



441 G St. N.W.
Washington, DC 20548

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September 23, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: The Emergency Alert System and Wireless Emergency Alerts*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC) entitled “The Emergency Alert System and Wireless Emergency Alerts” (FCC 24-83). We received the rule on August 27, 2024. It was published in the *Federal Register* on September 6, 2024. 89 Fed. Reg. 72724. The effective date of the rule is September 8, 2025.

According to FCC, with this rule it amends its regulations governing the Emergency Alert System and Wireless Emergency Alerts to add a new “MEP” code for alerting the public about missing and endangered persons whose circumstances do not meet the criteria for “America’s Missing: Broadcast Emergency Response,” or “AMBER,” alerts. FCC states the rule is a summary of its Report and Order in PS Docket Nos. 15-91 and 15-94, FCC 24-83.

Enclosed is our assessment of FCC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Cathy Williams
Chief, Performance & Program Management
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
“THE EMERGENCY ALERT SYSTEM AND WIRELESS EMERGENCY ALERTS”
(FCC 24-83)

(i) Cost-benefit analysis

The Federal Communications Commission (FCC) discussed the costs and benefits of this rule. See 89 Fed. Reg. 72724, 72729 (Sept. 6, 2024). FCC stated that while precise numerical estimation is not possible, it expects the new event code will improve public safety outcomes for missing and endangered persons in a similar fashion to certain other alerts. *Id.* at 72729.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FCC prepared a Final Regulatory Flexibility Analysis (FRFA). 89 Fed. Reg. at 72730. The analysis included (1) a statement of the need for and objectives of the rule; (2) a statement that no comments were filed specifically addressing the proposed rules and policies presented in the initial regulatory flexibility analysis; (3) a statement that the Small Business Administration’s Chief Counsel for Advocacy did not file comments; (4) a description and estimate of the number of small entities to which the rule will apply; (5) a description of projected reporting, recordkeeping, and other compliance requirements for small entities; (6) steps taken to minimize the significant economic impact on small entities, and significant alternatives considered; and (7) a statement that FCC will provide a report to Congress that includes the FRFA. *Id.* at 72730–72737.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FCC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative

Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FCC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 18, 2024, FCC published a proposed rule. 89 Fed. Reg. 27699. FCC also consulted with federally recognized tribes about the proposed rule in May and June 2024. 89 Fed. Reg. at 72725. FCC responded to comments in the rule. *Id.* at 72725–72729.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FCC determined this rule does not contain an information collection subject to the Act. 89 Fed. Reg. at 72730.

Statutory authorization for the rule

FCC promulgated this rule pursuant to sections 151, 154 (i) and (n), 303(r), 544(g), 606, 1201, and 1206 of title 47, United States Code. See 89 Fed. Reg. at 72737.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FCC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FCC is not subject to the Order.