Order 13132 for the attached final regulation, Federal Enforcement in Group and Individual Health Insurance Markets (RIN 09–38–AN35), in a meaningful and timely manner.

In accordance with Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

45 CFR Parts 144 and 146

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 148

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 150

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set forth in the preamble, the interim final rule with comment period adding 45 CFR Part 150, Subparts A through D, which was published on August 20, 1999, in the **Federal Register** at 64 FR 45786 through 45807, is adopted as a final rule, with the following amendments:

PART 150—CMS ENFORCEMENT IN GROUP AND INDIVIDUAL INSURANCE MARKETS

■ 1. The authority citation for part 150 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92).

§ 150.307 [Amended]

■ 2. In § 150.307, paragraph (a) is amended by removing the parenthetical ''(See Appendix A to this subpart for examples of violations.)''

§ 150.311 [Amended]

■ 3. In § 150.311, paragraph (e) is amended by removing the phrase ''of intent to assess a penalty'' and adding in its place the phrase ''to the responsible entity or entities''.

Appendix A To Subpart C [Removed]

■ 4. In Part 150, ''Appendix A To Subpart C Of Part 150—Examples Of Violations'' is removed.

Dated: January 19, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicare Services.

Dated: August 15, 2005.

Michael O. Leavitt,

Secretary, Department of Health & Human Services.

Editorial Note: This document was received at the **Federal Register** on November 17, 2005.

[FR Doc. 05–23076 Filed 11–23–05; 8:45 am]

BILLING CODE 4120–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 05–191]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules that expand the reach of the Emergency Alert System (EAS), as currently constituted, to cover digital communications technologies that are increasingly being used by the American public to receive news and entertainment—digital television and radio, digital cable, and satellite television and radio. This *First Report and Order* is the most recent in a series of proceedings in which the Commission has sought to contribute to an efficient and technologically current public alert and warning system.

DATES: *Effective Date:* The rules set forth in the *First Report and Order* shall become effective for digital television broadcasters, digital audio broadcasters, digital cable systems and SDARS licensees on December 31, 2006, and for DBS providers on May 31, 2007, except §§ 11.15, 11.21, 11.35, 11.51, 11.52, 11.55 and 11.61 which contains information that has not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective dates of these sections.

Comment Date: Written comments by the public on the new and/or modified information collection requirements are due January 24, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. You may submit your Paperwork Reduction Act (PRA) comments by electronic mail or U.S. mail. To submit your PRA comments by electronic mail, send comments to: *PRA@fcc.gov.* To submit your PRA comments by U.S. mail, mark them to the attention of Judith B. Herman and address them to the Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Senior Counsel, Office of Homeland Security, Enforcement Bureau, at (202) 418–1199. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in EB Docket No. 04–296, FCC 05–191, adopted November 3, 2005, and released November 10, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.* This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 24, 2006. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

In this present document, the Commission has assessed the effects of expanding the reach of EAS to cover DTV, DAB, digital cable, DBS and SDARS providers, and finds that this imposes minimal regulation on small entities to the extent consistent with the Commission's goal of advancing its public safety mission.

Synopsis of the First Report and Order

1. *Background.* In the Notice of Proposed Rulemaking (NPRM) (69 FR 16193, August 30, 2004), the Commission sought comment on whether the EAS in its present form is the most efficient mechanism for warning the American public of an emergency and, if not, on how the Emergency Alert System (EAS) can be improved. The main objective of the NPRM was to seek comment on whether the EAS as currently constituted is the most effective and efficient public warning system that best takes advantage of appropriate technological advances and best responds to the public's need to obtain timely emergency information. The NPRM sought comment on the current efficacy of EAS in an age when the communications landscape has evolved from what it was when EAS predecessors, and EAS itself, were originally conceived.

2. *Introduction.* In the *First Report and Order*, the Commission takes steps to advance its important public safety mission by adopting rules that expand the reach of EAS, as currently constituted, to cover digital communications technologies that are increasingly being used by the American public to receive news and entertainment—digital television and radio, digital cable, and satellite television and radio.

3. *Discussion.* The Commission's immediate concern, and the subject of this *First Report and Order*, is to ensure that increasingly popular digital technologies deliver some level of basic national or regional warning now, while more sophisticated alert and warning systems are being developed. It is an essential element of the Commission's mission to ensure that the American public receives public alerts and warnings. For the reasons indicated below, the Commission believes that the current EAS is overall the most effective way to provide such a basic level of warning as the Commission transitions to more sophisticated systems. Accordingly, the Commission adopts rules to ensure that digital television (DTV), digital audio broadcasting (DAB), digital cable, direct broadcast satellite (DBS) and satellite digital audio radio service (SDARS) consumers are provided with effective, basic alert and warning information now, in a manner that will neither interfere with nor impede the ongoing development of a fully integrated state of the art warning system. The Commission seeks to facilitate this steady transition to a digital warning system by extending the EAS obligations of analog broadcasters and cable systems to these additional digital communications systems.

4. The Commission believes that the benefits of requiring DTV, DAB, digital cable, DBS and SDARS licensees to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that provides effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. The Commission agrees with those commenters who argue that EAS should remain an important component of any future alert and warning system. Further, in most cases, the digital platforms affected by this *First Report and Order* either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with reasonable cost. Accordingly, based on the Commission's examination of the record in this proceeding, it does not believe that requiring these digital services to install and use EAS equipment will impose undue regulatory or financial burdens. The Commission will continue, along with other agencies and industry, to explore ways in which emergency information might be made available in a more efficient, effective, and technologically current fashion.

5. *Digital Television.* Television broadcasting in the United States is in the midst of a conversion from analog to digital technology. The majority of television stations serving all markets in the United States are already airing DTV programming, and the Commission set a target date of December 31, 2006 for the completion of the DTV transition. When the DTV transition is complete, some of the spectrum currently used for broadcast television will be reclaimed and put to other uses, notably public safety. The Commission has adopted standards and rules that address the transition of the nation's television broadcasters from analog to DTV, which are set forth in Part 73 of the Commission's rules. None of these rules, however, have addressed EAS participation.

6. In the NPRM, the Commission sought comment on whether to make participation compulsory. The Commission asked commenters to address the possibility that when television stations turn off their analog signals as part of the DTV transition, they could leave a market devoid of an EAS participating broadcaster. The Commission also noted that DTV broadcasters have the ability to multicast, *i.e.*, to transmit more than one program stream on their assigned channel. The Commission sought comment on whether DTV broadcasters should be required to transmit EAS messages on all program streams, or whether they should be permitted to transmit on only one stream and force tune receivers to that stream.

7. Based on the record before the Commission, the Commission finds that revising its EAS rules to apply to DTV broadcasters furthers the public interest by ensuring that the public—regardless of the form of technology used—receives emergency information. Accordingly, the Commission will require DTV broadcasters to comply with the Commission's part 11 rules. DTV broadcasters must participate in all national EAS activations. Participation in state and local EAS activations will remain voluntary, but if DTV broadcasters choose to transmit state and local EAS messages they must comply with the Commission's part 11 rules governing those messages. Essentially, DTV providers will now have the same EAS obligations as analog television broadcasters, including, *inter alia*, the obligations to install ENDEC units so that the monitoring and transmitting functions are available during the times stations are in operation and transmit EAS test messages. These requirements will be effective on December 31, 2006.

