

Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105-3920, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 200, Washington, DC.

(1) Navajo Nation Safe Drinking Water Act, Navajo Nation Code § 2501 et seq., Title 22, Chapter 11, Subchapter 15, Subchapters 1, 2, 5, 7, 8 (August 9, 2001):

(2) Navajo Nation Underground Injection Control Regulations promulgated September 12, 2006, Parts 1 through 3:

(3) Permit and Monitoring Fee Schedule, adopted June 28, 2001:

(4) Uniform Regulations for Permit Review, Administrative Enforcement: Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts, adopted September 5, 2001, Subparts 1 through 3.

(b) *Memorandum of Agreement (MOA)*. The MOA between EPA Region 9 and the Navajo Nation, signed by the EPA Regional Administrator on August 21, 2001. The Criminal Enforcement MOA between EPA Region 9 and the Navajo Nation, signed by EPA on October 30, 2006.

(c) *Statement of Legal Authority*. (1) "Statement of the Attorney General of the Navajo Nation Pursuant to 40 CFR § 145.24", August 27, 2001.

(2) "Statement of the Attorney General of the Navajo Nation Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation with Respect To Its Underground Injection Control Program", July 3, 2002.

(3) "Supplemental Statement of the Navajo Nation Attorney General Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation to Operate an Underground Injection Control Program under the Safe Drinking Water Act", October 11, 2006.

(d) *Program Description*. The Program Description submitted as part of the Navajo Nation's application, and any other materials submitted as part of this application or as a supplement thereto.

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## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### 47 CFR Part 301

[Docket Number: 080324461-8462-01]

RIN 0660-AA17

#### The Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes and Households that Utilize Post Office Boxes; Waiver

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** In this document, the National Telecommunications and Information Administration (NTIA) proposes certain changes affecting section 301.3 of its Digital-To-Analog Converter Box Coupon Program rules set forth at 47 CFR 301.3. Specifically, NTIA proposes to waive the "eligible household" and application requirements in section 301.3(a), and section 301.3(e), for individuals residing in nursing homes or other senior care facilities, subject to the alternative application requirements specified herein. NTIA also proposes to amend section 301.3(a)(2) to permit an otherwise eligible household that utilizes a post office box for mail receipt to apply for and receive coupons subject to providing satisfactory proof of physical residence.

**DATES:** Comments must be submitted by 5 p.m. EST, no later than June 9, 2008.

**ADDRESSES:** Comments via mail should be submitted to: Milton Brown, Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230. Comments may also be sent by facsimile to (202) 501-8013. Electronic comments may be submitted to coupon@ntia.doc.gov or to Regulations.gov at www.regulations.gov.

**FOR FURTHER INFORMATION CONTACT:** Milton Brown at (202) 482-1816.

**SUPPLEMENTARY INFORMATION:** The Digital Television Transition and Public Safety Act of 2005 (the Act), among other things, authorized NTIA to create a Digital-to-Analog Converter Box Coupon Program (Coupon Program) to assist consumers who wish to continue receiving broadcast programming over the air using analog-only televisions not

connected to cable or satellite service after the February 17, 2009, deadline for full power stations to convert to digital-only transmissions.<sup>1</sup> Specifically, Section 3005 of the Act directed NTIA to implement and administer a program through which eligible U.S. households may obtain via the United States Postal Service a maximum of two coupons of \$40 each to be applied towards the purchase of Coupon-Eligible Converter Boxes (CECB). To implement the Coupon Program, NTIA issued regulations on March 15, 2007.<sup>2</sup>

Since NTIA began accepting applications for coupons on January 1, 2008, the Program has received a number of applications submitted by, or on behalf of, individuals residing in nursing homes and from applicants who utilize a post office box for mail receipt. Because these applicants do not meet the current eligibility criteria under the Coupon Program regulations, these applications have been denied.

#### I. Nursing Home Residents

NTIA recognizes that our Nation's seniors, including those residing in nursing homes and other senior care facilities, constitute a vulnerable community that may rely on free, over-the-air television to a greater degree than other members of the public.<sup>3</sup> For this reason, seniors may have a greater need for converter boxes to continue receiving broadcast programming over the air using analog-only television sets. To date, NTIA has implemented the Coupon Program in a manner that strives to assure that no Americans lose television service as a result of the digital transition, and NTIA is committed to ensuring that the Program also addresses the particular needs of this vulnerable segment of the population as well. The eligibility requirements of the program, however, do not permit seniors living in nursing homes to avail themselves of the Coupon Program.

