June 17, 2021

Legal Memorandum

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# EAS Nationwide Test Date and Corresponding Form Filing Deadlines Set

**\*\* All Broadcast Stations Must Participate \*\***

By recent [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-680A1.pdf) (the “Notice”), the FCC has confirmed FEMA’s (the Federal Emergency Management Agency’s) earlier announcement that the next nationwide EAS test is scheduled for **August 11, 2021, at 2:20 PM ET**. All broadcasters are required to participate in the August 11 nationwide test, and all broadcasters are required to timely file the required Form One, Form Two, and Form Three reports associated with the nationwide test.

**A. Nationwide Test Scheduled for August 11**

 FEMA and the FCC have announced that a nationwide EAS test will be conducted at 2:20 p.m. ET on August 11. (The backup date, if needed, is August 25.) Stations should mark their calendars, ensure that EAS gear is functioning, assign responsibility for the filing of the nationwide EAS test reports (the first of which is due **July 6**—[more on that below](#First_reference)), and download, review, and complete the FCC’s updated EAS Operating Handbook ([more on that below](#Second_reference) as well).

According to the Notice, the EAS message will only be disseminated using the “daisy chain,” a hierarchical, broadcast-based distribution system (as opposed to internet distribution via IPAWS). Because the EAS message will be disseminated via the daisy chain, the “full message text and multilingual messaging will not be available.” The message will comply with the FCC’s accessibility requirements and include both audio and visual elements. As in prior years when the national test was delivered solely via the daisy chain, the stated “intent of conducting the test in this fashion is to determine the capability of the [EAS] to deliver messages to the public in the event that dissemination via internet is not available.”

To begin preparing now for the August 11 test, stations are encouraged to take the following steps:

* Review the station’s applicable state EAS plan;
* Ensure that a copy of the 2021 version (just released!) of the EAS Operating Handbook ([discussed below](#Second_reference)) is located at normal duty positions or EAS equipment locations and is immediately available to operators;
* Review the EAS Operating Handbook to become familiar with and prepare for the actions that will need to be taken upon receipt of the test alert;
* Ensure that the station’s EAS equipment operates in compliance with the FCC’s EAS rules and has the capability to receive and process the NPT (national periodic test) code and the “six zeroes” national location code;
* Upgrade, as needed, EAS equipment software and firmware to the most recent version;
* Complete and file the EAS “Form One” report for the station by July 6; and
* Manually synchronize EAS equipment clocks to the official time provided by NIST (National Institute of Standards and Technology), if the station’s equipment does not automatically synchronize to an internet time source.

As you review the material above and below, and as you begin to consider your preparations for the August 11 nationwide EAS test, please remember that **all broadcast stations are required to participate in the EAS**; the FCC does not recognize “non-participating” status for stations in the EAS rules. Accordingly, all stations must be prepared to participate in the nationwide test on August 11 (or, if the backup date is necessary, on August 25).

**B. Nationwide Test Reporting Requirements: “Form One” Due July 6; “Form Two” Due Day After Nationwide Test; “Form Three” Due September 27**

 You may recall from past years that there are three (yes, three!) reports that must be filed by each station in connection with a nationwide EAS test. These reports must be filed electronically in the FCC’s ETRS ([EAS Test Reporting System](https://www.fcc.gov/general/eas-test-reporting-system)) by certain FCC-established deadlines. According to the Notice, the ETRS is currently open and available to accept filings in connection with the 2021 nationwide test.

As we stated above, the first report—called Form One—is due by July 6; any updates or corrections must be made by August 5. This is the report that contains basic information about each station, including its transmitter location, EAS monitoring assignments, and make and model of EAS gear. If you still have a copy of a prior year’s Form One report, you may wish to refer to it while reviewing the auto-populated data in this year’s Form One report (although recall that last year the FCC waived the Form One filing requirement in light of the COVID-19 pandemic, and, of course, be sure to make certain to update any information that has changed).