8. In addition, the Commission concludes that when a DTV broadcaster participates in EAS activations, it must provide the EAS message to viewers of all program streams that the DTV broadcaster provides over a particular channel. All DTV viewers should have access to the potentially life-saving emergency information contained in EAS messages. The Commission concludes that all viewers should be informed of critical emergency information regardless of which program stream they are viewing.

9. *Digital Cable.* Cable systems, like broadcasters, are required to carry Presidential EAS messages, and permitted to transmit state and local EAS messages on a voluntary basis. In 1997, the Commission extended EAS requirements to wireless cable systems. The Commission's EAS requirements do not specifically refer to digital cable, which was not in widespread use in 1994 when EAS was implemented. In the NPRM, the Commission sought comment on whether it should extend EAS obligations to digital media, including digital cable television. In addition, the Commission raised technical questions regarding digital cable service participation in EAS.

10. Digital cable offers a number of advantages over analog cable. For instance, the digital format eliminates unwanted noise and interference from programming. Further, digital compression allows more than five times the number of stations to be delivered via the same bandwidth, on additional channel capacity that allows digital cable operators to deliver ''near on-demand'' programming by staggering the start times of programs on different channels. Because of these advantages, digital cable is increasingly deployed with analog cable in the marketplace. By 2005, more than 23 percent of TV households subscribed to digital cable.

11. The Commission specifically extends the EAS obligations set forth in Part 11 of its rules to digital cable systems. For purposes of this *First Report and Order* and Part 11 of the Commission's rules only, the term ''digital cable systems'' is defined as the portion of a cable system that delivers channels in digital format to subscribers. Essentially, digital cable systems will now have the same EAS obligations as analog cable systems. Specifically, the Commission will require digital cable systems to participate in national level EAS activations. Participation in state and local EAS activations will continue to be voluntary, but digital cable systems that choose to participate must comply with the part 11 rules.

12. The Commission will permit digital cable systems that are participating in EAS activations to determine the method they will use to distribute EAS messages to viewers of digital cable channels as long as all viewers receive the complete EAS message on the channel that they are watching. For example, digital cable systems may transmit EAS messages on all digital channels or transmit EAS messages on a single channel and force tune all receivers to that channel. Under the rules adopted in the EAS First Report and Order, digital cable systems with fewer than 5,000 subscribers must, like analog and wireless cable systems with fewer than 5,000 subscribers, provide a video interruption and an audio alert message on all channels and the EAS message on at least one channel.

13. *Digital Audio Broadcasting.* Radio stations using in-band, on-channel (IBOC) digital audio broadcasting (DAB) technology are able to provide enhanced sound fidelity, improved reception, multiple audio streams, and new data services to digital-ready radio receivers. This technology makes use of the existing AM and FM bands (In-Band) by adding digital carriers to a radio station's analog signal, allowing broadcasters to transmit digitally on their existing channel assignments (On-Channel) while simultaneously maintaining their analog service. Thus, IBOC permits the transmission of both analog and digital signals within the spectral emission mask of a single AM or FM channel, placing digital information on frequencies immediately adjacent to the analog signal. This technology allows new radios to receive both digital broadcasts and analog broadcasts from stations that have not yet converted to digital. This system is designed to blend to analog when digital reception fails. Radio stations will eventually convert to all-digital modes of operation. DAB does not require use of additional spectrum and there is no statutory mandate to convert to a digital format.

14. The Commission revises its part 11 EAS rules to apply to DAB broadcasters. The Commission will require DAB broadcasters to air all national EAS messages. Participation in state and local EAS activations will be voluntary, as it is for analog radio broadcasters. If DAB broadcasters choose to participate in state and local EAS activations, they must comply with the Commission's part 11 EAS rules. Essentially, DAB providers will now have the same EAS obligations as analog radio broadcasters. The Commission will also require DAB broadcasters to transmit all EAS messages that they air on all audio streams. Because DAB broadcasters will face similar burdens of equipment purchase, installation and training as DTV and digital cable providers, the Commission will apply the same date of compliance that it applied for DTV and digital cable. Accordingly, these rules will be effective December 31, 2006.

15. The Commission agrees with commenters who argue that EAS requirements should apply to all audio streams because the goal of EAS as a public warning system is to reach as many people as possible with lifesaving information and to do otherwise would result in the reduced effectiveness of EAS as digital radio listenership increases. All listeners should be informed of critical emergency information regardless of which audio stream they are listening to. The Commission sees no reason to exempt subscription-based streams. Further, as the Commission afforded to DTV broadcasters, the Commission affords DAB broadcasters more than a year to comply with these rules and grant DAB broadcasters the flexibility to determine the method they will use to distribute EAS messages to listeners of all audio streams as long as all listeners receive the complete and timely EAS message on the stream that they are listening to.

16. *Satellite Digital Audio Radio Service.* Governed by part 25 of the Commission's rules, SDARS provides a wide variety of digital radio programming on a subscription basis to subscribers throughout the contiguous United States. Most SDARS programming is created in the licensees' central headquarters in New York City (Sirius) and Washington, DC (XM), but SDARS licensees also re-transmit the programming of third-party content providers. Content is currently transmitted exclusively on a nationwide basis. SDARS licensees have recently begun providing metropolitan area traffic and weather updates on a round-the-clock basis by means of dedicated channels, but all subscribers receive each of these channels on a nationwide basis. SDARS, however, is not a broadcast service, and is not currently required to participate in EAS. In the NPRM, the Commission sought comment on whether it should adopt rules extending EAS obligations to other digital networks, such as SDARS.

17. The Commission amends part 11 of its rules to require that all SDARS licensees participate in EAS. The new rules will require SDARS licensees to transmit national level EAS messages on all channels. The Commission will require that SDARS licensees receive national EAS messages through an encoder/decoder (ENDEC) unit, the same manner as currently required of broadcasters and cable systems, from which they must directly monitor at least two sources, including one PEP station, or must directly monitor FEMA. This should not be difficult to accomplish as XM currently already monitors EAS alerts from an LP–1 station through an ENDEC unit located at its Washington, D.C. headquarters. The Commission strongly encourages SDARS licensees to have the ability to receive EAS alerts from state and local emergency managers and the ability to disseminate state and local EAS warnings on local traffic and weather channels that the SDARS licensees provide. The Commission will require SDARS licensees to inform their customers of the channels that will and will not be capable of supplying state and local EAS messages. Finally, the Commission will require SDARS licensees to test their ability to receive and distribute EAS messages in the same manner required of other EAS participants in section 11.61 of the Commission's rules and to keep records of all tests. Because SDARS licensees will face burdens of equipment

purchase, installation and/or training similar to those of DTV and DAB broadcasters and digital cable providers, these new rules will also take effect December 31, 2006.

18. The Commission will allow SDARS licensees that choose to implement the ability to receive state and local EAS warnings to develop the methods by which they can receive state and local EAS messages. In addition, the Commission encourages SDARS licensees that choose to implement the ability to receive and transmit state and local EAS warnings to develop additional ways of distributing EAS messages to the appropriate listeners, regardless of the channel they are listening to. Finally, the Commission requires SDARS licensees to inform their customers of the channels that will and will not supply state and local EAS messages. This information should be provided on the SDARS licensee's website and also distributed in writing to customers at least annually.

