commercial mobile service providers that elect to transmit emergency alerts and for the devices and equipment used by such providers for transmitting such alerts." In the CMAS NPRM, the Commission sought comment on what type of testing regime the Commission should require. The Commission noted that the CMSAAC proposed that, in order to assure the reliability and performance of this new system, certain procedures for logging CMAS alerts at the Alert Gateway and for testing the system at the Alert Gateway and on an end-to-end basis should be implemented. The Commission sought comment on these proposed procedures, and asked whether they satisfied the requirements of section 602(f) of the WARN Act. The Commission also sought comment on whether there should be some form of testing of the CMAS that sends test messages to the mobile device and the subscriber. The Commission noted that it had a testing regime in place for the Emergency Alert System (EAS), and asked whether the EAS testing rules offered a model for CMAS testing. The Commission noted that in the EAS rules, internal system tests are combined with tests that are heard (or in some cases seen) by the public, and asked whether some similar form of test that alerts the public should be required for the CMAS. The Commission asked how subscribers should be made aware of such tests if testing were to involve subscribers.

12. Commenters generally supported the testing regime recommended by the CMSAAC. They did not object to testing during development and internal testing, and assumed that some sort of logging of results will be part of the ultimate testing process. For example, the California Public Utilities Commission (CAPUC) supported the recommendations of the CMSAAC and endorsed thorough testing before deployment. Similarly, the National Emergency Numbering Association (NENA) endorsed testing and noted that there needs to be ample time devoted to testing the CMAS before its deployment. According to the Wireless RERC, there is a need to develop a thorough testing regime to ensure that the CMAS will be accessible and inclusive of all people, including those with disabilities and those who do not speak English.

13. Although all parties that commented on the testing issue agree that a thorough testing regime is essential for an effective CMAS, the parties differ regarding the timing of tests, or whether testing should affect end-users. For example, T-Mobile, Nokia, and Alltel all supported testing,

but recommended that the Commission follow the CMSAAC recommendations that end-to-end testing be defined as testing between the Alert initiator and the Alert Gateway, and that there be no testing that involves the end-user. According to Nokia, end-user testing would cause unnecessary network use and would result in customer confusion. AT&T agreed that any CMAS testing regime should follow the CMSAAC recommendations and asserted that "the EAS testing rules do not provide an effective model for testing the CMAS." In its reply comments, Interstate Wireless supported testing to end-user "test units." Similarly, by supporting the EAS testing regime as a model for testing the CMAS, CAPUC inherently supported testing to end-users. CellCast recommended a separate rulemaking for testing, and believes that testing to the end-user is appropriate. In its reply comments, CellCast also recommended that the Commission adopt a monthly end-to-end testing requirement.

14. In ex parte comments submitted on May 23, 2008, CTIA submitted a proposal for testing requirements that were developed together with Alltel, AT&T, Sprint Nextel, T-Mobile and Verizon Wireless. Under CTIA's proposal, participating CMS providers would participate in monthly testing of the CMAS system. The monthly test would be initiated by the federally-administered Alert Gateway at a set day and time and would be distributed through the commercial mobile service provider infrastructure and by participating CMS providers over their networks. Upon receipt of the test message, participating CMS providers would have a 24-hour window to distribute the test message in their CMAS coverage areas in a manner that avoids congestion or other adverse effects on their networks. Under CTIA's proposal, mobile devices supporting CMAS would not be required to support reception of the required monthly test and participating CMS providers would not be required to deliver required monthly tests to subscriber handsets, but a participating CMS provider may provide mobile devices with the capability for receiving these tests. CTIA's testing proposal also featured regular testing from the "C" interface to ensure the ability of the Federal Alert Gateway to communicate with the CMS Provider Gateway.

