

In light of the district court's decision to vacate the use of statewide average premium in the risk adjustment methodology on the ground that HHS did not adequately explain its decision to adopt that aspect of the methodology, we offer an additional explanation in this rule and are proposing to maintain the use of statewide average premium in the applicable state market risk pool for the payment transfer formula under the HHS-operated risk adjustment methodology for the 2018 benefit year. Therefore, HHS proposes to adopt the methodology previously established for the 2018 benefit year in the **Federal Register** publications cited above that applies to the calculation, collection and payment of risk adjustment transfers under the HHS-operated methodology for the 2018 benefit year. This includes the adjustment to the statewide average premium, reducing it by 14 percent, to account for an estimated proportion of administrative costs that do not vary with claims.<sup>11</sup> We seek comment on the proposal to use the statewide average premium. However, in order to protect the settled expectations of issuers that structured their pricing and offering decisions in reliance on the previously promulgated 2018 benefit year methodology, all other aspects of the risk adjustment methodology are outside of the scope of this rulemaking, and HHS does not seek comment on those finalized aspects.

### III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

### IV. Regulatory Impact Analysis

#### A. Statement of Need

This rule proposes to maintain statewide average premium as the cost-scaling factor in the HHS-operated risk adjustment methodology and continue the operation of the program in a budget neutral manner for the 2018 benefit year to protect consumers from the effects of adverse selection and premium increases due to issuer uncertainty. The Premium Stabilization Rule, previous Payment Notices, and other rulemakings noted above provided detail on the implementation of the risk adjustment program, including the specific

parameters applicable for the 2018 benefit year.

#### B. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year).

OMB has determined that this proposed rule is “economically significant” within the meaning of section 3(f)(1) of Executive Order 12866, because it is likely to have an annual effect of \$100 million in any 1 year. In addition, for the reasons noted above, OMB has determined that this is a major rule under the Congressional Review Act.

This proposed rule offers further explanation of budget neutrality and the use of statewide average premium in the risk adjustment payment transfer formula when HHS is operating the permanent risk adjustment program established in section 1343 of the PPACA on behalf of a state for the 2018 benefit year. We note that we previously estimated transfers associated with the risk adjustment program in the Premium Stabilization Rule and the 2018 Payment Notice, and that the provisions of this proposed rule do not change the risk adjustment transfers previously estimated under the HHS-operated risk adjustment methodology established in those final rules. The approximate estimated risk adjustment transfers for the 2018 benefit year are \$4.8 billion. As such, we also incorporate into this proposed rule the RIA in the 2018 Payment Notice proposed and final rules.

### V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: July 30, 2018.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: August 2, 2018.

**Alex M. Azar II,**

*Secretary, Department of Health and Human Services.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 11

[PS Docket Nos. 15–94, 15–91; FCC 18–94]

### Emergency Alert System; Wireless Emergency Alerts

**AGENCY:** Federal Communications Commission.

**ACTION:** Further notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) seeks comment on whether additional alert reporting measures are needed; whether State EAS Plans should be required to include procedures to help prevent false alerts, or to swiftly mitigate their consequences should a false alert occur; and on factors that might delay or prevent delivery of Wireless Emergency Alerts (WEA) to members of the public and measures the Commission could take to address inconsistent WEA delivery.

**DATES:** Comments are due on or before September 10, 2018 and reply comments are due on or before October 9, 2018.

**ADDRESSES:** You may submit comments, identified by PS Docket Nos. 15–94, 15–91 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Website:* <http://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

<sup>11</sup> See 81 FR 94058 at 94099.

- *Mail*: 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities*: Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Gregory Cooke, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-7452, or by email at [Gregory.Cooke@fcc.gov](mailto:Gregory.Cooke@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in PS Docket Nos. 15-94 and 15-91, FCC 18-94, adopted on July 12, 2018, and released on July 13, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street SW, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov).

#### Synopsis of the FNPRM

1. In the FNPRM, to further enhance the efficacy and utility of the EAS and WEA, the Commission seeks comment on whether to adopt false alert reporting measures; proposals to require that State EAS Plans include procedures to help prevent and mitigate the consequences of false alerts; factors that might delay or prevent delivery of WEA alerts to the public; and measures the Commission could take to address inconsistent WEA delivery.

