

the FAA proposes to amend 14 CFR part 39 as follows:

### **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Docket No. FAA-2006-25437; Directorate Identifier 2006-NM-136-AD.

#### **Comments Due Date**

(a) The FAA must receive comments on this AD action by August 24, 2006.

#### **Affected ADs**

(b) None.

#### **Applicability**

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146-100A, -200A, and -300A series airplanes; and Model Avro 146-RJ70A, 146-RJ85A, and 146-RJ100A airplanes; certificated in any category.

#### **Unsafe Condition**

(d) This AD results from reports of loss of the nose wheel assembly. We are issuing this AD to prevent the nose wheel nut from loosening, and consequently, the nose wheel assembly detaching from the airplane; and to prevent the nose wheel clamping loads from applying to the machined radius at the root of the stub axle, which could result in damage to the nose landing gear.

#### **Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### **Modification**

(f) Within 12 months after the effective date of this AD, modify the nose landing gear in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin 32-174-70676A, dated February 21, 2006.

**Note 1:** BAE Systems (Operations) Limited Modification Service Bulletin 32-174-70676A refers to Messier-Dowty Service Bulletin 146-32-161, dated March 2, 2005, as an additional source of service information for accomplishing the modification.

**Note 2:** BAE Systems (Operations) Limited Modification Service Bulletin 32-174-70676A refers to the abutment ring as a spacer. Airplane Maintenance Manual (AMM) 32-42-17 401 identifies this part as an abutment ring (item 4). Item 3 of the AMM is identified as a spacer but this is not the part described in the modification service bulletin.

#### **No Reporting**

(g) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

#### **Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### **Related Information**

(i) European Aviation Safety Agency (EASA) airworthiness directive 2006-0137, dated May 23, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on July 17, 2006.

#### **Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-11806 Filed 7-24-06; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF COMMERCE**

### **National Telecommunications and Information Administration**

#### **47 CFR Chapter III**

**[Docket Number: 060512129-6129-01]**

**RIN 0660-AA16**

#### **Implementation and Administration of a Coupon Program for Digital-to-Analog Converter Boxes**

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

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) proposes to implement and administer a program to provide \$40 coupons to consumers for use towards the purchase of digital-to-analog converter boxes. Congress mandated the coupon program in Title III of the Deficit Reduction Act of 2005. The converter boxes are necessary for consumers who wish to continue receiving broadcast programming over the air using analog-only televisions after February 18, 2009—the date that full-power televisions stations are required to cease analog broadcasting. Without converter boxes, consumers

with analog-only television sets will be unable to view full-power television broadcasts unless they purchase digital television sets or subscribe to cable or satellite service.

**DATES:** Comments must be submitted by 5 p.m. EDT, no later than September 25, 2006.

**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](mailto:coupon@ntia.doc.gov) or to Regulations.gov at [www.regulations.gov](http://www.regulations.gov).

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

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

##### *A. Overview*

In this Notice of Proposed Rulemaking (NPRM), NTIA seeks comment on ways to implement the digital-to-analog converter box coupon program pursuant to the Digital Television Transition and Public Safety Act of 2005 (the Act).<sup>1</sup>

The Act, among other things, requires the Federal Communications Commission (FCC) to require full-power television stations to cease analog broadcasting by February 18, 2009. Recognizing that consumers may wish to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service, the Act authorizes NTIA to create a digital-to-analog converter box assistance program. Specifically, Section 3005 of the Act authorizes the Assistant Secretary for Communications and Information to “implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes.” NTIA is proposing these regulations to implement the requirements of the Act.

##### *B. Summary of Relevant Provisions of the Act*

Section 3002 of the Act amends the Communications Act of 1934 to direct the FCC to terminate analog television licenses for full power stations and to require all full-power Class A television stations in the digital television service to broadcast in the radio spectrum between 54 and 698 MHz, by February

<sup>1</sup> See Title III of the Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4, 21 (Feb. 8, 2006).