15. The Commission agreed with the CMSAAC and most commenters that periodic testing of all components of the CMAS, including the CMS provider's components would serve the public interest and is consistent with the WARN Act. Accordingly, as

recommended by CTIA and several CMS providers, the Commission will require each participating CMS provider to participate in monthly testing of CMAS message delivery to the CMS Provider Gateway and within the CMS providers' infrastructure. CMS providers must receive these required monthly test messages and must also distribute those test messages to their coverage area within 24 hours of receipt by the CMS Provider Gateway. CMS providers may determine how this delivery will be accomplished and may stagger the delivery of the required monthly test message over time and over geographic subsets of their coverage area to manage the traffic loads and accommodate maintenance windows. Participating CMS providers must keep an automated log of required monthly test messages received by the CMS Provider Gateway from the Federal Alert Gateway.

16. CMAS required monthly tests will be initiated only by the Federal Alert Gateway Administrator using a defined test message; real event codes and alert messages may not be used for test messages. A participating CMS provider may forego these monthly tests if pre-empted by actual alert traffic or in the event of unforeseen conditions in the CMS provider's infrastructure, but shall indicate this condition by a response code to the Federal Alert Gateway. The Commission will not require that CMS providers make available mobile devices that support reception of the required monthly test. The Commission will, however, allow CMS providers to choose to do so. CMS providers that choose not to make the required monthly test available to subscribers must find alternate methods of ensuring that subscriber handsets will be able to receive CMAS alert messages.

17. The Commission also adopted CTIA's recommendation that, in addition to the required monthly test, there should be periodic testing of the interface between the Federal Alert Gateway and each CMS Provider Gateway to ensure the availability and viability of both gateway functions. Additional periodic testing to ensure that the Federal Alert Gateway is able to deliver CMAS alerts to the CMS Provider Gateway will further strengthen the reliability of the CMAS. CMS Provider Gateways must send an acknowledgement upon receipt of these interface test messages. CMS providers must comply with these testing requirements no later than the date of deployment of the CMAS, which is the date that CMAS development is complete and the CMAS is functional and capable of providing alerts to the public. All of these testing requirements

are consistent with the testing procedures advocated by CTIA. The Commission declined to adopt some of the specific testing requirements that CTIA suggested, such as designating a specific day and time for the required monthly test and defining the exact parameters and content of the required monthly test, the expiration time for the required monthly test, and specific details of the periodic tests of the interface between the Federal Alert Gateway and participating CMS Provider Gateways. Because the CMAS must still undergo significant development and the Federal Alert Aggregator and Gateway have just recently been identified, the Commission believed it would be premature to adopt such specific testing requirements at this time.

#### Procedural Matters

##### A. Final Paperwork Reduction Act Analysis

18. This Second Report and Order adopts a new or revised information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. This requirement will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. The Commission also will publish a separate notice in the **Federal Register** inviting comment on the new or revised information collection requirements adopted in this proceeding. The requirement will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirement. In addition, the Commission noted that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), it will seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

##### B. Report to Congress

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

#### Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in PSHSB Docket 07-287 (CMAS NPRM).

The Commission sought written public comments on the proposals in the CMAS NPRM, including comment on the IRFA. Comments on the IRFA were to have been explicitly identified as being in response to the IRFA and were required to be filed by the same deadlines as that established in section IV of the CMAS NPRM for other comments to the CMAS NPRM. The Commission sent a copy of the CMAS NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the CMAS NPRM and IRFA were published in the **Federal Register**. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

21. *Need for, and Objectives of, the Order.* Section 602(c) of the WARN Act requires the Commission to, "[w]ithin 90 days after the date on which the Commission adopts relevant technical standards based on recommendations of the Commercial Mobile Service Alert Advisory Committee . . . complete a proceeding to require licensees and permittees of noncommercial educational broadcast stations or public broadcast stations (as those terms are defined in section 397(6) of the Communications Act of 1934 (47 U.S.C. 397(6))) to install necessary equipment and technologies on, or as part of, any broadcast television digital signal transmitter to enable the distribution of geographically targeted alerts by commercial mobile service providers that have elected to transmit emergency alerts under this section." Although the CMAS NPRM solicited comment on issues related to section 602(a) (CMAS Technical requirements) and 602(b) (CMS provider election to the CMAS), this Second Report and Order only addresses issues raised by sections 602(c) and 602(f) of the WARN Act. Accordingly, this FRFA only addresses the manner in which any commenters to the IRFA addressed the Commission's adoption of rules regarding NCE and public television licensee's installation of digital television transmission towers retransmission equipment, as required by section 602(c) of the WARN Act, and the Commission's adoption of rules for testing the CMAS as required by section 602(f) of the WARN Act.