19. To alert listeners to an emergency announcement that may interest them, Sirius also suggested exploring the possibility of pre-empting the text box that normally contains the channel name and current programming, to announce the state or region and type of alert, and the channel number transmitting detailed information. The Commission strongly encourages such developments, and the use of the SDARS and DAB text box to display entire EAS messages, which the Commission hopes to see included in any next generation public alert and warning system.

20. *Direct-to-Home Satellite Services.* DTH satellite services include DBS and Home Satellite Dish (HSD) services. Under the Commission's current part 11 rules, DBS providers and HSD providers are not required to participate in EAS, but may participate on a voluntary basis. The Commission has encouraged such participation. For purposes of this *First Report and Order*, DBS providers include the entities set forth in section 25.701(a) of the Commission's rules. Accordingly, DBS providers include: (1) Entities licensed to operate satellites in the 12.2 to 12.7 GHz DBS frequency bands; (2) entities licensed to operate satellites in the Ku band fixed satellite service (FSS) and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set aside of at least one channel of non commercial programming pursuant to section 25.701(e) of the Commission's rules, or (3) non U.S. licensed satellite operators in the Ku band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set aside of one channel of non commercial programming pursuant to section 25.701(e) of the Commission's rules. This definition ensures that the EAS rules apply to the vast majority of existing DTH satellite services, particularly those for which viewers may have expectations as to available warnings based on experience with broadcast television services. The use of this definition will make the EAS obligations applicable to DTH–FSS licensees, including those who provide capacity to video programming distributors.

21. HSD providers originally supplied satellite television; however, currently, DBS providers serve most satellite television consumers. Over the past 5 years, the number of DBS subscribers has steadily increased from almost 13 million in June 2000 to over 27 million in June 2005. During the same time period, the number of HSD subscribers has steadily decreased from almost 1.5 million to fewer than 150,000. DTH satellite service provides multi-channel video programming and now reaches almost 25% of U.S. households with a television. DTH satellite providers receive programming from national programmers, such as HBO, ESPN, and CNN, and from local channels, such as the broadcast affiliates in a particular area, and then transmit these programs to customers' receivers. Because of this pass-through system, a satellite television customer receives EAS messages only if he receives the local broadcast stations as part of his programming package, and those stations carry the EAS message.

22. In the NPRM, the Commission sought comment on: (1) Whether it should adopt rules extending EAS obligations to DBS; (2) whether it serves the public interest to continue to exempt such satellite services that reach increasingly larger numbers of Americans from any requirement to provide public warning; (3) what burdens extending the EAS obligations would place on such services and whether the benefits outweigh the burdens; and (4) technical issues involved with requiring DBS providers to comply with the Commission's EAS rules.

23. In order to ensure that DBS subscribers receive an EAS message from the President in the event of a national emergency, the Commission modifies its EAS rules to require DBS providers to participate in national EAS activations by discontinuing regular programming and providing the national EAS message to viewers of all channels. Accordingly, DBS providers will be required to comply with the Commission's part 11 EAS rules. DBS providers must install equipment capable of encoding and decoding the EAS protocol and generating and detecting all EAS codes. DBS providers may install this equipment at the location most convenient to their system designs. In addition to ensuring that EAS equipment complies with Commission rules, providers must also monitor two EAS sources upon receipt of an emergency action notification and ensure that their EAS monitoring equipment is operational. Finally, the Commission will require DBS licensees to test their ability to receive and distribute EAS messages. The Commission concludes that extending national level EAS requirements to DBS providers serves the public interest by ensuring that the significant portion of the American public that are DBS subscribers have access to this critical emergency information.

24. Although participation in state and local EAS activations remains voluntary, the Commission will require DBS providers to pass through all EAS messages aired on local channels to subscribers receiving those channels. Therefore, subscribers viewing local channels through DBS services will receive all EAS messages transmitted over those local channels. Additionally, the Commission concludes that DBS providers must be capable of receiving (from state and local emergency managers) and distributing state and local EAS messages or they must disclose their inability to do on their Web site and in writing to their customers at least annually. Most emergencies originate at the state and local level and the current EAS system includes an interface for state and local emergency managers, providing a way to access the system and originate and relay EAS messages. The Commission encourages DBS licensees to design their systems to include this capability and, specifically, to design their converter boxes to be capable of receiving the appropriate regional, state and local EAS messages. Any future Public Alert and Warning System will likely include EAS and may require DBS licensees to increase participation in regional, state and local EAS activations.

25. The Commission acknowledges that there are technical issues that will need to be resolved in order for DBS licensees to make the necessary changes to their systems and wishes to give maximum flexibility to DBS providers. Accordingly, the Commission will permit DBS providers to determine the method they will use to distribute EAS messages to viewers, as long as all viewers receive national EAS messages regardless of the channel that they are watching. Because of the complexity associated with ensuring that national alert messages will be transmitted on all channels that do not originate at local broadcast stations, the Commission is providing DBS providers more time to comply with these rules. DBS providers will need to modify their satellite uplink facilities at multiple locations. DBS providers will also need to develop and implement technologies within each of several dozen different satellite transponder data streams. Estimates indicate that such efforts will likely require approximately 18 months to implement fully. Accordingly, these rules will take effect May 31, 2007. The Commission encourages DBS providers that have the capability to participate in EAS activations to do so as soon as possible.

26. The Commission will require DBS licensees to test their ability to receive and distribute EAS messages in a manner similar to that required of other EAS participants in section 11.61 of its rules and to keep records of all tests. DBS licensees should monitor a state or local primary source to participate in testing. Accordingly, the Commission will require that DBS providers conduct EAS tests each month on at least 10 percent of the total channels they provide. For purposes of this calculation, the total number of channels should not include those channels that the DBS provider passes through with the embedded national, state or local EAS message. The channels tested should vary each month, and over the course of a year all channels should be tested. DBS providers must log receipt of weekly tests in their records. Requiring that only 10 percent of channels be tested each month and that weekly tests must only be logged in records should reduce the burdens associated with EAS testing for DBS providers. Any remaining burdens are outweighed by the public interest benefits of testing which ensures that DBS providers are able to receive and transmit EAS messages. These testing requirements are no more onerous to DBS providers than those required of any other EAS participant. Due to the potential technical difficulties and costs associated with transmission of weekly tests, in the *Further Notice*, the Commission seeks comment regarding weekly test transmission requirements for DBS providers.

27. Although the Commission encourages participation by HSD providers, the Commission will not require their participation in EAS because: (1) There were only approximately 145,000 HSD users in June 2005 and that number continues to decrease; and (2) as HSD users receive programming directly from programmers, it would be very burdensome for HSD providers to distribute EAS messages to subscribers.

28. *Administrative Matters.* The Commission receives numerous questions about and requests for clarification and corrections of its EAS rules. The Commission finds that several minor administrative changes to the EAS rules are in order. Accordingly, the Commission amends its EAS rules to delete all reference to the ''FCC EAS mailing list'' which the Commission no longer maintains. EAS information may now be obtained from the Web site *http://www.fcc.gov/eb/eas* and from the general FCC information number 1888–CALL–FCC. Further, the Commission amends section 11.41 to change ''Operating Handbook'' to ''EAS Operating Handbook.'' In section 11.52(b) of the Commission's rules, the Commission will change the reference to 11.51(j)(2) to 11.51(m)(2). Section 11.53(c) provides that, prior to commencing operations, broadcast stations must determine whether the EAS has been activated by monitoring the assigned EAS sources. In order to clarify how EAS monitoring assignments are determined, the Commission amends this section to add the following to the end of section 11.53(c): ''as specified in their State or Local plan.'' Finally, because section 76.305 no longer exists, the reference to that section in 11.54(b)(13) is changed to the correct reference: section 76.1711.