18, 2009. Section 3003 of the Act directs the FCC to begin an auction of returned analog television spectrum no later than January 28, 2008 and to deposit auction proceeds into a fund established by the Act no later than June 30, 2008. The returned analog television spectrum to be auctioned is the band between 698 and 806 MHz, except for the 24 megahertz that has been reserved for public safety uses and certain other frequencies that have already been made available through auction. Section 3004 of the Act establishes a new Treasury fund to be known as the Digital Television Transition and Public Safety Fund (Fund). It directs the receipts from the FCC's analog spectrum return auction to be deposited into the Fund.

Specific to this NPRM, 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 of \$40 each to be applied towards the purchase of a digital-to-analog converter box. The Act defines the term "converter box" to mean a stand-alone device used solely for digital-to-analog conversion.<sup>2</sup> The Act does not define "eligible household." To implement the coupon program, the Act authorizes NTIA to use up to \$990 million from the Fund for the program, including \$100 million for program administration. NTIA is also authorized to expend up to \$1.5 billion for the program, including \$160 million for administration, upon a 60-day notice and certification to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that the \$990 million is insufficient to fulfill coupon requests for eligible U.S. households.<sup>3</sup> This section also authorizes NTIA, beginning on October 1, 2006, to borrow not more than \$1.5 billion from the Treasury to implement the program. NTIA, however, must reimburse the Treasury for this amount, without interest, as recovered analog television spectrum auction proceeds are deposited into the Fund.

## II. Proposed Rules and Request for Comment

NTIA recognizes that there will be a number of solutions, including market

<sup>2</sup> Section 3005(d) provides that the term "digital-to-analog converter box" means "a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device." 120 Stat. at 24.

<sup>3</sup> See *supra* note 1 at Section 3005(c)(3).

based solutions, to address potential disruption of television service resulting from the analog to digital transition. Many consumers will neither need nor want a coupon to purchase a converter box. For example, many households that are now receiving over-the-air analog television signals will have purchased digital receivers by the time that analog broadcasting ends. We also assume that many households that currently receive over-the-air television transmissions will begin receiving digital service through one of the multichannel video programming distributors, such as cable or satellite service. Therefore, we consider this coupon program to represent one of a number of solutions to accommodate consumers once analog broadcasting ends.

### A. Eligible U.S. Households

NTIA proposes that a "television household" is a "household" with at least one television. A "household" consists of all persons who currently occupy a house, apartment, mobile home, group of rooms, or single room that is occupied as separate living quarters and has a separate U.S. postal address.<sup>4</sup> An eligible household address shall not be a post office box.

The Act and its legislative history indicate that the coupon program is not intended to cover every television in every household in the United States. The legislative history provides that the coupon program is intended to help consumers who wish to continue receiving broadcast programming over-the-air using analog only televisions not connected to cable or satellite.<sup>5</sup> The legislative history also notes that as of June 2004, only 14.86 percent of U.S. television households relied exclusively on over-the-air transmission.<sup>6</sup> Furthermore, the Act limits the number of coupons per U.S. household to only two.<sup>7</sup> As a result, NTIA proposes to define those U.S. television households that will be eligible to participate in the coupon program as those households

<sup>4</sup> This definition is based on the definitions of "household" and "housing unit" used by the U.S. Census Bureau. See U.S. Census Bureau, *http://www.census.gov* (Current Population Survey—Definitions and Explanations); see also "Digital Broadcast Television Transition: Several Challenges Could Arise in Administering a Subsidy Program for DTV Equipment," GAO-05-623T (May 26, 2005) (GAO Challenges Report) at 10 (discussion on eligibility criteria for low-income households).

<sup>5</sup> H.R. REP. NO. 109-362, at 201 (2005) (Conf. Rep.).

<sup>6</sup> *Id.*

<sup>7</sup> See Section 3005(c)(1)(A) of the Act, 120 Stat. at 23 (titled "Two-per-household maximum" provides that "[t]he Assistant Secretary shall ensure that each requesting household receives, via the United States Postal Service, no more than two coupons").

that only receive over-the-air television signals using analog-only television receivers. In other words, households that receive cable or satellite television service would not be eligible even if they have one or more analog-only television receivers not connected to such service.