#### I. Background

2. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies. The primary purpose of the EAS is to provide the President of the United States (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." State and local authorities also use this common distribution architecture of the EAS to distribute voluntary weather-related and other emergency alerts. Further, testing of the system at the state and local level increases the proficiency of local emergency personnel, provides insight into the system's functionality and effectiveness at the federal level, and enhances the public's ability to respond to EAS alerts when they occur. The integrity of the EAS is maintained through the Commission's EAS rules, which set forth the parameters and frequency with which EAS Participants must test the system, prohibit the unauthorized use of the EAS Attention Signal and codes, and require EAS Participants to keep their EAS equipment in good working order.

#### II. Discussion

##### A. False Alert Reporting

3. In the FNPRM, the Commission seeks further comment on whether there is a need for additional false alert and lockout reporting beyond the reporting rule adopted in the companion *Report and Order* in PS Docket Nos. 15-94 and 15-91, FCC 18-94, adopted on July 12, 2018, and released on July 13, 2018. Should there be a dedicated mechanism by which EAS Participants, Participating CMS Providers, other stakeholders and the public can report false alerts? What form should such a reporting mechanism take? Should it be integrated into the Alert Reporting System (ARS)? Should it be mandatory for EAS Participants and Participating CMS Providers? If such reporting were mandatory, what time frame, if any, should be established for the false alert report to be made (e.g., should such reports be required within five minutes of discovery)?

4. Alternatively, the Commission seeks comment on whether, in lieu of adopting a dedicated reporting mechanism for false EAS or WEA alerts or EAS lockouts, it should instead implement a process by which EAS Participants, Participating CMS Providers, emergency managers, and members of the public could inform the Commission about false alerts through currently available means other than that adopted in the companion *Report and Order* (also in PS Docket Nos. 15-94 and 15-91, FCC 18-94, adopted on July 12, 2018, and released on July 13, 2018). Regardless of what type of system might be used to facilitate false alert reporting, could and should the Commission incorporate reporting parameters to minimize reports concerning the same EAS or WEA false

alert, or are there benefits from receiving different descriptions, times, locations and reporting identities covering the same false alert?

5. The Commission seeks comment on the costs and benefits of this proposal. What burdens, if any, would a dedicated false alert reporting system impose on anyone who might want to make such a report? Would incorporating some kind of feedback mechanism into the false alert reporting system on false alerts already reported be helpful to reduce burdens on other entities that might otherwise make identical reports covering the same false alert? What quantifiable benefits might be expected to result from implementation of such reporting? To the extent offering a standard way to report on false alerts could speed corrective action, would the benefits of such an outcome outweigh whatever burdens might be associated with making the false alert report?

##### B. State EAS Plan Revisions

6. Section 11.21 of the Commission's EAS rules specifies that State EAS Plans include "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." Section 11.21, however, does not specify that these procedures include those to prevent and correct false alerts.

7. In the Public Safety & Homeland Security Bureau's (Bureau) report released in April 2018 concerning the false ballistic missile alert issued in Hawaii on January 13, 2018 (*Report on Hawaii False Alert*), the Bureau made several recommendations to state, local, Tribal, and territorial emergency alert originators and managers to help prevent the recurrence of a false alert and to improve preparedness for responding to any false alert that may occur. To the extent the Commission can aid states and localities in effecting mechanisms to prevent and correct false alerts over EAS and WEA, and promote regular communication with the SECCs to further that end, such endeavor fulfills the Commission's statutory goal promoting of safety of life and property through the regulation of wire and radio communications networks.

8. In light of the foregoing, the Commission proposes ways it can aid states and localities in implementing the Bureau's recommendations in the *Report on Hawaii False Alert*. In particular, the Commission proposes to revise Section 11.21 to require State EAS Plans to include procedures to help prevent false alerts, or to swiftly

mitigate their consequences should a false alert occur. Such information could be supplied by state and local emergency management authorities, at their discretion, to SECCs for inclusion in the State EAS Plans they administer, and would then be available to other emergency management authorities within the state for quick and easy reference. The Commission further proposes that the State EAS Plan template recently adopted by the Commission should be revised to require SECCs to identify their states' procedures for the reporting and mitigation of false alerts, (or, where the state and local emergency management authorities either do not have or will not share such information with the SECC, to specifically note that in the EAS Plan). With regard to this proposal, should any listing of such procedures contain any or all of the following:

- The standard operating procedures that state and local alert initiators follow to prepare for "live code" and other public facing EAS tests and alerts.
- The standard operating procedures that state and local alert initiators have developed for the reporting and correction of false alerts, including how the alert initiator would issue any corrections to false alerts over the same systems used to issue the false alert, including the EAS and WEA.
- The procedures agreed upon by the SECC and state emergency management agency or other State-authorized alert initiator by which they plan to consult with each other on a regular basis—at least annually—to ensure that EAS procedures, including initiation and cancellation of actual alerts and tests, are mutually understood, agreed upon, and documented in the State EAS Plan.
- The procedures ensuring redundant and effective lines of communication between the SECC and key stakeholders during emergencies.
- Other information that could prevent or mitigate the issuance of false alerts.