29. *Conclusion.* The Commission expands the reach of EAS, as currently constituted, to ensure that more Americans are able to receive national and/or regional public alerts and warnings. Digital technologies are rapidly becoming the norm for communications technologies and public alert and warning must keep pace with this digital revolution. Government and industry are engaged in the early stages of efforts to develop a fully integrated, state of the art, digitally-based public alert and warning system for the American public. Increasingly popular digital technologies must have the ability to deliver some level of basic national or regional warning now, during the time that more sophisticated alert and warning systems are being developed. Further, the Commission amends its EAS rules to ensure that persons with disabilities have equal access to public warnings.

Final Paperwork Reduction Act Analysis

30. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 24, 2006.

Final Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

32. Today's Order establishes rules that expand the reach of the Emergency Alert System (EAS), as currently constituted, to cover the following digital communications technologies that are increasingly being used by the American public to receive news and entertainment—digital television and radio, digital cable, and satellite television and radio. As noted in the Order, one of the most fundamental and significant statutory mandates of the Commission is the promotion of safety of life and property through the use of wire and radio communication. Clearly, some level of EAS participation must be established for new digital services to ensure that large portions of the American public are able to receive national and/or regional public alerts and warnings.

33. This Order is a follow-up to the NPRM that was issued last year. In the NPRM, the Commission solicited comment on an array of questions and potential rule changes to contribute to an efficient and technologically current public alert and warning system. The NPRM also solicited comments and participation of state and local

emergency planning organizations and all telecommunications industries to develop a more effective EAS. The EAS First Report and Order takes initial steps to resolve the issues raised in the NPRM.

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

34. There were no comments filed that specifically addressed the IRFA. Nonetheless, the agency considered the potential impact of the rules discussed in the IRFA on small entities and reduced the compliance burden for all small entities (as discussed in Appendix A of the NPRM) in order to reduce the economic impact of the rules enacted herein on such entities.

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

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

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

37. *Television Broadcasting.* The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $12 million or less in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting images together with sound. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. 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 estimates, therefore, likely overstate 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. There are also 2,127 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the SBA size standard.

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

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

40. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The Commission has estimated that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

41. *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 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues

exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

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

43. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other subscription programming, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, the Commission estimates that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

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

45. *Satellite Telecommunications and Other Telecommunications*. The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

46. The second category—*Other Telecommunications*—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

47. In the Order, the Commission takes steps to advance its public safety mission by adopting rules that expand the reach of EAS, as currently constituted, to cover the following digital communications technologies: digital television and radio, digital cable, and satellite television and radio.

48. As indicated above, the Commission has revised its EAS rules to make them apply to DTV broadcasters. The Order requires that DTV broadcasters comply with the Commission's part 11 rules. Thus, DTV broadcasters must participate in all national EAS activations. Participation in state and local EAS activations will remain voluntary, but if DTV broadcasters choose to transmit state and local EAS messages they must comply with the Commission's part 11 rules governing those messages. Essentially, DTV providers will now have the same EAS obligations as analog television broadcasters. In addition, the Order requires that, when DTV broadcasters participate in EAS activations, they must provide the EAS message to viewers of all program streams.

49. The Commission has revised its EAS rules to require digital cable systems to participate in national level EAS activations. Digital cable systems will now have the same EAS obligations as analog cable systems. Participation in state and local EAS activations will continue to be voluntary, but digital cable systems that choose to participate must comply with the part 11 rules. The Order requires that digital cable systems with fewer than 5,000 subscribers must, like analog and wireless cable systems with fewer than 5,000 subscribers, provide a video interruption and an audio alert message on all channels and the EAS message on at least one channel.

50. The Commission also has revised its EAS rules to make them apply to digital audio broadcasting (DAB) providers. The Order requires digital audio broadcasters to air all national EAS messages. Participation in state and local EAS activations will be voluntary, as it is for analog radio broadcasters. If DAB providers choose to participate in state and local EAS activations, they must comply with part 11 of the Commission's rules. DAB providers will now have the same EAS obligations as analog radio broadcasters. The Order also requires DAB providers to transmit all EAS messages that they air on all audio streams.

51. The Commission has revised its EAS rules to require that all Satellite Digital Audio Radio Service (SDARS) licensees participate in EAS in its current form. The Order requires SDARS licensees to transmit national level EAS messages on all channels.

52. The Commission also strongly encourages SDARS licensees to have the ability to receive EAS alerts from state and local emergency managers and the ability to disseminate state and local EAS warnings on any local traffic and weather channels that the SDARS licensees provide. The Commission has required SDARS licensees to inform their customers of the channels that will and will not supply state and local EAS messages. This information should be provided on the SDARS licensee's Web site and should also be distributed in writing to customers at least annually.

53. In addition, in order to ensure that DBS satellite subscribers receive an EAS message from the President in the event of a national emergency, the Commission has revised its EAS rules to require that DBS satellite service providers participate in national EAS activations. For purposes of this Order, DBS providers include the entities set forth in section 25.701 of the Commission's rules. The Order permits DBS satellite service providers to determine the method they will use to distribute EAS messages to viewers, as long as all viewers receive the national EAS message on the channel they are watching. The Commission notes that SBCA commented that DBS operators need additional development time to participate in national EAS activations. SBCA focuses on the technical and operational difficulties involved in investing in new hardware and software, but has provided no cost estimate. However, DIRECTV commented that it was prepared to commit the assets to develop the systems and procedure necessary to deliver National EAS messages. The Commission has determined that the public safety benefit that would result from imposing a timely public alert and warning obligation on DBS providers far outweighs the burdens to such providers from implementing these new requirements.

54. Although participation in state and local EAS activations remains voluntary, the Commission has required DBS providers to pass through all EAS messages aired on local channels to subscribers receiving those channels so that subscribers viewing local channels through DBS services will receive all EAS messages transmitted over those local channels. The Commission has also required DBS providers to be capable of receiving (from state and local emergency managers) and distributing state and local EAS messages or they must disclose their inability to do on their website and in writing to their customers at least annually.

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

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

56. The NPRM invited Comments on a number of alternatives to the imposition of EAS obligations on the digital communications technologies discussed in this Order that are increasingly being used by the American public. For example, the NPRM specifically sought comment on the technical alternatives to providing EAS messages. In particular, the NPRM sought comment on whether the EAS system could be made more efficient. Should it be phased out in favor of a new model? If so, what would the new model look like? If a new model were to be adopted, what legal and practical barriers would have to be overcome to ensure its implementation and effectiveness? What technologies should serve as the basis for such a model? Alternatively, should EAS requirements be extended to other services such as cellular telephones?