We invite comment on any other eligibility factors that NTIA should consider. For example, should NTIA consider economic need in the eligibility requirements for coupons? If so, how should "economic need" be determined? Should we propose a rule to make coupons available only to households with an income based on a poverty threshold? For example, should we distribute coupons only to those households with an annual income of \$19,806 or below—the U.S. Census Bureau's poverty threshold for a family of four?<sup>8</sup> Should we consider some other income level as a basis for eligibility for this program? We note that neither the Committee of Conference's Joint Explanatory Statement (the Manager's report) includes such a requirement regarding economic need or other factors that might be related to a household's eligibility to receive coupons.

Depending on the demand for the coupons, it is possible that the number of requests for coupons may exceed the total dollar amount provided by the Act. If the number of requests exceeds \$990,000,000 as specified in the Act, NTIA is authorized to request additional funds from the appropriate Congressional committees, as required by the Act.<sup>9</sup> Recognizing that the additional funding, which cannot exceed \$1,500,000,000, may still be insufficient to administer the program, NTIA proposes to fulfill valid coupon requests on a first-come, first-served basis until funds devoted to this program have been spent. Are there other factors NTIA should consider in distributing coupons if the number of requests exceeds the number of coupons available? On the other hand, if the demand for coupons is low, should NTIA consider expanding its eligibility requirements?

### B. Coupon Value and Use Restrictions

The Act states that the value of each coupon shall be \$40.<sup>10</sup> We recognize that the cost of a converter box may be greater than \$40. NTIA proposes to issue \$40 coupons that can be redeemed only

<sup>8</sup> See U.S. Census Bureau's Poverty Thresholds for 2005, *http://www.census.gov/hhes/www/poverty/threshld/thresh05.html*.

<sup>9</sup> See *supra* note 3.

<sup>10</sup> Sec. 3005(c)(4), 120 Stat. at 24.

at a certified retailer when purchasing an eligible converter box. To keep track of the number of coupons issued, used and redeemed, as well as to minimize fraud and counterfeiting, NTIA intends to place identifying serial numbers on the coupons. NTIA invites comment on this proposal and other fraud prevention methods that are available or are currently being used. For example, instead of a paper coupon, should NTIA consider using an electronic coupon card?

The Act also states that the “[t]wo coupons may *not* be used in combination, toward the purchase of a single digital-to-analog converter box.”<sup>11</sup> As a result, NTIA proposes that each individual coupon be restricted for the purchase of one digital-to-analog converter box and that a coupon holder cannot use two coupons in combination toward the purchase of a single digital-to-analog converter box. To prevent fraud, NTIA proposes to prohibit a coupon holder from returning a converter box to a retailer for a cash refund or for credit towards the purchase of another item. NTIA proposes to permit the even exchange for another certified converter box in the event of defective or malfunctioning equipment. NTIA also proposes similar restrictions on participating retailers elsewhere in the rules. NTIA invites comment on these proposed rules.

### C. Application Process

The Act states that a household may obtain coupons by making a request between January 1, 2008 and March 31, 2009.<sup>12</sup> NTIA proposes to require consumers to request coupons by submitting an application in accordance with the eligibility criteria and procedures provided in this proposed rule. As part of the application process, NTIA proposes to require applicants to submit the following: (1) Name; (2) address; (3) the number of coupons that they require; (4) a certification that they only receive over-the-air television signals using an analog-only (NTSC) television receiver; and (5) a certification that no other member of the household has or will apply for a coupon. NTIA proposes to commence the application period on January 1, 2008 and conclude on March 31, 2009.