22. This Second Report and Order adopts further rules necessary to enable CMS alerting capability for CMS providers who elect to transmit emergency alerts to their subscribers. Specifically, the Order adopts rules that require NCE and public television stations to install on, or as part of, any broadcast television digital signal transmitter equipment to enable the distribution of geographically targeted

alerts by commercial mobile service providers that have elected to transmit CMAS alerts. This equipment will interface with the CMAS Alert Gateway and enable the transmission of the national CMAS alert feed from the CMAS Alert Gateway to all covered broadcast television digital towers. As the Commission discussed in greater detail below, it is necessary that NCE and public broadcast television stations install this equipment to further enable the distribution of geographically targeted alerts by CMS providers that participate in the CMAS. The installation and operation of this equipment is consistent with the technologically neutral requirements adopted in the CMAS First Report and Order.

23-24. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the IRFA. The only commenter that explicitly identified itself as a small business was Interstate Wireless, Inc., whose comments addressed only the technical requirements and protocols relevant to section 602(a) of the WARN Act. Interstate Wireless Inc.'s comments were addressed in the CMAS First Report and Order.

25. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

26. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new

category, the Commission will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small.

27. *Cellular Radiotelephone Service.* As noted, the SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)." Under that SBA category, a business is small if it has 1,500 or fewer employees. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Accordingly, the pertinent data for this category is contained within the prior Wireless Telecommunications Carriers (except Satellite) category. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior category and the available data, the Commission estimated that the majority of wireless firms can be considered small.

28. *Auctions.* Initially, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

29. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held

auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

30. *Narrowband Personal Communications Service.* The Commission held an auction for narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more

than \$15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

31. *Wireless Communications Service.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined "small business" for the wireless communications service (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

32. *700 MHz Guard Bands Licenses.* In the 700 MHz Guard Bands Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses. Subsequently, in the 700 MHz Second Report and Order, the Commission reorganized the

licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel). A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks. Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

33. *700 MHz Band Commercial Licenses.* There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698–757, 758–763, 776–787, and 788–793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) “Small business,” which is defined as an entity that has attributed average annual gross revenues that do not exceed \$15 million during the preceding three years; and (2) “very small business,” which is defined as an entity with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years. In Block C of the Lower 700 MHz Band (710–716 MHz and 740–746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small size standards.

34. An auction of 740 licenses for Blocks C (710–716 MHz and 740–746 MHz) and D (716–722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: five EAG licenses and 251 CMA licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

35. The remaining 62 megahertz of commercial spectrum is currently scheduled for auction on January 24, 2008. As explained above, bidding credits for all of these licenses will be available to “small businesses” and “very small businesses.”

36. *Advanced Wireless Services.* In the AWS–1 Report and Order, the Commission adopted rules that affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The Commission did not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the AWS–1 Report and Order adopts the same small business size definition that the Commission adopted for the broadband PCS service and that the SBA approved. In particular, the AWS–1 Report and Order defines a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The AWS–1 Report and Order also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

37. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census category of “Wireless Telecommunications Carriers (except Satellite).” Under this category, the SBA deems a business to be small if it has 1,500 or fewer employees. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission estimates small business prevalence using the

prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small. Thus, under this category, the majority of firms can be considered small.

38. In the Paging Third Report and Order, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services. Of those, the Commission estimates that 360 are small, under the SBA-approved small business size standard.

39. *Wireless Communications Service.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications service (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the

auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

40. *Wireless Communications Equipment Manufacturers.* While these entities are merely indirectly affected by the Commission's action, the Commission described them to achieve a fuller record. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

41. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

42. *Software Publishers.* While these entities are merely indirectly affected by the Commission's action, it is describing them to achieve a fuller record. These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of \$23 million or less in average annual receipts for the category of Software Publishers. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under \$10 million, and an additional 403 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under \$10 million, and an additional 565 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission estimates that the majority of the firms in this category are small entities that may be affected by the Commission's action.