57. The Commission has considered each of the alternatives described above, and in the EAS First Report and Order imposes minimal regulation on small entities to the extent consistent with the Commission's goal of advancing its public safety mission by adopting rules that expand the reach of EAS. The affected service providers have generally expressed their willingness to cooperate in a national warning system, and the Commission anticipates that this addition of new providers to EAS can be accomplished swiftly and smoothly. The Commission believes that the benefits of requiring DTV, DAB, digital cable, satellite DTH and SDARS providers to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that is able to provide effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. The Commission agrees with those commenters who argue that EAS should remain an important component of any future alert and warning system. Further, in most cases, the digital platforms affected by this Order either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with minimal cost. As indicated above, the Commission will continue, along with other agencies and industry, to explore ways in which emergency information might be made available in an efficient, effective, and technologically current fashion.

Report to Congress

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

Report and Ordering Clauses

59. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 303(r), 403, 554(g) and 606, the *First Report and Order* in EB Docket No. 04–296 *is adopted*, and that part 11 of the Commission's rules, 47 CFR part 11, is revised as set forth in the rule changes. The rules set forth in the *First Report and Order* shall become effective for digital television broadcasters, digital audio broadcasters, digital cable systems and SDARS licensees on December 31, 2006, and for DBS providers on May 31, 2007, except §§ 11.15, 11.21, 11.35, 11.51, 11.52, 11.55 and 11.61 which contains information that has not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective dates of these sections.

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

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

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

PART 11—EMERGENCY ALERT SYSTEM (EAS)

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

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

■ 2. Revise § 11.1 to read as follows:

§ 11.1 Purpose.

This part contains rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. The rules in this part describe the required technical standards and operational procedures of the EAS for analog AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities. The EAS may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.

■ 3. Amend § 11.11 by revising paragraphs (a), (b) and (e) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; analog television broadcast stations including Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in 47 CFR 25.701(a) (including certain Ku-band Fixed-Satellite Service Direct to Home providers); SDARS, as defined in 47 CFR 25.201; participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. These rules in this part are effective on December 31, 2006 for DTV, DAB, digital cable and SDARS providers, and on May 31, 2007 for DBS providers. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates listed above in this paragraph and in the following tables:

ANALOG AND DIGITAL BROADCAST STATIONS

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

[1] Effective December 31, 2006, digital FM Class D stations have the same requirements.
[2] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment. Effective December 31, 2006, digital LPTV stations have the same requirements.
[3] LPFM stations must install a decoder within one year after the FCC publishes in the FEDERAL REGISTER a public notice indicating that at least one decoder has been certified by the FCC. Effective December 31, 2006, digital LPFM stations have the same requirements.
[4] Effective December 31, 2006, digital Class A TV stations have the same requirements.
[5] Effective July 1, 1995, the two-tone signal must be 8–25 seconds.
[6] Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.

ANALOG CABLE SYSTEMS

[A. Analog cable systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels_including the required testing_by October 1, 2002, or comply with the following EAS requirements. All other analog cable systems must comply with B.]

	System size and effective dates		
B. EAS equipment requirement	>=10,000 subscribers	>=5,000 but <10,000 subscribers	<5,000 subscribers
Two-tone signal from storage device	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS decoder [3]	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder [2]	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels,[3] Audio and Video EAS message on at least one channel.	N	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.
[2] Analog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.
[3] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.
Note: Programmed channels do not include channels used for the transmission of data such as interactive games.

WIRELESS CABLE SYSTEMS (BRS/EBS STATIONS)

[A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.]

	System size and effective dates	
B. EAS equipment requirement subscribers	>=5,000 subscribers	<5,000
EAS decoder	Y 10/1/02	Y 10/1/02
EAS encoder [1] [2]	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels [3]	Y 10/1/02	N
Video interrupt and audio alert message on all channels; [4] Audio and Video EAS message on at least one channel	N	Y 10/1/02

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

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

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

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

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

DIGITAL CABLE SYSTEMS

[A. Digital cable systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing by December 31, 2006, or comply with the following EAS requirements. All other digital cable systems must comply with B.]

	System size and effective dates	
B. EAS equipment requirement	>=5,000 subscribers	<5,000 subscribers
Two-tone signal from storage device [1]	Y 12/31/06	Y 12/31/06
EAS decoder [3]	Y 12/31/06	Y 12/31/06
EAS encoder [2]	Y 12/31/06	Y 12/31/06
Audio and Video EAS Message on all channels [4]	Y 12/31/06	N
Video interrupt and audio alert message on all channels,[3] Audio and Video EAS message on at least one channel	N	Y 12/31/06

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

[2] Digital cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

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

[4] All digital cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

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

SDARS AND DBS

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

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

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

(b) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog LPFM stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, analog LPTV stations as defined in § 74.701(f), and digital LPTV stations as defined in § 74.701(k) of this chapter are not required to comply with § 11.32. Analog and digital LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter, are not required to comply with the requirements of this part. FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part. International

broadcast stations as defined in § 73.701 of this chapter are not required to comply with the requirements of this part. Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33.

* * * * *

(e) Organizations using other communications systems or technologies such as low earth orbit satellite systems, paging, computer networks, etc. may join the EAS on a voluntary basis by contacting the FCC. Organizations that choose to voluntarily participate must comply with the requirements of this part.

■ 4. Revise § 11.13 to read as follows:

§ 11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).

(a) The Emergency Action Notification (EAN) is the notice to all EAS Participants and to the general public that the EAS has been activated for a national emergency.

(b) The Emergency Action Termination (EAT) is the notice to all EAS Participants and to the general public that the EAN has terminated.

■ 5. Revise § 11.15 to read as follows:

§ 11.15 EAS Operating Handbook.

The EAS Operating Handbook states in summary form the actions to be taken by personnel at EAS Participant facilities upon receipt of an EAN, an EAT, tests, or State and Local Area alerts. It is issued by the FCC and contains instructions for the above situations. A copy of the Handbook must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.

■ 6. Revise § 11.19 to read as follows:

§ 11.19 EAS Non-participating National Authorization Letter.

This authorization letter is issued by the FCC to EAS Participants that have elected not to participate in the national level EAS. It states that the EAS Participant has agreed to go off the air or discontinue programming on all channels during a national level EAS message. For licensees this authorization will remain in effect through the period of the initial license and subsequent renewals from the time of issuance unless returned by the holder or suspended, modified, or withdrawn by the Commission.

■ 7. Revise § 11.21 introductory text and paragraph (a) to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR). State and local plans contain unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS). The plans must be reviewed and approved by the Director, Office of Homeland Security, Enforcement Bureau, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

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

* * * * *

■ 8. Amend § 11.31 by revising the format code for LLLLLLLL in paragraph (c), revising paragraph (d), and revising the footnotes in paragraphs (e) and (f) to read as follows:

§ 11.31 EAS protocol.

* * * * *

(c) * * *

LLLLLLLL—This is the identification of the EAS Participant, NWS office, etc., transmitting or retransmitting the message. These codes will be automatically affixed to all outgoing messages by the EAS encoder.

* * * * *

(d) The only originator codes are:

Originator	ORG code
EAS Participant	EAS
Civil authorities	CIV
National Weather Service	WXR
Primary Entry Point System	PEP

(e) * * *

[1] Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their existing EAS equipment to add these event codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003 must be capable of receiving and transmitting these event codes. EAS Participants that install or replace their EAS equipment after February 1, 2004 must install equipment that is capable of receiving and transmitting these event codes.

(f) * * *

[1] Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their existing EAS equipment to add these marine area location codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003, must be capable of receiving and transmitting these marine area location codes. EAS Participants that install or replace their EAS equipment after February 1, 2004, must install equipment that is capable of receiving and transmitting these location codes.