The Act limits coupon distribution to two coupons per household and requires the Assistant Secretary of Communications and Information to ensure that the requesting households receive the coupons via the United

States Postal Service.<sup>13</sup> As stated above, NTIA proposes a rule through which an eligible U.S. television household that requests coupons must certify that it only receives over-the-air television signals using an analog-only (NTSC) television receiver, and that they receive only over-the-air transmissions in analog format, and that they do not receive service from a multichannel video program distributor such as a cable or satellite service. As part of the certification process, the applicant household must request the specific number of coupons that it requires, not to exceed two. An applicant household requesting more than one coupon must certify that it has more than one analog-only (NTSC) television receiver. If an applicant fails to specify the number of coupons that they require, that applicant will only receive one coupon. Once certified, the requested coupon(s) will be sent via the United States mail. Regardless of the manner or the type information being collected as part of the application process, NTIA intends to protect all such information consistent with applicable law including, but not limited to, the Privacy Act of 1974.<sup>14</sup>

NTIA intends to make application forms widely available. NTIA intends to allow potential applicants to request forms through the mail, via telephone, and over the Internet. NTIA places the highest priority on designing an application system that prevents waste, fraud, and abuse. As such, NTIA intends to utilize a computer based application system which prevents duplicate requests for coupons and other potential abuses of the program by households. NTIA seeks comment on ways to prevent waste, fraud, and abuse in the application process.

The legislative history of the Act expresses an expectation that NTIA will use electronic media and networks to make aspects of the program more efficient.<sup>15</sup> To that end, NTIA proposes to permit consumers to request, submit and track applications over the Internet. We invite comment on our proposal to permit consumers to submit electronic applications.

### D. Coupon Expiration

The Act states that all coupons will expire three months after issuance. NTIA proposes to print an expiration date on each coupon. NTIA also proposes that the expiration date will be three months after the coupon's issuance date, which would be the date upon which the coupon is placed in the

U.S. mail. Consumers will not be able to redeem a coupon to purchase a converter box after the expiration date printed on a coupon and retailers will not be able to accept coupons for converter box purchases after their expiration date. NTIA believes that an expiration date will encourage consumers to obtain the necessary converter boxes in a timely manner. Moreover, a specified expiration date will reduce opportunities for waste, fraud, and abuse and provide greater efficiency and certainty in administering the program. We seek comment on this proposed rule and also on whether other options for addressing the expiration requirement are available. For example, should NTIA define the issuance date to be the date upon which a consumer receives a coupon? If so, how would NTIA calculate the expiration date of a coupon? Or should NTIA assume that the average delivery of a first class letter is two to three days and thus define the issuance date to be three days after the coupon is placed in the U.S. mail?

### E. Digital-to-Analog Converter Box

The Act defines the term “digital-to-analog converter box” (converter box) as “a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device.” It is our understanding that a converter box as defined by the Act is currently not commercially available, at least on a widespread basis. Ideally, a converter box should be able to receive digital broadcast signals in the same receiving configuration (*e.g.*, same household antenna, same location) as used for the existing analog reception. We note, however, recent GAO congressional testimony indicating that antenna reception of digital signals may vary based on a household's geography and other factors.<sup>16</sup>

For purposes of the coupon program, NTIA proposes certain standards for a minimum-capabilities converter box that simply converts an Advanced Television Systems Committee (ATSC) terrestrial digital broadcasting signal to the analog National Television Standards Committee (NTSC) format. The digital converter box should be able to receive, render and display usable pictures and sound from high definition

<sup>11</sup> See Sec. 3005(c)(1)(B) of the Act, 120 Stat. at 23 (emphasis added).

<sup>12</sup> See *id.* at Sec. 3005(c)(1)(A).

<sup>13</sup> See *supra*, note 5.

<sup>14</sup> 5 U.S.C. 552a.

<sup>15</sup> H.R. Rep. 109–362 at 202 (2005 (Conf. Rep.)).