Would inclusion of this information in State EAS Plans be beneficial to alert originators and state and local emergency management authorities in preventing and correcting false alerts, and conducting tests of the EAS? Would this action spur greater communication between alert originators and state and local emergency management authorities and their respective SECCs? Would its inclusion provide a single source of information to which state, local, Tribal and territorial emergency alert originators and managers might refer if the need arose? Alternatively, are there reasons why such information should not be included in State EAS

Plans? The Commission seeks comment on these proposals. As to the development of the false alert procedures themselves, the FNPRM asks which agency or agencies are best situated to require their creation or otherwise have oversight over these processes. Is the FCC best positioned to take action with respect to helping prevent the transmission of false alerts, or is this better left to other agencies, such as DHS/FEMA or local alert originators?

9. The Commission seeks comment on the costs and benefits of this proposal. What costs or burdens, if any, would fall on SECCs or state, local, Tribal and territorial emergency alert originators and managers, by the inclusion of the state and local alerting procedures in State EAS Plans, as described above? What quantifiable benefits might be expected to result from such action? To the extent including state and local alerting procedures in State EAS Plans might prevent false alerts from occurring, and speed corrective action with respect to any false alerts that might issue, would the potential benefits of such outcomes, such as minimizing public confusion and disruptions caused by false alerts, outweigh whatever burdens might be associated with that process? Would the inclusion of this information in State EAS Plans more generally enhance the efficacy of state and local alerting?

#### *C. Delivery of WEA to Subscriber Handsets*

10. In the *Report on Hawaii False Alert*, the Bureau indicated that some wireless subscribers did not receive either the false alert or the subsequent correction over WEA. Further, news reports in connection with the recent National Capital Region end-to-end WEA test, the recent Vail Colorado test and Ellicott City floods indicate that some subscribers did not receive timely WEA tests or alerts. Wireless providers have identified possible reasons that members of the public, who have not opted out of receipt of WEA alerts on their mobile devices, may not receive a particular WEA message, including: (1) Whether a mobile device can receive WEA messages; (2) whether the mobile device falls within the radio coverage of a cell site transmitting a WEA message and is not impacted with adverse radio frequency conditions such as interference, building or natural obstructions, etc.; (3) whether a handset is being served by a 3G cell site during a voice call or data session (in which case a WEA message would not be received until the voice or data session is ended); and (4) whether the device

remains connected to the provider's network. Are there other reasons why a WEA may not be received by a member of the public? Are WEA alert messages broadcast from all cell sites inside the alert's geo-targeted area? What about an instance where the consumer inside the geo-targeted area may be served by a tower outside the geo-targeted area? Will the manner of delivering a WEA message to a mobile device within a geo-targeted area change after the Commission's new geolocation rules go into effect in November of 2019, and if so, how? Is it possible that due to certain network conditions, such as congestion, certain cell sites within the alert's geo-target area may not transmit a particular alert message? Are there any network conditions or resource scheduler-related issues that may cause the Participating CMS Provider's network to delay or fail to transmit WEA alert messages that it has received from IPAWS? The Commission also invites commenters to address what, if any, role that handsets and handset manufacturers play in ensuring WEA capable devices can receive WEA alerts.

11. How should WEA performance be measured and reported? The Commission seeks comment regarding WEA delivery issues that stakeholders have encountered or are aware of, either in connection with a live alert or with a regional end-to-end test.

12. The Commission also seeks comment on how stakeholders could report WEA performance. Commenters should discuss the technical feasibility, usefulness, and desirability of this option. Are there other technical ways to get feedback automatically from a WEA recipient? What might the appropriate data points look like? Who should receive such data, and how would it be protected? Should the Commission develop a testing template for state and local governments that want to test the effectiveness of WEA alerts, including how precisely WEA alerts geotarget the desired area for various carriers?