To permit seniors residing in nursing homes to participate in the program, NTIA proposes to waive the current household eligibility and application process set forth at 47 CFR 301.3 and to permit these individuals to apply for and receive one coupon under certain

<sup>1</sup> Title III of Pub. L. No. 109-171, 120 Stat. 4, 21 (2006).

<sup>2</sup> See 47 CFR Part 301.

<sup>3</sup> See Testimony of John M.R. Kneuer, Assistant Secretary for Communications and Information, Before the Committee on Commerce, Science and Transportation, United States Senate (Oct. 17, 2007) (recognizing seniors as a targeted group that depends on over-the-air television to a greater extent than the general population), available at [http://www.ntia.doc.gov/ntiahome/congress/2007/Kneuer\\_SenateCommerce\\_101707.htm](http://www.ntia.doc.gov/ntiahome/congress/2007/Kneuer_SenateCommerce_101707.htm).

circumstances. However, NTIA must be assured that coupons are distributed to verifiable residents of these facilities and that the Coupon Program is administered effectively within the existing resources Congress has made available and in a manner that minimizes waste, fraud and abuse. NTIA requests comments on its proposal to waive its eligibility requirements for nursing home residents.

The addition of nursing home residents to the program presents particular administrative challenges. NTIA is concerned about whether information is readily available that would allow the agency to confirm that the individual making the coupon request (or on whose behalf the request is made) actually resides in a nursing home. NTIA seeks comments on ways to address these and other administrative challenges.

In addition, information the agency has gathered from organizations representing both residents and operators of senior care facilities indicates that the majority of residents of such facilities face cognitive, mobility, and economic barriers to requesting and using coupons. Many nursing home residents would therefore likely require the assistance of another person to order a coupon, purchase the box for them using the coupon, and install the converter box. NTIA seeks comment on how best to address the role of such assistive personnel in our waiver process while still protecting against the potential increased risk of waste, fraud, or abuse.

#### *A. Identification of Nursing Homes or Other Senior Care Facilities*

In order to plan and administer the Coupon Program effectively and efficiently, NTIA must be able to determine how many additional coupon requests will be added by operation of the proposed waiver. Moreover, NTIA must be able to ensure to the extent possible that such requests are being made by or on behalf of, and coupons are being issued to, legitimately qualified individuals who need converter boxes. NTIA recognizes that the terms "nursing home" and "senior care facility" are somewhat generic. There are many facilities that care for elderly residents that may be considered nursing homes in the general sense. These include assisted living facilities, continuing care retirement communities, and convalescent rest homes. For these reasons, NTIA believes it is necessary to define in some way the scope of facilities whose residents will qualify for the waiver (Eligible Nursing

Home). NTIA seeks comments on how it should define eligible nursing homes for the purpose of the proposed waiver.

There are databases available to assist NTIA in identifying Eligible Nursing Homes. For example, the U.S. Department of Health and Human Services (HHS) Center for Medicare and Medicaid Services (CMS) determines a nursing facility's eligibility to participate in the Medicare program based on a state's certification of compliance and a facility's compliance with civil rights requirements.<sup>4</sup> CMS maintains an Online Survey, Certification and Reporting (OSCAR), in cooperation with the state long-term care surveying agencies.<sup>5</sup> NTIA proposes to use a facility's inclusion in the CMS OSCAR database as a baseline criterion to establish the eligibility of a facility for the waiver proposed here.

However, NTIA recognizes that not all nursing homes in the United States are included within the OSCAR database. Accordingly, NTIA solicits comments on ways to ensure that all appropriate facilities not otherwise in the OSCAR database are identified and included in our waiver standards. To that extent, NTIA requests that nursing home associations, state certifying agencies, and other senior care groups provide as much information as possible to enable NTIA to ensure that the Program reaches nursing homes with residents that would benefit from the Coupon Program. NTIA also seeks information on the number of nursing home residents that would actually need coupons to purchase converter boxes in order to continue receiving broadcast programming over the air using analog-only televisions not connected to cable, satellite, or other pay television service, and the impact on the cost of administering the program.