The second report—called Form Two—must be completed shortly after the nationwide test occurs, and will be due on or before August 12. Form Three will be due by September 27, and we will remind you later about that report.

To reiterate, **Form One must be completed and filed by all broadcast stations via ETRS by July 6, 2021**.

**C. Stations Should Download, Review, and Complete the FCC’s New EAS Operating Handbook**

On the same day it issued the Notice, the FCC released a [new, 2021 EAS Operating Handbook](https://www.fcc.gov/file/21268/download) for all broadcast stations (the prior version was dated July 2017). Although the core content of the handbook has remained the same across the 2021 and 2017 versions, stations should promptly review, complete, and print the new [EAS Operating Handbook](https://www.fcc.gov/file/21268/download) and post it at the location of the station’s EAS equipment (and, in so doing, replace the prior, July 2017 version of the Handbook). This will ensure both that stations remain current with their FCC-imposed requirement to keep a copy of the Handbook at normal duty positions or EAS equipment locations, and that the Handbook is timely updated to reflect any changes in station operation since the last update (the Handbook has some “fill-in-the-blank” areas for stations).

All station personnel involved in any aspect of EAS compliance—weekly and monthly tests, nationwide tests, state and local alerts, EAS logging, equipment procurement, etc.—should review the EAS Operating Handbook, determine whether it is current and accurate (especially in the “fill-in‑the‑blanks” areas), and ensure that it is posted at the appropriate location(s). Please Note: stations are not permitted to alter the existing content of the Handbook, other than to complete the portions that are designed for station input.

**D. Questions?**

 As you complete Form One and otherwise prepare for the August 11 nationwide EAS test, please consult with your EAS equipment manufacturer and legal counsel for assistance with any questions.

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# CRB Adopts Increased Streaming Rates for Radio Broadcasters, Takes Middle Position Between NAB and SoundExchange Proposals

 After several delays caused by the COVID-19 pandemic, the Copyright Royalty Board (“CRB”) [announced its decision](https://www.crb.gov/announcements/) (the “Announcement”) adopting the streaming royalty rates that radio stations must pay for the period from January 1, 2021, to December 31, 2025. Because the CRB’s full “written determination is currently being reviewed by the parties to the proceeding to determine which portions, if any, contain confidential information that must be redacted from the version that will be released to the public,” full details regarding the decision are not yet available. However, according to the Announcement, most radio broadcasters are likely to see a rate increase.

*Commercial Broadcasters*. For commercial broadcasters, the royalty rate for non-subscription advertising-supported webcasts will increase by approximately 17%—up from the current $0.18 royalty rate to $0.21 for every 100 songs streamed. The rate for commercial subscription services will be $0.26 for every 100 songs streamed.

*Certain Non-Commercial Broadcasters*. Royalty rates vary across NCE stations, contingent on how the station is classified under the CRB’s rules. Accordingly, the new CRB rates listed below **do not** apply to (1) qualifying, substantially student-run NCE stations (subject to various eligibility criteria), or (2) public radio stations that are: affiliated with NPR, American Public Media, Public Radio International, or Public Radio Exchange; a member of the National Federation of Community Broadcasters; or otherwise qualified to receive funding from the Corporation for Public Broadcasting (“CPB”). For all other noncommercial broadcasters, the CRB’s new royalty rate can vary based on a threshold of 159,140 Aggregate Tuning Hours (ATH) in a month. The noncommercial webcaster rate will be $1000 annually for each station or channel for all webcast transmissions totaling not more than 159,140 ATH in a month, for each year in the rate term. However, if in any month a noncommercial webcaster makes total transmissions in excess of 159,140 ATH on any individual channel or station, the noncommercial webcaster will be required to pay per-performance royalty fees for the transmissions it makes on that channel or station in excess of 159,140 ATH at the rate of $0.21 for every 100 songs streamed.