<sup>16</sup> See GAO Challenges Report *supra*, note 7.

as well as standard definition broadcast; however, the converter box would not be required to render pictures and sound at more than standard definition quality. Specifically, the converter box should be capable of receiving, decoding and presenting video and audio from digital television transmissions as specified in FCC Part 73 and ATSC Standards A/52A, A/53C, and A/65B.<sup>17</sup> NTIA proposes to take into consideration the cost (*i.e.*, inexpensive but meets the ATSC Recommended Practice: Receiver Performance Guidelines standard (A/74) of the converter box as well as the ease of installation and operation. Specifically, NTIA proposes the following characteristics in certifying a converter box:

(a) Appropriately processes all ATSC radio frequency (RF) signals provided to the antenna-only input and then provides output signals in standard definition video for display on an NTSC television receiver/monitor;

(b) Delivers NTSC composite video and stereo audio to drive NTSC monitors;

(c) Delivers Channel 3 or 4 switchable (NTSC) RF output for television receivers;

(d) Complies with FCC requirements for Closed Captioned, Emergency Alert System (EAS) and the required parental controls;

(e) Operable by and includes a remote control; and

(f) Tunes to all television channels 2–69.

NTIA proposes to accept certification for converter boxes that are capable of only receiving over-the-air broadcast signals for display over analog-only (NTSC) receivers/monitors to firmly control the nature of the input and output signals and connectors on the box. The only input of the converter box shall be for an external antenna. The outputs shall be channel 3 or 4 (NTSC modulated signals), composite video (NTSC baseband), and audio (stereo). The single input (Type F connector) ensures that only an antenna can be connected to eligible boxes thus ensuring use of such boxes as for over-the-air television reception only. The channel 3 or 4 analog output (Type F connector) ensures that older style NTSC analog television receivers can be connected to eligible boxes. The composite video and stereo audio (all three RCA connectors) ensures that other NTSC analog television monitors

can also connect to the boxes. We seek comment on these characteristics that we propose to use to certify converter boxes and on other characteristics we should consider as well.

NTIA proposes to require manufacturers to self-certify that the converter boxes meet the standards outlined in the rules. NTIA reserves the right to test the converter boxes that have been self-certified by the manufacturer to ensure that they meet those standards. We also invite comment on whether there are existing industry or government organizations engaged in activities that can help speed the development of testing/certification processes within the allowed time frame of this program?

For purposes of this program, we interpret the Act's definition to mean that a digital-to-analog converter box is not a digital cable television box. Therefore, we do not propose to accept self-certifications for a digital cable television box. We also do not intend to accept certifications for converter boxes that have features beyond those necessary to convert an ATSC digital signal to an analog NTSC format. We invite comment on the appropriate minimum technical capabilities for converter boxes. We also seek comment on the extent we should consider certain standards, such as energy standards, in determining the type of converter box that would be eligible for this program.<sup>18</sup> How would these standards affect this program?

Finally, NTIA is seeking comments on how the converter boxes eligible for participation in the coupon program should be identified for the consumer. Should NTIA print a list of approved converter boxes on the coupons or on information sent with the coupons? Should NTIA maintain an Internet Web site listing approved converter boxes? Should it be left to the retailer to inform consumers which converter boxes are eligible for the coupon through the retailers advertising or at placards at point of sale?

#### F. Retailer Certification

Participation by retailers in this program is voluntary. Retailers that choose to participate will not be compensated by NTIA. We propose to permit consumers to redeem coupons at retailers that have established production and distribution channels and who have demonstrated that they can redeem coupons expeditiously and efficiently. We note that retailers are also typically familiar with coupon

programs and have systems in place to process coupons. We are also interested in retailers that can handle converter box purchases with the coupons via mail, phone or the Internet-based sales.

We propose to institute a process for retailers through which they must certify, under penalty of law, that they: (1) Provide information to customers about the necessity for and the installation of a converter box; (2) have in place systems that can be easily audited as well as systems that have the ability to prevent fraud and abuse in the coupon program; (3) are willing to be audited at any time during the course of the coupon program; (4) have the ability to electronically provide NTIA with sales information related to coupons used in the purchase of converter boxes, specifically tracking each serialized coupon by number with a corresponding certified converter box purchase; and (5) will only submit coupons for redemption as a result of purchases made for converter boxes certified by NTIA.