#### *B. Administration of Coupon Program for Nursing Home Residents*

To mitigate risks associated with the lack of readily available information to authenticate requests from or on behalf of nursing home residents, NTIA proposes an exception to our existing coupon eligibility and application requirements that would enable residents of Eligible Nursing Homes to apply for and receive coupons subject to certain additional information requirements not otherwise applicable

to eligible households. Specifically, NTIA proposes to permit coupon applications to be submitted by, or on behalf of, a resident of an Eligible Nursing Home using any of the following three methods, provided that only one application may be submitted for any individual:

1. Individual: An individual residing in an Eligible Nursing Home (Nursing Home Resident) may apply for one (1) coupon on his own behalf. In such circumstances, the coupon applicant would be required to include: (i) his or her name, date of birth, and Social Security Number (SSN); (ii) the name and address of the Eligible Nursing Home; and (iii) a certification from the Nursing Home Resident as to whether he or she receives television exclusively over the air or through cable, satellite or other pay television service. In accordance with the Privacy Act of 1974, disclosure of an individual's SSN for purposes of this waiver process is voluntary; however additional information to verify the resident's identity will be solicited if the individual chooses not to disclose the SSN.<sup>6</sup> Such additional process may delay the resident's receipt of a coupon.

2. Person Designated to Act on a Nursing Home Resident's Behalf: Alternately, a person designated to act on behalf of a Nursing Home Resident may request one (1) coupon for that resident. In that case, the coupon application would be required to include all of the information specified in Option 1 above, and, in addition, the person requesting the coupon on the Nursing Home Resident's behalf must supply: (i) his own name, address, Social Security Number, and date of birth; and (ii) evidence that he is empowered to act on the behalf of the resident (e.g., power of attorney or birth certificate indicating familial relationship).

3. An Administrator of a Nursing Home or Other Senior Care Facility: Finally, provided that an application has not already been submitted under either of the foregoing options, an administrator of an Eligible Nursing Home may also request one (1) coupon on behalf of a Nursing Home Resident of his facility. As in Option 2, the administrator would be required to provide for each resident for whom the request is being made all of the information specified in Option 1 above. In addition, the administrator would

<sup>4</sup> See generally 42 CFR Part 403.

<sup>5</sup> OSCAR is a compilation of all the data elements collected by surveyors during the inspection survey conducted at nursing facilities for the purpose of certification for participation in the Medicare and Medicaid programs. The institutional files are available at [http://www.cms.hhs.gov/HealthPlanRep/FileData/05\\_Inst.asp](http://www.cms.hhs.gov/HealthPlanRep/FileData/05_Inst.asp).

<sup>6</sup> The Privacy Act of 1974 provides that it "shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security number." 5 U.S.C. 552a.

also be required to provide: (i) the name and address of the residents' Eligible Nursing Home; (ii) the administrator's own name, Social Security Number, and date of birth; and (iii) a copy of each facility's operating license indicating the administrator's authorization to administer the Eligible Nursing Home.

NTIA intends to audit periodically the use of coupons obtained through any of these methods to ensure that the coupon was used to provide a converter box for the resident's personal use. Due to the potentially high risk of fraud and lack of other identifying information for individuals in this population, NTIA proposes to collect the Social Security Numbers and dates of birth from nursing home residents and their representatives. This information provides a unique identifier for each resident. NTIA will only use the Social Security Number for identification, verification and tracking purposes for the Coupon Program. This information will be collected and maintained in a manner meeting the highest level of security required for personally identifiable information. The information collected will be limited to that which is necessary to identify the individual, and, if necessary, conduct an audit of the Coupon Program or the nursing home facility. Similar information is routinely collected from families and legal designees conducting business for individuals in senior care facilities.

NTIA requests comments on other methods or information that the agency can use to verify the legitimacy of requests made by or on behalf of Nursing Home Residents. NTIA also seeks comments on methods to track and prevent duplicate requests and identify patterns of fraudulent behavior.

### *C. Applicability of Other Provisions of the Coupon Program Rule*

Consistent with section 301.4(d) of the Coupon Program regulations, NTIA proposes to send coupons to Nursing Home Residents via U.S. Postal Service to the address of the Eligible Nursing Home specified in the application. In the case of a request from an administrator on behalf of a Nursing Home Resident, NTIA proposes to mail the coupon directly to the requesting administrator at the address provided for the facility in the application.

NTIA proposes that a coupon issued pursuant to this waiver process may only be used to purchase a CECB to be connected to a television set individually-owned by the Nursing Home Resident on whose behalf the application was made. CECBs purchased with coupons issued under

this process may not be connected to television sets owned by the nursing home or senior care facility.