43. *NCE and Public Broadcast Stations.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having \$13 million or less in annual receipts. According to Commission staff review of the 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 (twelve) million or less. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

44. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of

operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent. There are also 2,117 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

45. The Commission has, under SBA regulations, estimated the number of licensed NCE television stations to be 380. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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

46. This Report and Order may contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. If the Commission determines that the Report and Order contains collection subject to the PRA, it will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA at an appropriate time. At that time, OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public

Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

47. 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.”

48. As noted in paragraph 2 above, this Second Report and Order deals only with the WARN Act section 602 (c) requirement that the Commission complete a proceeding to require licensees and permittees of noncommercial educational broadcast stations or public broadcast stations to install necessary equipment and technologies on, or as part of, any broadcast television digital signal transmitter to enable the distribution of geographically targeted alerts by commercial mobile service providers that have elected to transmit emergency alerts under this section.” Many of the entities affected by this Second Report and Order are the member stations for the Association of Public Broadcasters (APBS), which was a member of the CMSAAC. Further, in its formation of the CMSAAC, the Commission made sure to include representatives of small businesses among the advisory committee members. The CMAS NPRM also sought comment on a number of alternatives to the recommendations of the CMSAAC, such as the Digital EAS. In its consideration of this and other alternatives the CMSAAC recommendations, the Commission has attempted to impose minimal regulation on small entities to the extent consistent with the goal of advancing its public safety mission by adopting technical requirements, standards and protocols for a CMAS that CMS providers would elect to provide alerts and warnings to their customers. The Commission’s action in this Second Report and Order

neither requires nor forecloses the exact outcome requested by the entities most affected, as represented by APTS.

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

49. None.

#### Report to Congress

50. The Commission will send a copy of the CMAS Second Report and Order, including this FRFA, in a report to be sent to Congress 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 is also hereby published in the **Federal Register**.

#### Ordering Clauses

51. *It is ordered*, that pursuant to sections 1, 4(i) and (o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, this Second Report and Order *is hereby adopted*. The rules adopted in this Second Report and Order shall become effective October 14, 2008, except that § 10.350 (a)(7) and (b) contain new or modified information collection requirements which will not become effective prior to OMB approval.

52. *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 10

Alert and Warning, Commercial Mobile Alert System, noncommercial educational broadcast stations, public broadcast stations.

Federal Communications Commission.

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

#### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR chapter 1 part 10 as follows:

#### **PART 10—COMMERCIAL MOBILE ALERT SYSTEM**

■ 1. The authority citation for part 10 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

■ 2. Add a new § 10.340 to subpart C to read as follows:

#### **§ 10.340 Digital Television Transmission Towers Retransmission Capability.**

Licensees and permittees of noncommercial educational broadcast television stations (NCE) or public broadcast television stations (to the extent such stations fall within the scope of those terms as defined in section 397(6) of the Communications Act of 1934 (47 U.S.C. 397(6))) are required to install on, or as part of, any broadcast television digital signal transmitter, equipment to enable the distribution of geographically targeted alerts by commercial mobile service providers that have elected to transmit CMAS alerts. Such equipment and technologies must have the capability of allowing licensees and permittees of NCE and public broadcast television stations to receive CMAS alerts from the Alert Gateway over an alternate, secure interface and then to transmit such CMAS alerts to CMS Provider Gateways of participating CMS providers. This equipment must be installed no later than eighteen months from the date of receipt of funding permitted under section 606(b) of the WARN Act or 18 months from the effective date of these rules, whichever is later.

■ 3. Add a new § 10.350 to subpart C to read as follows:

#### **§ 10.350 CMAS Testing Requirements.**

This section specifies the testing that will be required, no later than the date of deployment of the CMAS, of CMAS components.

(a) *Required Monthly Tests.* Testing of the CMAS from the Federal Alert Gateway to each Participating CMS Provider’s infrastructure shall be conducted monthly.

(1) A Participating CMS Provider’s Gateway shall support the ability to receive a required monthly test (RMT) message initiated by the Federal Alert Gateway Administrator.