■ 9. Amend § 11.33 by revising paragraphs (a)(4) and (b) introductory text to read as follows:

§ 11.33 EAS Decoder.

(a) * * *

(4) *Display and logging.* A visual message shall be developed from any valid header codes for tests and national activations and any preselected header codes received. The message shall include the Originator, Event, Location, the valid time period of the message and the local time the message was transmitted. The message shall be in the primary language of the EAS Participant and be fully displayed on the decoder and readable in normal light and darkness. All existing and new models of EAS decoders manufactured after August 1, 2003 must provide a means to permit the selective display and logging of EAS messages containing header codes for state and local EAS events. Effective May 16, 2002, analog radio and television broadcast stations, analog cable systems and wireless cable systems may upgrade their decoders on an optional basis to include a selective display and logging capability for EAS messages containing header codes for state and local events. EAS Participants that install or replace their decoders after February 1, 2004 must install decoders that provide a means to permit the selective display and logging of EAS messages containing header codes for state and local EAS events.

* * * * *

(b) *Attention Signal.* EAS Decoders shall have detection and activation circuitry that will demute a receiver upon detection of the two audio tones of 853 Hz and 960 Hz. To prevent false

responses, decoders designed to use the two tones for receiver demuting shall comply with the following:

* * * * *

■ 10. Amend § 11.34 by revising paragraph (e) to read as follows:

§ 11.34 Acceptability of the equipment.

* * * * *

(e) Waiver requests of the Certification requirements for EAS Encoders or EAS Decoders which are constructed for use by an EAS Participant, but are not offered for sale will be considered on an individual basis in accordance with part 1, subpart G, of this chapter.

* * * * *

■ 11. Revise § 11.35 to read as follows:

§ 11.35 Equipment operational readiness.

(a) EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§ 73.1820 and 73.1840 of this chapter for all broadcast streams and cable system records as specified in §§ 76.1700, 76.1708, and 76.1711 of this chapter. All other EAS Participants must also keep records indicating reasons why any tests were not received and these records must be retained for two years, maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.

(b) If the EAS Encoder or EAS Decoder becomes defective, the EAS Participant may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. Entries shall be made in the broadcast station log, cable system records, and records of other EAS Participants, as specified in paragraph (a) of this rule, showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

(c) If repair or replacement of defective equipment is not completed within 60 days, an informal request shall be submitted to the District Director of the FCC field office serving the area in which the EAS Participant is located, or in the case of DBS and SDARS providers to the District Director of the FCC field office serving the area where their headquarters is located, for additional time to repair the defective equipment. This request must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service, and when the defective equipment will be repaired or replaced.

■ 12. Revise § 11.41 to read as follows:

§ 11.41 Participation in EAS.

(a) All EAS Participants specified in § 11.11 are categorized as Participating National (PN) sources unless authorized by the FCC to be Non-Participating (NN) sources.

(b) An EAS Participant may submit a written request to the FCC asking to be an NN source. The FCC may then issue a Non-participating National Authorization letter. NN sources must go off the air during a national EAS activation after transmitting specified information.

(1) An EAS Participant that is an NN source under § 11.18(f) that wants to become a PN source in the national level EAS must submit a written request to the FCC.

(2) NN sources may voluntarily participate in the State and Local Area EAS. Participation is at the discretion of EAS Participant management and should comply with State and Local Area EAS Plans.

(c) All sources, including NN, must have immediate access to an EAS Operating Handbook.

■ 13. Amend § 11.42 by revising paragraphs (a)(1), (a)(2), (b), and (c) to read as follows:

§ 11.42 Participation by communications common carriers.

(a) * * *

(1) An originating source from the nearest service area to a selected Test Center and then to the EAS Participant for the duration of the emergency, provided an Emergency Action Notification is issued by the White House and the originating source has a local channel from the originating point to the nearest service area.

(2) An independent broadcast station to the radio and television broadcast networks and any other EAS Participant provided the station has in service a local channel from the station's studio or transmitter directly to the broadcast source.

(b) Upon receipt of the Emergency Action Termination, the common carriers shall disconnect the originating source and the participating independent stations and restore the networks and other EAS Participants to their original configurations.

(c) During a National level EAS Test, common carriers which have facilities in place may, without charge, connect an originating source from the nearest exchange to a selected Test Center and then to any EAS Participant. Independent stations will not be connected during the test unless authorized by the FCC. Upon test termination, EAS Participants shall be restored to their original configurations.

* * * * *

■ 14. Amend § 11.44 by revising paragraph (d) to read as follows:

§ 11.44 EAS message priorities.

* * * * *

(d) During a national emergency, the facilities of all EAS Participants must be reserved exclusively for distribution of Presidential Messages. NIC messages received from national networks which are not broadcast at the time of original transmission must be recorded locally by LP sources for transmission at the earliest opportunity consistent with the message priorities in paragraph (b) of this section.

■ 15. Revise § 11.46 to read as follows:

§ 11.46 EAS public service announcements.

EAS Participants may use Public Service Announcements or obtain commercial sponsors for announcements, infomercials, or programs explaining the EAS to the public. Such announcements and programs may not be a part of alerts or tests, and may not simulate or attempt to copy alert tones or codes.

■ 16. Revise § 11.47 to read as follows:

§ 11.47 Optional use of other communications methods and systems.

(a) Analog and digital broadcast stations may additionally transmit EAS messages through other communications means. For example, on a voluntary basis, FM stations may use subcarriers to transmit the EAS codes including 57 kHz using the RBDS standard produced by the National Radio Systems Committee (NRSC) and television stations may use subsidiary communications services.

(b) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Office of Homeland Security, Enforcement Bureau, or their State

Emergency Communications Committee for information and guidance.

■ 17. Revise § 11.51 to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

(a) Analog and digital broadcast stations must transmit, either automatically or manually, national level EAS messages and required tests by sending the EAS header codes, Attention Signal, emergency message and End of Message (EOM) codes using the EAS Protocol. The Attention Signal must precede any emergency audio message. After January 1, 1998, the shortened Attention Signal may only be used as an audio alert signal and the EAS codes will become the minimum signaling requirement for National level messages and tests.

(b) When relaying EAS messages, EAS Participants may transmit only the EAS header codes and the EOM code without the Attention Signal and emergency message for State and local emergencies. Pauses in video programming before EAS message transmission should not cause television receivers to mute EAS audio messages. No Attention Signal is required for EAS messages that do not contain audio programming, such as a Required Weekly Test.

(c) By the effective dates provided in § 11.11(a), all analog and digital radio and television stations shall transmit EAS messages in the main audio channel. Effective December 31, 2006, all DAB stations shall also transmit EAS messages on all audio streams. Effective December 31, 2006, all DTV broadcast stations shall also transmit EAS messages on all program streams.

(d) By the effective dates provided in § 11.11(a), analog and digital television broadcast stations shall transmit a visual message containing the Originator, Event, Location and the valid time period of an EAS message. If the message is a video crawl, it shall be displayed at the top of the television screen or where it will not interfere with other visual messages.