The Coupon Program does not intend to reimburse individuals, family members, nursing home administrators or others who may be designated to act on behalf of residents for any costs these individuals may incur in obtaining coupons or providing other assistance related to obtaining and installing converter boxes.

NTIA proposes that all other provisions of the Coupon Program rules would apply to Nursing Home Residents.

## **II. Applicants Utilizing Post Office Boxes for Mail Receipt**

As noted above, since NTIA began accepting applications for coupons on January 1, 2008, it has received and denied applications from a number of consumers that utilize a post office box for mail receipt. NTIA has become aware through the appeals process, however, that many applicants have sound reasons for utilizing a post office box for mail receipt. For example, a number of consumers appealing denials expressed concerns about the risk of identity theft as a result of stolen mail received via home delivery as the reason that they receive mail utilizing a post office box. As a consequence, NTIA believes it is appropriate to revisit our regulations concerning the treatment of applications using post office boxes.

In developing the Coupon Program regulations, NTIA carefully considered mechanisms to deter waste, fraud, and abuse in the Program. In a number of studies of government benefit programs, most recently in its examination of fraud associated with Hurricane Katrina and Rita disaster benefits distributed by the Federal Emergency Management Agency (FEMA), the Government Accountability Office (GAO) noted that preventive controls are the most effective and efficient means to minimize waste, fraud, and abuse.<sup>7</sup> GAO has specifically cited the misuse of post office boxes by applicants for benefits and recommended that preventive controls in a benefits

program should, at a minimum, require that application data be validated against other government or third-party sources to determine whether an applicant has provided accurate information on their identity and place of residence.<sup>8</sup> Specifically, GAO recommended that applicants should be required to provide their actual address.<sup>9</sup>

Accordingly, the current Coupon Program regulations require applicants to provide a United States Postal Service mailing address in all but a few instances, such as applicants residing on Indian reservations, Alaskan Native Villages, and other rural areas to which the U.S. Postal Service does not deliver to residential addresses. Consistent with GAO's recommendation, the Coupon Program regulations make it clear that these applicants may be required to provide additional proof of their physical residence. Moreover, as GAO recommended, the address of each applicant is checked by NTIA's contractor against a third-party database to assist in validating eligibility.

NTIA now proposes to amend section 301.3(a) of its regulations to permit a household utilizing a post office box for mail receipt to become eligible to apply for and receive coupons if it can provide proof of physical residence as proof of the application process. NTIA believes that requiring proof of physical residence will balance the need for preventive controls to protect the Program from waste, fraud, and abuse with the goal of the Program to provide assistance to those consumers that will need a converter box to continue receiving broadcast programming over the air using analog-only televisions.

Specifically, NTIA proposes that an applicant that utilizes a post office box for mail receipt must provide one or more of the following documents to satisfy the requirement for proof of physical residence: a valid driver's license containing the applicant's physical address; a utility bill (water, gas, electric, oil, cable, or landline telephone (i.e., not wireless or pager) bearing the applicant's name and physical address and issued within the sixty (60) days immediately preceding the date the coupon application is

<sup>7</sup> Hurricanes Katrina and Rita Disaster Relief: Improper Fraudulent Individual Assistance Payments Estimated to be Between \$600 Million and \$1.4 Billion, Testimony, GAO-06-844T (GAO 2006 Testimony) (June 14, 2006); Hurricanes Katrina and Rita: Unprecedented Challenges Exposed the Individuals and Households Program to Fraud and Abuse; Actions Needed to Reduce Such Programs in Future, Report to Congressional Committees, GAO-06-1013 (Sept. 2006); Hurricanes Katrina and Rita Disaster Relief: Prevention is the Key to Minimizing Fraud, Waste, and Abuse in Recovery Efforts, Testimony, GAO-07-418T (GAO 2007 Testimony) (Jan. 29, 2007).

<sup>8</sup> GAO 2007 Testimony, *supra* n. 3, at 4-5. See also *Benefit Fraud with Post Office Boxes*, Letter to Representative Gallegly, GAO/HEHS-97-54R (Feb. 21, 1997).