13. The Commission also seeks comment on whether and if so, how, it should take measures to address inconsistent WEA delivery. For example, should the Commission adopt technical standards (or benchmarks) for WEA performance and delivery? What form should these take? Should these be focused on internal network performance or mobile device performance, or both? Is there any practical way to ameliorate the impact of external factors (such as interference, building or natural obstructions, etc.) on WEA delivery? Should the Commission adopt rules related to WEA performance

(and if so, what form should those take), or would best practices be sufficient? What are the costs and benefits of the various options available to address inconsistent WEA delivery?

### III. Procedural Matters

#### A. Ex Parte Rules

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

#### B. Comment Filing Procedures

15. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may

be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers*: Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

#### C. Accessible Formats

16. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

#### D. Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for

comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

18. In the FNPRM, the Commission proposes actions to prevent and correct false alerts and to otherwise improve the effectiveness of the EAS and WEA. First, the Commission seeks comment on whether to adopt a dedicated reporting system, or use currently available means, such as the Commission’s Operations Center or Public Safety Support Center, so that EAS Participants, Participating CMS Providers, emergency managers, and members of the public can inform the Commission about false alerts. Second, the Commission proposes to revise its rules governing State EAS Plans to require the inclusion of standard operating procedures implemented within states to prevent and correct false alerts, where such information has been provided by state and local emergency management authorities. Finally, the Commission seeks comment on whether to adopt technical benchmarks or best practices to help ensure effective delivery of WEA alerts to the public. These proposed and contemplated actions and rule revisions potentially would enhance the Commission’s awareness of false alerts issued over the EAS and WEA, and provide state, local, Tribal and territorial emergency alert originators and managers with a common source to find standard operating procedure applicable within their jurisdictions to conduct EAS tests and correct false alerts. To the extent these proposed and contemplated actions may prevent the transmittal of false alerts and hasten corrective action of any false alerts issued, they would benefit the public by minimizing confusion and disruption caused by false alerts.

#### 2. Legal Basis

19. The proposed action is taken 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), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206.

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

20. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed actions, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

21. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

22. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

23. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments

(independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

24. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA’s size standard the majority of such entities are small entities.

25. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,639 stations and the number of commercial FM radio stations to be 6,744, for a total number of 11,383. The Commission notes that the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,120. Nevertheless, 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.

26. The Commission also notes, that in assessing whether a business entity 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 its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field

of operation. The Commission further notes that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

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

28. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category

operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

29. The Commission has estimated the number of licensed commercial television stations to be 1,378. Of this total, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 395. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,367 low power television stations, including Class A stations (LPTV) and 3,750 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

30. The Commission notes, 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. In addition, another element of the definition of “small business” requires that an 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 broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its

estimates of small businesses to which they apply may be over-inclusive to this extent.

31. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small, any company in this category which receives annual receipts of \$38.5 million or less. According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year. Of that number, 319 operated with annual receipts of less than \$25 million a year and 48 firms operated with annual receipts of \$25 million or more. Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

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

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

\$250,000,000.” There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission finds that all but nine incumbent cable operators are small entities under this size standard. The Commission notes that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

34. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

35. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet

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

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

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

38. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of

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

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

40. *Direct Broadcast Satellite ("DBS") Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers

industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1,500 employees. U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, the Commission concludes that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, the Commission must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

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

41. The Commission expects the actions proposed in the FNPRM, if adopted, will impose additional reporting, recordkeeping and/or other compliance obligations on small as well as other entities who inform the Commission about false alerts, and who submit additional information in State EAS Plans about the procedures they are using to prevent and correct false alerts. More specifically, the FNPRM seeks comment on implementing a mechanized process, or utilizing currently available means, such as the Public Safety Support Center reporting portal, to enable EAS Participants, Participating CMS Providers, emergency managers, and members of the public to inform the Commission about false alerts. Additionally, the FNPRM seeks comment on whether the Commission



should adopt additional requirements regarding false alert reporting in light of the Hawaii false alert and the recommendations in the *Report on Hawaii False Alert*, which has the potential to impact reporting requirements. For example, the Commission seeks comment on whether requiring false alert reporting, or specifying the false alert information required in a false alert report, would encourage implementation of standard operating procedures for reporting and responding to false alerts by alert originators.

