

petition proposes to amend the color additive regulations at 21 CFR 73.200, a color additive regulation in 21 CFR part 73, "Listing of Color Additives Exempt From Certification") by expanding the permitted uses of synthetic iron oxide as a color additive to include use in edible decorative paint.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist that would warrant an environmental assessment (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: August 13, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 10 and 11

[PS Docket Nos. 15-94 and 15-91; FCC 21-77; FR ID 37636]

### Emergency Alert System, Wireless Emergency Alerts; National Defense Authorization Act for Fiscal Year 2021

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (the FCC or Commission) seeks comment on several recommendations made by the Federal Emergency Management Agency (FEMA) to revise the Emergency Alert System (EAS) rules to delete outdated references, re-name certain EAS terms to enhance public awareness, and update EAS capabilities for alerts that are persistent during certain extreme emergencies.

**DATES:** Comments are due on or before October 19, 2021, and reply comments are due November 18, 2021.

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

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

- *Mail:* Parties who 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 commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

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:**

David Munson, Attorney Advisor, Public Safety and Homeland Security Bureau at 202-418-2921 or [David.Munson@fcc.gov](mailto:David.Munson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order and Further Notice of Proposed Rulemaking (*R&O and FNPRM*), in PS Docket Nos. 15-94 and 15-91, FCC 21-77, adopted and released on June 17, 2021. The full text of this document is available at <https://www.fcc.gov/document/fcc-further-strengthens-emergency-alerting-0>.

Pursuant to §§ 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://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the

Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

*People with Disabilities:* 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).

The proceeding the *FNPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules, 47 CFR 1.1200 *et seq.* 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.

### Synopsis

In the Further Notice of Proposed Rulemaking (*FNPRM*), the Commission seeks comment on several recommendations made by FEMA for revising the EAS rules to enhance its functionality. Specifically, the Commission seeks comment on FEMA's proposed rule changes recommending: (i) Deleting the National Information Center (NIC) event code from part 11 of the Commission's rules; (ii) replacing the EAS originator code for the "Primary Entry Point System," from "PEP," to "NAT," which would stand for "National Authority"; (iii) either modifying the definition for the Emergency Action Notification (EAN) event code from "Emergency Action Notification (National Only)," to "Emergency Alert, National," or replacing the EAN event code with a new event code called "NEM," defined as "National Emergency Message"; and (iv) considering methods to update the EAS to "support persistent display of alert information and/or persistent notification for emergencies that require immediate public protective actions to mitigate loss of life."

### Paperwork Reduction Act of 1995 Analysis

The *FNPRM* may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. 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, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might further reduce the information

collection burden for small business concerns with fewer than 25 employees.

### Initial Regulatory Flexibility Analysis

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 *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 Notice. 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 *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

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

alert information persistent would ensure that the public received the alert.

#### B. Legal Basis

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

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed 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 proposed rules, 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.

*Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's 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 30.7 million businesses.

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." Internal Revenue Service (IRS)

uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

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 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

**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 \$41.5 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.

In addition to the U.S. Census Bureau’s data, based on Commission data the Commission estimates that there are 4,560 licensed AM radio stations, 6,704 commercial FM radio stations and 8,339 FM translator and booster stations. The Commission has also determined that there are 4,196 noncommercial educational (NCE) FM radio stations. The Commission however does not compile and does not otherwise have access to information on the revenue of NCE stations that would

permit it to determine how many such stations would qualify as small entities under the SBA size standard.

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 bases, thus the Commission’s 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.

**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.

The Commission notes again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included.

Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, its estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity would not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, the Commission’s estimate of small radio stations potentially affected by the rule revisions discussed in the *FNPRM* includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

**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 \$41.5 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, and 25 had annual receipts between \$25,000,000 and \$49,999,999. Based on this data, the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

The Commission has estimated the number of licensed commercial television stations to be 1,368. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, and therefore these licensees qualified as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 390. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the

revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,246 low power television stations, including Class A stations (LPTV), and 3,543 TV translator stations. 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.

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 its 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.

*Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small, any company in this category which receives annual receipts of \$41.5 million or less. 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.

*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 4,600 active cable systems in the United States. Of this total, all but five 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. 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.

*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.” As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. 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 it 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.

*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 \$35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there was a total of 333 firms that operated for the entire year. 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.

*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 its action can be considered small.

*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)).

*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.

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.

*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.

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

*Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees, and 12 firms had employment of 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

*AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS–2 and AWS–3, although the Commission does not know for certain which entities are likely to apply for these frequencies, it notes that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements

and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

*Narrowband Personal Communications Services.* Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. 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.

*Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining “small entity”, 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 claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D-, E-, and F-Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

On January 26, 2001, the Commission completed the auction of 422 C- and F-Block Broadband PCS licenses in

Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction No. 35, including judicial and agency determinations, resulted in a total of 163 C- and F-Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A-, C-, and F-Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

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

*Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. 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 established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments

operated with between 1,000 and 2,499 employees, and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

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

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

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

FEMA has also recommended that the Commission consider methods to

update the EAS to “support persistent display of alert information and/or persistent notification for emergencies that require immediate public protective actions to mitigate loss of life.”