<sup>9</sup> GAO stated "[w]hile not all payments made to post office boxes are improper or potentially fraudulent, the number of potentially fraudulent payments could be substantially reduced if FEMA put in place procedures to instruct disaster recipients to provide actual street addresses of damaged property when claiming disaster assistance." GAO 2006 Testimony, *supra* n. 3, at 5.

submitted; a government-issued property tax bill for the applicant's residence; an unexpired homeowner's or renter's insurance policy for the applicant's residence; an unexpired residential lease or rental agreement with the applicant's name and physical address. NTIA will only use this information for identification, verification and tracking purposes for the Coupon Program. This information will be collected and maintained in a manner meeting the highest level of security required for personally identifiable information. Similar information is routinely collected by governmental agencies to verify residency.<sup>10</sup>

NTIA requests comments on other methods by which it can verify the physical address of an applicant that utilizes a post office box for mail receipt. NTIA also seeks other information and estimates of the number of consumers with post office boxes that will apply for coupons if the proposed rule is implemented.

#### **Executive Order 12866**

This proposed rule has been determined to be significant for purposes of Executive Order 12866; and therefore, has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Analysis was completed, outlining the costs and benefits of implementing this program. The complete analysis is available from NTIA upon request.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. NTIA has determined that the rule meets the applicable standards provided in section 3 of the Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Congressional Review Act**

This rule has been determined to be major under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

#### **Regulatory Flexibility Act**

As required by the Regulatory Flexibility Act, 5 U.S.C. 603. NTIA has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA.

These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice and must have a separate and distinct heading designating them as a response to the IRFA.

#### **Information Collection and Recording Requirements**

This document contains proposed information collection requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), NTIA invites comments on this information collection and intends to request approval for it from the Office of Management and Budget (OMB). To successfully administer this program, NTIA requests approval of the collection of information for the proposed coupon application process and requirements for Nursing Home Residents as well as for applicant utilizing a post office box for mail receipt. Comments on the information collection and recordkeeping requirements in this proposed rule must be received by June 23, 2008.

Comments are invited on (a) whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments on the information collection and recordkeeping requirements in this proposed rule may be sent to Milton Brown, Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230.

1.) *Title:* Waiver Application for the Digital-to-Analog Converter Box Coupon.

*Type of Request:* New Collection.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .50 hours (30 minutes) per respondent.

*Respondents:* Individuals residing in nursing homes and other senior care facilities, representatives of such individuals, and administrators of nursing homes or other senior care facilities.

*Estimated Number of Respondents:* 420,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* .50 hours.

2.) *Title:* Proof of Physical Residence for the Digital-to-Analog Converter Box Coupon Application.

*Type of Request:* New Collection.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .50 hours (30 minutes) per respondent.

*Respondents:* Individuals that utilize post office boxes for residential mail receipt.

*Estimated Number of Respondents:* 340,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* .50 hour.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### **Executive Order 12372**

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

#### **Unfunded Mandates**

This rule contains no federal mandates under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 for State, local and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### **National Environmental Policy Act**

It has been determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), an Environmental Impact Statement is not required.

#### **Government Paperwork Elimination Act**

NTIA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

<sup>10</sup> See e.g., Cal. Welfare and Institutions Code § 14007.1 (Deering 2007); D.C. Code Ann. § 39-309 (LexisNexis 2008); Ky. Rev. Stat. Ann. § 186.010 (LexisNexis 2008); N.C. Gen. Stat. § 20-7 (2007)

**Executive Order 12630**

This rule does not contain policies that have takings implications.

**Executive Order 13132**

This rule does not contain policies having federalism implications requiring preparation of Federalism Impact Statement.

**Authority:**

Title III of the Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4, 21 (Feb. 8, 2005).

Dated: April 18, 2008.

**Meredith Attwell Baker,**

*Acting Assistant Secretary for Communications and Information.*

**APPENDIX A****INITIAL REGULATORY FLEXIBILITY ANALYSIS**

As required by the Regulatory Flexibility Act (RFA) of 1989, as amended, NTIA has prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the economic impact on small entities that might result from this Notice of Proposed Rulemaking (NPRM). NTIA requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. NTIA will consider all timely comments in drafting our final Regulatory Flexibility Analysis and in making its decision on a final rule. NTIA will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

This analysis addresses six issues: (1) a description of the reasons why action by NTIA is being considered; (2) the proposed rule's objectives and legal basis; (3) a description of and, where feasible, an estimate of the number and types of small entities affected by the proposed rule; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement; and (5) the relevant rules that could duplicate, overlap, or conflict with the proposed rule. The following sections provide details on each of these issues.