42. The FNPRM also proposes to amend its rules governing State EAS Plans to allow them to include procedures implemented by alert originators within states to prevent and correct false alerts. This information includes standard operating procedures that alert initiators follow to prepare for “live code” and other public facing EAS tests and alerts; standard operating procedures that alert initiators have developed for the reporting and correction of false alerts; procedures agreed upon by the SECC and state emergency management agency or other State-authorized alert initiator by which they plan to consult with each other on a regular basis; and the procedures ensuring redundant and effective lines of communication between the SECC and key stakeholders during emergencies.

43. Finally, the FNPRM seeks comment on whether to adopt technical benchmarks or best practices to help ensure effective delivery of WEA alerts to the public.

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

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

45. The Commission does not expect the actions in the FNPRM to have a significant economic impact on small entities. Although the Commission

seeks further comment on additional requirements regarding false alert reporting in light of the Hawaii false alert and the recommendations in the Report on Hawaii False Alert, the comments are designed to be minimally burdensome to all affected entities, including small businesses. A potential burden associated filing a false alert report would likely be limited to the time expended to make such report—which would entail entering false alert information into an online filing portal. Given the relatively rare occurrence of false alerts, however, the number of individuals or entities that might ultimately use the online filing portal is likely to be extremely small.

46. The proposed changes to the State EAS Plan requirements will enable state and local alert originators to include procedures implemented by alert originators within states to prevent and correct false alerts, standard operating procedures that alert initiators follow to prepare for “live code” and other public facing EAS tests and alerts; standard operating procedures that alert initiators have developed for the reporting and correction of false alerts. To the extent that there are costs associated with submitting this information to SECCs, and to the Commission, these costs are expected to be *de minimis*. With respect to the Commission’s request for comment on whether and how to address inconsistent WEA delivery, there is a range of measures that could ultimately be adopted. The Commission has requested comment on the relative costs and benefits of these various approaches to ensure it has input from small entities and others to minimize the economic impacts of whatever actions it might take. Nevertheless, in addition to the steps taken by the Commission discussed herein, commenters are invited to propose steps that the Commission may take to further minimize any economic impact on small entities. When considering proposals made by other parties, commenters are also invited to propose alternatives that serve the goals of these proposals.

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

47. None.

#### E. Paperwork Reduction Analysis

48. The Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 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.” In addition, the Commission have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the IRFA, *supra*.

49. The FNPRM in this document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA). Public and agency comments are due 60 days after publication of this document in the **Federal Register**. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” The Commission will submit the FNPRM to the Office of Management and Budget for review under Section 3507(d) of the PRA.

50. The Commission specifically seek comment on the time and cost burdens associated with the voluntary false alert and lockout, and State EAS Plan reporting proposals contained in the FNPRM and whether there are ways of minimizing the costs burdens associated therewith.

#### F. Ordering Clauses

51. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 613, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206, and the *Twenty-First Century Communications and Video Accessibility Act of 2010*, Public Law 111–260 and Public Law 111–265, that this Further Notice of Proposed Rulemaking *is adopted*.

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



53. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before September 10, 2018, and interested parties may file reply comments on or before October 9, 2018.

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

Radio, Television.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 11 as follows:

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

■ 1. The authority citation for 47 CFR part 11 continues to read as follows:

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

■ 2. Amend § 11.21 by adding paragraph (g) to read as follows:

**§ 11.21 State and Local Area plans and FCC Mapbook.**

\* \* \* \* \*

(g) The State EAS Plan must contain procedures implemented within the state to prevent and correct false alerts initiated over the EAS and Wireless Emergency Alert systems, including:

(1) The standard operating procedures that state and local alert initiators follow to prepare for “live code” and other public facing EAS tests and alerts.

(2) The standard operating procedures that state and local alert initiators have developed for the reporting and correction of false alerts, including how the alert initiator would issue any corrections to false alerts over the same systems used to issue the false alert, including the EAS and WEA.

(3) The procedures agreed upon by the SECC and state emergency management agency or other State-

authorized alert initiator by which they plan to consult with each other on a regular basis to ensure that EAS procedures, including initiation and cancellation of actual alerts and tests, are mutually understood, agreed upon, and documented in the State EAS Plan.

(4) The procedures ensuring redundant and effective lines of communication between the SECC and key stakeholders during emergencies.

(5) Other information that could prevent or mitigate the issuance of false alerts.

Where the state and local emergency management authorities either do not have or will not share the foregoing information with the SECC, the SECC must specifically note that in the EAS Plan.

\* \* \* \* \*

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