NTIA also proposes to require retailers to adhere to and enforce coupon restrictions contained in the Act such as prohibiting coupon holders from using two coupons in combination towards the purchase of a single digital-to-analog converter box. We will require retailers to prohibit consumers from using coupons to purchase any device other than a converter box certified pursuant to this rulemaking. Moreover, we expect retailers to have in place a system that prevents consumers from returning a converter box to the retailer for a cash refund or for credit towards the purchase of another item. In other words, a coupon holder is limited to an even exchange of one certified converter box for another. NTIA proposes to require retailers to submit coupons or coupon information to NTIA for redemption within 30 days after the coupon has been used to purchase a converter box. NTIA also proposes to require retailers to retain hard copies of sales information related to converter boxes purchased with coupons for one year. We seek comment on ways to prevent waste, fraud and abuse in the process by which retailers accept and process coupons.

As part of the certification process, NTIA intends to inform retailers of the coupon program's details and their rights and obligations, including their obligations to honor all valid coupons that are tendered in the authorized manner. NTIA proposes to reimburse retailers within 60 days after receiving sales information related to converter boxes purchased with coupons. NTIA also proposes to review and resolve any

<sup>17</sup> See 47 CFR 73.682(d); ATSC Standards A/52A, *Digital Audio Compression (AC-3)*, A/53C, *Digital Television Standard*, and A/65A, *Program and System Information Protocol for Terrestrial Broadcast and Cable*.

<sup>18</sup> See *e.g.*, Cal. Code Regs., tit. 20, section 1605 (2004).

allegation by the retailer that it was improperly denied reimbursement for a valid coupon properly tendered and accepted pursuant to the rules. We request comment on our proposed rule with respect to the self-certification process and other rights and responsibilities identified for retailers. NTIA places the highest priority on creating a coupon redemption process that prevents waste, fraud and abuse, while minimizing the burden on participating retailers and consumers. Therefore, we also seek comment on the various ways to prevent waste, fraud and abuse in the coupon redemption process.

### G. Consumer Education

In addition to the proposed rules above, we also solicit comment on other issues related to the coupon program that are not a part of the rulemaking process. For example, we solicit views on the most effective means to provide consumer education about this program. The Act provides that NTIA may spend "not more than \$5,000,000 for consumer education concerning the digital transition and the availability of the digital-to-analog converter box program." Considering the costs of media production and paid advertising time, the \$5,000,000 limit necessitates that NTIA carefully leverage the program's consumer education spending by collaborating with and complementing the consumer education efforts of broadcasters, equipment manufacturers, retailers, consumer groups and others with a stake in a successful and timely transition to digital television broadcasting. According to the FCC Web site, a wide range of broadcasters, equipment manufacturers, retailers, consumer groups and others have begun to produce and provide information concerning the digital transition.<sup>19</sup>

In order to maximize consumer education efforts, NTIA may seek proposals to produce commonly used on-air announcements, print and online promotional materials as well as other media or services that can be used to convey clear, consistent, frequent and widely disseminated information concerning the existence of the digital-to-analog converter box program and the actions that households must take to obtain coupons and converters. Examples include advertising campaigns, public service announcements, print articles, web sites, and posters for public display.

Any public information campaign undertaken by NTIA will only be successful if other stakeholders in the digital-to-analog converter box program contribute significant effort to the production and distribution of this information.