**A. Need for, Objectives of, the Proposed Rule**

This proposed waiver to NTIA's TV Converter Box Coupon Program regulations will permit individuals residing in nursing homes to be eligible to receive coupons for the purchase of digital-to-analog converter boxes. The proposed rule also permits households utilizing a post office box for mail receipt to provide proof of physical residence, so that they can become eligible to apply for and receive coupons.

**B. Legal Basis**

The legal basis for any action taken pursuant to this proposed rule is contained

in the Digital Television Transition and Public Safety Act of 2005 (the Act).<sup>11</sup> Specifically, section 3005 of the Act directs NTIA to implement and administer a program through which eligible U.S. households may obtain a maximum of two coupons, \$40 each, to be applied towards the purchase of a digital-to-analog converter box.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply**

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.<sup>12</sup> The RFA generally defines the term "small entity" to include "small business," "small organization," or "small governmental jurisdiction."<sup>13</sup> According to the Small Business Administration (SBA), Nursing Care Facilities and Continuing Care Retirement Communities must have receipts of \$12.5 million or less in order to qualify as a small business concern.<sup>14</sup> SBA provided, however, that Homes for the Elderly and Other Residential Care Facilities must have receipts of \$6.5 million or less to qualify as a small business concern.<sup>15</sup> NTIA does not have data on the number of these facilities that would qualify as a small business concern. NTIA also does not have data on the number of residents of these small businesses that would take advantage of the Coupon Program.

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

There are no projected reporting, recordkeeping or other compliance requirements associated with this proposed rule. Nursing facility administrators should be aware, however, that NTIA intends to audit periodically the use of coupons obtained to ensure that the coupon was used to provide a converter box for the resident's personal use.

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

The proposed rule has no significant economic impact on small entities. Participation in this program is voluntary, thus any economic impact would not be caused by the proposed rule as small entities are not required to participate in the program. NTIA also notes that this program may not be attractive to many nursing care facilities or homes for the elderly, small or otherwise, because residents may receive television service through one of the multichannel video programming distributors, such as cable or satellite service. In fact, nursing care facilities or homes for the elderly are only implicated in this program if an administrator chooses to apply

for a coupon on behalf of a resident.

Although it would take an approximately 30 minutes to submit the application on the resident's behalf, there is no indication that this time commitment would have a significant economic impact to nursing care facilities or homes for the elderly that are considered "small entities."

The proposed rule provides two alternatives to minimize any economic impact on nursing care facilities or homes for the elderly. Nursing home residents may apply for coupons directly, thereby eliminating any cost or time by the nursing facility. Alternatively, the proposed rule permits a person other than a nursing home employee acting on behalf of the nursing home resident to apply for the coupon. This option would also remove any cost or time on behalf of a nursing care facility or home for the elderly.

It should be noted that an alternative currently exists which permits seniors living in nursing homes to obtain converter boxes as a result of the Coupon Program. Family members or friends of seniors living in nursing homes may apply for coupons under the current regulations and use those coupons to purchase converter boxes for seniors living in nursing homes. Of course, the regulations only permit households to apply for up to two coupons, and they will not be permitted to apply for additional coupons beyond those permitted under the regulations. This alternative, while available to some, does not address those seniors living in nursing homes that do not have family members or friends willing or able to apply for coupons.

NTIA also considered other options to ensure that nursing home residents receive converter boxes. For example, NTIA considered purchasing the boxes directly and distributing them to nursing home residents. This option, however, would be administratively difficult to implement. NTIA has also approached industry regarding providing assistance to vulnerable groups that may need converter boxes. NTIA will continue reaching out to industry in this regard; however, this approach does not provide certainty that seniors living in nursing homes will receive converter boxes prior to the transition.

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

NTIA is not aware of any federal rules that may duplicate, overlap or conflict with the proposed rule.

The preceding analysis indicates that the expected burden on small entities to implement the proposed rule would be minimal.

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<sup>11</sup> Title III of Pub. L. No. 109-171, 120 Stat. 4, 21 (2006).

<sup>12</sup> 5 U.S.C. § 603(b)(3), 604(a)(3).

<sup>13</sup> 5 U.S.C. § 601(6).

<sup>14</sup> 13 CFR § 121.201.

<sup>15</sup> 13 CFR § 121.201.