Updating the EAS to support persistent alerts would likely require extensive modifications to the EAS. To comply with such a requirement if adopted, EAS equipment manufacturers would likely be required to develop software and/or firmware changes to implement such functionality in deployed EAS equipment and EAS equipment in production. Similar to FEMA’s code change proposal recommendations, such changes would require EAS Participants to acquire and install the software/firmware update to enable the functionality in their EAS devices, and devices currently deployed with EAS capabilities that are not be capable of being updated to reflect such functionality will have to be replaced. It is also possible that such functionality will require modifications to non-EAS equipment that receive and process the EAS device alert content output and convert it into a visual scroll. EAS Participants would also bear the expenses to update or replace deployed devices to enable this proposed EAS functionality.

To help the Commission more fully evaluate the cost of compliance if it were to adopt FEMA’s proposals, in the *FNPRM*, the Commission requests comments on the cost implications to implement the proposed recommendations and asks whether there are more efficient and less burdensome alternatives that might achieve the same results. The Commission expects the information it receives in comments, including cost and benefit analyses, to help it identify and evaluate relevant matters for small entities, including compliance costs and other burdens that may result if the proposed recommendations in the *FNPRM* were adopted.

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

The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements

under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.”

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

The FEMA recommendation to change the EAS originator code for “Primary Entry Point System,” from “PEP,” to “NAT” and to either modify the definition for the EAN event code from “Emergency Action Notification (National Only),” to “Emergency Alert, National,” or replace the EAN event code with a new event code called “NEM” would require EAS equipment manufacturers to develop software updates to implement the new code in deployed EAS equipment and EAS equipment in production. Such action also would require EAS Participants to acquire and install a software update to change the code in their EAS device. The Commission believes a software update imposes minimal costs for small and other entities, and the costs of such an action can be done in the normal course of business. The Commission is aware that some EAS device models in deployment might not be capable of being updated to reflect the new codes, and those devices would have to be replaced. As a possible alternative to a code change for EAN, the Commission asks, for example, whether retaining the EAN and revising its definition would be less costly than replacing it with a new code such as “NEM”, or whether the revision of the EAN definition produce similar costs as a new code due

to necessary technical and operational plan changes. The Commission also believes that should EAS event code changes be adopted, it may be possible to coordinate the implementation timeframe to allow a sufficient period of time for EAS Participants to complete the required installation in the normal course of the device’s regularly scheduled maintenance and which would help minimize the cost of the software update.

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

In the alternative, the Commission asks commenters to consider whether there are less obtrusive means to achieve FEMA’s proposal, such as

relying on alert originators to repeat (re-originate) alerts they deem significant enough to warrant such treatment. Significantly, the Commission raises as alternatives for comment whether FEMA's proposal on keeping the alert information or notification persistent is more appropriately configured in a next generation EAS, and whether FEMA's recommendation is more appropriately addressed in the Notice of Inquiry in this proceeding (seeking comment on internet related updates and improvements to the EAS).

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

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

**Ordering Clauses**

Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), and 606, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206, Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010, as amended, 47 U.S.C. 613, and the National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, 134 Stat. 3388, section 9201, 47 U.S.C. 1201, 1206, that this Report and Order and Further Notice of Proposed

Rulemaking in PS Docket Nos. 15-94 and 15-91 *is hereby adopted*.

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

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2021-15174 Filed 8-19-21; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 578**

[Docket No. NHTSA-2021-0001]

**RIN 2127-AM32**

**Civil Penalties**

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

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

**SUMMARY:** On January 14, 2021, NHTSA published an interim final rule in response to a petition for rulemaking from the Alliance for Automotive Innovation (Alliance). The interim final rule provided that an inflation adjustment to the civil penalty rate applicable to automobile manufacturers that violate applicable corporate average fuel economy (CAFE) standards would apply beginning with vehicle Model Year 2022. The interim final rule also requested comment. In light of a subsequent Executive Order and the agency's review of comments, NHTSA is reviewing and reconsidering that interim final rule. Accordingly, NHTSA is issuing this supplemental notice of proposed rulemaking (SNPRM) to consider the appropriate path forward and to allow interested parties sufficient time to provide comments.

**DATES:** *Comments:* Comments must be received by September 20, 2021.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

- *Instructions:* NHTSA has established a docket for this action. Direct your comments to Docket ID No. NHTSA-2021-0001. See the **SUPPLEMENTARY INFORMATION** section on "Public Participation" for more information about submitting written comments.

- *Docket:* All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the following location: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The telephone number for the docket management facility is (202) 366-9324. The docket management facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael Kuppersmith, Office of Chief Counsel, NHTSA, email [michael.kuppersmith@dot.gov](mailto:michael.kuppersmith@dot.gov), telephone (202) 366-2992, facsimile (202) 366-3820, 1200 New Jersey Ave. SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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