(e) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog Low Power FM (LPFM) stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, analog low power TV (LPTV) stations as defined in § 74.701(f) of this chapter, and digital LPTV stations as defined in § 74.701(k) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

(f) Analog and digital broadcast station equipment generating the EAS codes and the Attention Signal shall modulate a broadcast station transmitter so that the signal broadcast to other EAS Participants alerts them that the EAS is being activated or tested at the National, State or Local Area level. The minimum level of modulation for EAS codes, measured at peak modulation levels using the internal calibration output required in § 11.32(a)(4), shall modulate the transmitter at the maximum possible level, but in no case less than 50% of full channel modulation limits. Measured at peak modulation levels, each of the Attention Signal tones shall be calibrated separately to modulate the transmitter at no less than 40%. These two calibrated modulation levels shall have values that are within 1 dB of each other.

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

(1) Must install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for analog cable systems shall comply with the aural signal requirements in § 76.605 of this chapter,

(2) Must provide a video interruption and an audio alert message on all channels. The audio alert message must state which channel is carrying the EAS video and audio message,

(3) Shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location, and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) May elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, analog cable systems, digital cable systems, and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(5) Wireless cable systems and digital cable systems with a requirement to carry the audio and video EAS message on at least one channel and a requirement to provide video interrupt and an audio alert message on all other channels stating which channel is carrying the audio and video EAS message, may comply by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.

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

(1) Must install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for analog cable systems shall comply with the aural signal requirements in § 76.605 of this chapter. This will provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers. Wireless cable systems and digital cable systems shall also provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers.

(2) Shall transmit the EAS audio message required in paragraph (a) of this section on all downstream channels.

(3) Shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) May elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, analog cable systems, digital cable systems, and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(5) Wireless cable systems and digital cable systems with a requirement to

carry the audio and video EAS message on all downstream channels may comply by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.

(i) Effective December 31, 2006, SDARS licensees shall transmit national audio EAS messages on all channels in the same order specified in paragraph (a) of this section.

(1) SDARS licensees must install, operate, and maintain equipment capable of generating the EAS codes.

(2) SDARS licensees may determine the distribution methods they will use to comply with this requirement.

(j) Effective May 31, 2007, DBS providers shall transmit national audio and visual EAS messages on all channels in the same order specified in paragraph (a) of this section.

(1) DBS providers must install, operate, and maintain equipment capable of generating the EAS codes.

(2) The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(3) DBS providers may determine the distribution methods they will use to comply with this requirement. Such methods may include distributing the EAS message on all channels, using a means to automatically tune the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages, and/or passing through the EAS message provided by programmers and/or local channels (where applicable).

(k) If manual interrupt is used as authorized in paragraph (m) of this section, EAS Encoders must be located so that EAS Participant staff, at normal duty locations, can initiate the EAS code and Attention Signal transmission.

(l) EAS Participants that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or systems with one EAS Encoder. The requirements of § 11.32 must be met by the combined facility.

(m) EAS Participants are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL-code which identifies the EAS Participant retransmitting the message. See § 11.31(c). If an EAS source originates an EAS message with the Event codes in this paragraph, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, EAS Participants shall use the event code RWT. The location codes are the state and county for the broadcast station city of license or system community or city. Other location codes may be included upon approval of station or system management. EAS messages may be transmitted automatically or manually.

(1) Automatic interrupt of programming and transmission of EAS messages are required when facilities are unattended. Automatic transmissions must include a permanent record that contains at a minimum the following information: Originator, Event, Location and valid time period of the message. The decoder performs the functions necessary to determine which EAS messages are automatically transmitted by the encoder.

(2) Manual interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 60 minutes. All actions must be logged and include the minimum information required for EAS video messages.

(n) EAS Participants may employ a minimum delay feature, not to exceed 15 minutes, for automatic interruption of EAS codes. However, this may not be used for the EAN event which must be transmitted immediately. The delay time for an RMT message may not exceed 60 minutes.

(o) Either manual or automatic operation of EAS equipment may be used by EAS Participants that use remote control. If manual operation is used, an EAS decoder must be located at the remote control location and it must directly monitor the signals of the two assigned EAS sources. If direct monitoring of the assigned EAS sources is not possible at the remote location, automatic operation is required. If automatic operation is used, the remote control location may be used to override the transmission of an EAS alert. EAS Participants may change back and forth between automatic and manual operation.

■ 18. Revise § 11.52 to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) EAS Participants must be capable of receiving the Attention Signal required by § 11.32(a)(9) and emergency messages of other broadcast stations during their hours of operation. EAS Participants must install and operate during their hours of operation, equipment capable of receiving and decoding, either automatically or manually, the EAS header codes, emergency messages and EOM code. EAS Participants must comply with these requirements by the dates set forth in § 11.11.

Note to Paragraph (a): The two-tone Attention Signal will not be used to actuate two-tone decoders but will be used as an aural alert signal.

(b) If manual interrupt is used as authorized in § 11.51(m)(2), decoders must be located so that operators at their normal duty stations can be alerted immediately when EAS messages are received.

(c) EAS Participants that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facility.

(d) EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.

(1) If the required EAS sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the FCC's EAS office. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(2) The management of EAS Participants shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) EAS Participants are required to interrupt normal programming either automatically or manually when they

receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT) for their State or State/county location.

(1) *Automatic* interrupt of programming is required when facilities are unattended. Automatic operation must provide a permanent record of the EAS message that contains at a minimum the following information: Originator, Event, Location and valid time period of the message.

(2) *Manual* interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 60 minutes. All actions must be logged and recorded as specified in §§ 11.35(a) and 11.54(b)(13). Decoders must be programmed for the EAN and EAT Event header codes for National level emergencies and the RMT and RWT Event header codes for required monthly and weekly tests, with the appropriate accompanying State and State/county location codes.

■ 19. Amend § 11.53 by revising paragraphs (a) introductory text and (c) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

* * * * *

(a) *National Level.* The EAN is issued by the White House. The EAN message is sent from a government origination point to broadcast stations and other entities participating in the PEP system. It is then disseminated via EAS Participants.

* * * * *

(c) Analog and digital broadcast stations must, prior to commencing routine operation or originating any emissions under program test, equipment test, experimental, or other authorizations, determine whether the EAS has been activated by monitoring the assigned EAS sources as specified in their State or Local plan.

■ 20. Amend § 11.54 by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 11.54 EAS operation during a National Level emergency.

* * * * *

(b) Immediately upon receipt of an EAN message, EAS Participants must:

(1) Monitor the two EAS sources assigned in the State or Local Area plan or FCC Mapbook for any further instructions. SDARS licensees and DBS providers may choose their two EAS sources, one of which must be a PEP station.

(2) Discontinue normal programming and follow the transmission procedures in the appropriate section of the EAS Operating Handbook. Announcements may be made in the same language as the primary language of the EAS Participant.

(i) Key EAS sources (National Primary (NP), Local Primary (LP), State Primary (SP), State Relay (SR) and Participating National (PN) sources) follow the transmission procedures and make the announcements in the National Level Instructions of the EAS Operating Handbook.

(ii) Non-participating National (NN) sources follow the transmission procedures and make the sign-off announcement in the EAS Operating Handbook's National Level Instructions section for NN sources. After the sign-off announcement, NN sources are required to remove their carriers or services from the air and monitor for the Emergency Action Termination message. NN sources using automatic interrupt under § 11.51(m)(1), must transmit the header codes, Attention Signal, sign-off announcement and EOM code after receiving the appropriate EAS header codes for a national emergency.