(2) Participating CMS Providers shall schedule the distribution of the RMT to their CMAS coverage area over a 24 hour period commencing upon receipt of the RMT at the CMS Provider Gateway. Participating CMS Providers shall determine the method to distribute the RMTs, and may schedule over the 24 hour period the delivery of RMTs over geographic subsets of their coverage area to manage traffic loads and to accommodate maintenance windows.

(3) A Participating CMS Provider may forego an RMT if the RMT is pre-empted by actual alert traffic or if an unforeseen condition in the CMS Provider infrastructure precludes distribution of the RMT. A Participating CMS Provider Gateway shall indicate such an unforeseen condition by a response code to the Federal Alert Gateway.

(4) The RMT shall be initiated only by the Federal Alert Gateway Administrator using a defined test message. Real event codes or alert messages shall not be used for the CMAS RMT message.

(5) A Participating CMS Provider shall distribute an RMT within its CMAS coverage area within 24 hours of receipt by the CMS Provider Gateway unless pre-empted by actual alert traffic or unable due to an unforeseen condition.

(6) A Participating CMS Provider may provide mobile devices with the capability of receiving RMT messages.

(7) A Participating CMS Provider must retain an automated log of RMT messages received by the CMS Provider Gateway from the Federal Alert Gateway.

(b) *Periodic C Interface Testing.* In addition to the required monthly tests, a Participating CMS Provider must participate in periodic testing of the interface between the Federal Alert Gateway and its CMS Provider Gateway. This periodic interface testing is not intended to test the CMS Provider's infrastructure nor the mobile devices but rather is required to ensure the availability/viability of both gateway functions. Each CMS Provider Gateway shall send an acknowledgement to the Federal Alert Gateway upon receipt of such an interface test message. Real event codes or alert messages shall not

be used for this periodic interface testing.

[FR Doc. E8-18144 Filed 8-13-08; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071106673-8011-02]

RIN 0648-XJ59

#### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel in the Bering Sea and Aleutian Islands Management Area; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; correction.

**SUMMARY:** On July 30, 2008, NMFS published a revised Table 4 that reallocated Atka mackerel from the 2008 incidental catch allowance to the B season allowance for the Amendment 80 cooperative in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). Table 4 of that document contains the final 2008 and 2009 BSAI Atka mackerel allocations. That table contained inadvertent calculation errors that are corrected in this rule.

**DATES:** Effective August 14, 2008, through 2400 hrs, A.l.t., December 31, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** Federal regulations at 50 CFR part 679 implement the Fishery Management Plan (FMP) and govern the groundfish fisheries in the BSAI. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

On July 30, 2008 (73 FR 44173) NMFS published a revised Table 4 that reallocated Atka mackerel from the 2008 incidental catch allowance to the B season allowance for the Amendment 80 cooperative in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. However, NMFS inadvertently miscalculated the 2008 Amendment 80 Cooperatives total amount as 8,804 metric tons (mt) instead of 8,683 mt and A season amount as 3,812 mt instead of 3,691 mt. NMFS also inadvertently miscalculated the 2009 Amendment 80 sectors amounts in the Eastern Aleutian District and Bering Sea area and the Central Aleutian District. This document corrects the errors and republishes Table 4 in its entirety.

#### Correction

Accordingly, the revised Table 4 from the temporary rule (FR Doc. E8-17466) published on July 30, 2008, at 73 FR 44173, is corrected as follows:

On page 44174, Table 4, is corrected and republished in its entirety to read as follows:

TABLE 4—2008 AND 2009 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector <sup>1</sup>	Season <sup>2,3</sup>	2008 allocation by area			2009 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/ Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	19,500	24,300	16,900	15,300	19,000	13,200
CDQ reserve	Total	2,087	2,600	1,808	1,637	2,033	1,412
	HLA <sup>4</sup>	n/a	1,560	1,085	n/a	1,220	847
ICA	Total	100	10	10	1,400	10	10
Jig <sup>5</sup>	Total	80	0	0	61	0	0
BSAI trawl limited access	Total	319	434	0	488	678	0