 Although the new royalty rates do reflect an increase for affected radio broadcasters, it does appear that the CRB attempted to strike a middle ground between dueling proposals presented by NAB and SoundExchange. NAB advocated for a two-tier rate system that would include a $0.16 rate for every 100 songs streamed on general non-subscription advertising-supported webcasts, and a lower rate of $0.08 for every 100 songs streamed on simulcasts of over-the-air radio stations. On the other hand, SoundExchange proposed raising the rate for all non-subscription advertising-supported webcasts to $0.28 for every 100 songs streamed.

 It’s currently uncertain whether the CRB’s decision will be challenged in court (as has happened in the past). If not (or if the decision is challenged but ultimately upheld), stations will need to “true up” their royalties by paying any additional sums owed under the new rates from January 1, 2021, forward. We will continue to monitor the status of the CRB proceeding and let you know of any important updates.

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# FCC Adopts Minor Changes to EAS Rules,

# Considering More at FEMA’s Request

At the Commission’s June open meeting today (June 17), the FCC adopted a Report and Order and Further Notice of Proposed Rulemaking (the “Order” and “Notice,” respectively), aimed at enhancing the efficacy of the Emergency Alert System (“EAS”) and Wireless Emergency Alerts (“WEA”).

The Order largely adopts changes proposed in an April 2021 Notice of Proposed Rulemaking, including by: providing a mechanism for various governmental entities to report false EAS and WEA alerts to the FEMA Administrator; enhancing various requirements applicable to State Emergency Communications Committees (“SECCs”); and providing for repeating EAS alerts to be issued by certain classes of EAS alert originators. Of those items, the Order’s treatment of “false” EAS alerts is likely of greatest interest to broadcasters, and the new rules will permit FEMA and state, tribal, local, and territorial governments to notify the FCC when a “false” EAS (or WEA) alert is transmitted. Importantly, the Order declines to adopt a strict definition of what constitutes a “false alert,” and instead provides various examples to distinguish when the government is—and is not—encouraged to report a false alert.

Note, however, that the false-alert reporting mechanism adopted in the Order does **not** apply to broadcasters; broadcasters are separately **required** under the FCC’s existing rules to self-report the transmission of a “false alert” within 24 hours of discovering the false alert transmission. That said, broadcasters ought to review and understand the Order’s illustrative examples (noted above) of when a government entity should (and should not) report a false or erroneous alert, as, presumably, government entities may begin reporting false/erroneous alerts to FEMA (and the FCC) based on the Order’s guidance.

Further changes are proposed in the Notice, each of which responds to recommendations made by FEMA largely targeting the technical and linguistic aspects of the EAS. For instance, the Notice proposes changing the EAS originator code for the “Primary Entry Point System” from “PEP” to “NAT” (for “National Authority”), and changing the EAN event code from “Emergency Action Notification (National Only)” to “Emergency Alert, National,” or replacing the code with a new event code called “NEM,” defined as “National Emergency Message.”

However, the Notice does tee up one item that might be of particular interest to broadcasters—FEMA’s recommendation to examine the feasibility of “methods to update the EAS to support persistent display of alert information and/or persistent notification for emergencies that require immediately public protective actions to mitigate loss of life.” If the FEMA recommendation that prompted the Notice is ultimately adopted, this new class of emergency alerts would “persist on EAS until the alert time has expired or is cancelled by the alert originator.” The Notice raises many questions on that issue, including whether current EAS hardware and software can support such a change, what visual and auditory form such persistent alerts (which could hypothetically last for hours) might take, and whether alternatives (such as repeating (re-originating) the alert at regular intervals) might be a preferable manner of achieving the same public safety goals.

The new rules set forth in the Order will take effect after various additional procedural requirements are met. Comments on the Notice will be due 60 days after publication in the *Federal Register*; reply comments will be due 90 days after publication.

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*Tim Nelson, Editor*

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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