(3) After completing the above transmission procedures, key EAS and Participating National sources must transmit a common emergency message until receipt of the Emergency Action Termination Message. Message priorities are specified in § 11.44. If LP or SR sources of a Local Area cannot provide an emergency message feed, any source in the Local Area may elect to provide a message feed. This should be done in an organized manner as designated in State and Local Area EAS Plans.

(4) The Standby Script shall be used until emergency messages are available. The text of the Standby Script is in the EAS Operating Handbook's section for Participating sources.

(5) Analog and digital TV broadcast stations shall display an appropriate EAS slide and then transmit all EAS announcements visually and aurally as specified in §§ 11.51(a) through (e) and 73.1250(h) of this chapter.

(6) Analog cable systems, digital cable systems, and wireless cable systems shall transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h).

(7) DBS providers shall transmit all EAS announcements visually and aurally as specified in § 11.51(j).

(8) Announcements may be made in the same language as the primary language of the EAS participant.

(9) Analog and digital broadcast stations may transmit their call letters and analog cable systems, digital cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation. State and Local Area identifications must be given as provided in State and Local Area EAS plans.

(10) All analog and digital broadcast stations and analog cable systems, digital cable systems and wireless cable systems operating and identified with a particular EAS Local Area must transmit a common national emergency message until receipt of the Emergency Action Termination.

(11) Analog and digital broadcast stations, except those holding an EAS Non-participating National Authorization letter, are exempt from complying with §§ 73.62 and 73.1560 of this chapter (operating power maintenance) while operating under this part.

(12) National Primary (NP) sources must operate under the procedures in the National Control Point Procedures.

(13) The time of receipt of the EAN and Emergency Action Termination messages shall be entered by analog and digital broadcast stations in their logs (as specified in §§ 73.1820 and 73.1840 of this chapter), by analog and digital cable systems in their records (as specified in § 76.1711 of this chapter), by subject wireless cable systems in their records (as specified in § 21.304 of this chapter), and by all other EAS Participants in their records as specified in § 11.35(a).

(c) Upon receipt of an Emergency Action Termination Message, EAS Participants must follow the termination procedures in the EAS Operating Handbook.

(d) EAS Participants originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by section 325(a) of the Communications Act of 1934, 47 U.S.C. 325(a), to other EAS Participants.

(e) During a national level EAS emergency, EAS Participants may transmit in lieu of the EAS audio feed an audio feed of the President's voice message from an alternative source, such as a broadcast network audio feed.

■ 21. Amend § 11.55 by revising paragraphs (a), (c) introductory text, (c)(4) and (c)(7) to read as follows:

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

(a) The EAS may be activated at the State and Local Area levels by EAS Participants at their discretion for day-to-day emergency situations posing a

threat to life and property. Examples of natural emergencies which may warrant activation are: Tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc. Man-made emergencies may include: toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

(1) DBS providers shall pass through all EAS messages aired on local television broadcast stations carried by DBS providers under the Commission's broadcast signal carriage rules to subscribers receiving those channels.

(2) SDARS licensees and DBS providers may participate in EAS at the state and local level and make their systems capable of receiving and transmitting state and local level EAS messages on all channels. If an SDARS licensee or DBS provider is not capable of receiving and transmitting state and local EAS message on all channels, it must inform its subscribers, on its website and in writing on an annual basis, of which channels are and are not capable of supplying state and local messages.

* * * * *

(c) Immediately upon receipt of a State or Local Area EAS message, EAS Participants participating in the State or Local Area EAS must do the following:

* * * * *

(4) EAS Participants participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area plans. Analog and digital television broadcast stations must comply with § 11.54(b)(5); analog cable systems, digital cable systems, and wireless cable systems must comply with § 11.54(b)(6); and DBS providers must comply with § 11.54(b)(7). EAS Participants providing foreign language programming should comply with § 11.54(b)(8).

* * * * *

(7) The times of the above EAS actions must be entered in the EAS Participants' records as specified in §§ 11.35(a) and 11.54(b)(13).

* * * * *

■ 22. Revise § 11.61 to read as follows:

§ 11.61 Tests of EAS procedures.

(a) EAS Participants shall conduct tests at regular intervals, as specified in paragraphs (a)(1) and (a)(2) of this section. Additional tests may be performed anytime. EAS activations and special tests may be performed in lieu of required tests as specified in paragraph (a)(4) of this section. All tests will conform with the procedures in the EAS Operating Handbook.

(1) Required Monthly Tests of the EAS header codes, Attention Signal, Test Script and EOM code.

(i) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. Analog and digital class D non-commercial educational FM and analog and digital LPTV stations are required to transmit only the test script.

(ii) Effective May 31, 2007, DBS providers must comply with this section by monitoring a state or local primary source to participate in testing. Tests should be performed on 10% of all channels monthly (excluding local-into-local channels for which the monthly transmission tests are passed through by the DBS provider), with channels tested varying from month to month, so that over the course of a given year, 100% of all channels are tested.

(2) Required Weekly Tests:

(i) EAS Header Codes and EOM Codes:

(A) Analog and digital AM, FM, and TV broadcast stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times. Effective December 31, 2006, DAB stations must conduct these tests on all audio streams. Effective December 31, 2006, DTV stations must conduct these tests on all program streams.

(B) Analog cable systems and digital cable systems with 5,000 or more subscribers per headend and wireless cable systems with 5,000 or more subscribers must conduct tests of the EAS Header and EOM Codes at least once a week at random days and times on all programmed channels.

(C) Analog cable systems and digital cable systems serving fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers must conduct tests of the EAS Header and EOM Codes at least once a week at random days and times on at least one programmed channel.

(D) SDARS providers must conduct tests of the EAS Header and EOM codes at least once a week at random days and times on all channels.

(ii) DBS providers, analog and digital class D non-commercial educational FM stations, and analog and digital LPTV stations are not required to transmit this test but must log receipt, as specified in §§ 11.35(a) and 11.54(b)(13).

(iii) The EAS weekly test is not required during the week that a monthly test is conducted.

(iv) EAS Participants are not required to transmit a video message when transmitting the required weekly test.

(3) *Periodic National Tests.* National Primary (NP) sources shall participate in tests as appropriate. The FCC may request a report of these tests.

(4) *EAS activations and special tests.* The EAS may be activated for emergencies or special tests at the State or Local Area level by an EAS Participant instead of the monthly or weekly tests required by this section. To substitute for a monthly test, activation must include transmission of the EAS header codes, Attention Signal, emergency message and EOM code and comply with the visual message requirements in § 11.51. To substitute for the weekly test of the EAS header codes and EOM codes in paragraph (a)(2)(i) of this section, activation must include transmission of the EAS header and EOM codes. Analog and digital television broadcast stations, analog cable systems, digital cable systems, wireless cable systems, and DBS providers shall comply with the aural and visual message requirements in § 11.51. Special EAS tests at the State and Local Area levels may be conducted on daily basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in EAS Participant records, as specified in §§ 11.35(a) and 11.54(b)(13).

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DEPARTMENT OF ENERGY

48 CFR Parts 909 and 970

RIN 1991–AB64

Acquisition Regulation: Work for Others

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting as final without change an Interim Final Rule amending the Department of Energy Acquisition Regulation (DEAR) to provide policy and procedures regarding work for non-DOE entities performed by DOE contractors who manage and operate DOE-owned or DOE-leased facilities and to make an administrative change concerning debarment and suspension officials.