We seek comment on ways to provide consumer information to those households most likely to rely solely on over-the-air broadcasts in analog format. We note that there are differences in the estimated number of households that rely exclusively on over-the-air broadcasts. For example, as noted above, the legislative history indicates that 14.86 percent of U.S. households rely exclusively on over-the-air transmissions, whereas the Government Accountability Office (GAO) provided an estimate of 19 percent or 21 million American households.<sup>20</sup> We note also that in recent congressional testimony GAO stated that the identification of households that rely exclusively on over-the-air television is difficult because no list of such households exists.<sup>21</sup> GAO also noted that information on the inverse—those households that subscribe to cable or satellite service—is dispersed across hundreds of providers, and these providers may face limitations on the release of their lists to others. Thus, any information as to ways to target consumer outreach to those households eligible for coupons under this program would be helpful. The Managers' Report provides that NTIA may use the efficiencies of electronic media and networks for outreach efforts. We solicit comment on the best ways to utilize the Internet and other forms of electronic media to disseminate consumer information on the various aspects of the program. Again, we seek information regarding ways primarily to target those specific households that only receive over-the-air television broadcast signals.

### III. Submission of Comments

NTIA requests written comments from interested parties on the proposed rule as stated above as well any other aspects of the Act related to the digital-to-analog converter box program. NTIA is especially interested in receiving written comments from persons with particular knowledge of the legal, economic and technical elements related to such a program. Any information submitted to NTIA, however, should not contain

confidential, proprietary or business sensitive data.

### Executive Order 12866

This proposed rule has been determined to be economically 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 a comments filed in response to this Notice and must have a separate and distinct heading designating them as responses to the IRFA.

### Information Collection and Recordkeeping Requirement

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 for which NTIA intends to request approval from the Office of Management and Budget (OMB). To successfully administer this program, NTIA requests approval on three collection requirements and recordkeeping and reporting requirements for: (1) The application that households must submit to receive coupons; (2) the certification form for retailers that will sell the converter boxes and submit coupons for redemption; and (3) the certification form and recordkeeping and reporting requirements for manufacturers

<sup>19</sup> The Federal Communications Commission maintains a consumer education website on the digital television transition at <http://www.dtv.gov>.

<sup>20</sup> See "Digital Broadcast Television Transition: Estimated Cost of Supporting Set-Top Boxes to Help Advance the DTV Transition," GAO-05-258T (February 17, 2005).

<sup>21</sup> See GAO Challenges Report, *supra* note 7.

regarding converter boxes eligible for the coupon program.

Comments on the information collection and recordkeeping requirements in this proposed rule must be received by September 25, 2006.

Comments are invited on (a) Whether the collection of information is 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*: Application for the Digital-to-Analog Converter Box Coupon.

*Type of Request*: New Collection.

*Estimated Burden*: Public reporting burden for this collection of information is estimated to average .25 hours (15 minutes) per respondent.

*Respondents*: U.S. television households that receive only over-the-air television in analog format.

*Estimated Number of Respondents*: 21 million U.S. television households.

*Estimated Number of Responses per Respondent*: 1.

*Estimated Total Annual Burden on Respondents*: .5 hours.

(2) *Title*: Certification for Retailer to Accept and Redeem Coupons for the purchase of a Digital-to-Analog Converter Box Coupon.

*Type of Request*: New Collection.

*Estimated Burden*: Public reporting burden for this collection of information is estimated to average 1.0 hour per respondent.

*Respondents*: Retailers that accept coupons for digital-to-analog converter boxes and submit them to NTIA for redemption.

*Estimated Number of Respondents*: 100.

*Estimated Number of Responses per Respondent*: 1.

*Estimated Total Annual Burden on Respondents*: 1 hour.

(3) *Title*: Certification of Digital to Analog Converter Box.

*Type of Request*: New Collection.

*Estimated Burden*: Public reporting burden for this collection is estimated at 1 hour per respondent.

*Respondents*: Companies that manufacture digital-to-analog converter boxes who request NTIA certification.

*Estimated Number of Respondents*: 20.

*Estimated Number of Responses per Respondent*: 1.

*Estimated Total Annual Burden on Respondents*: 1 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.

#### **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 a Federalism Summary Impact Statement.

**Authority**: Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat 4, 21 (Feb. 8, 2006).

Dated: July 18, 2006.

**John M. R. Kneuer,**

*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 (“Notice” or “proposed rule”).<sup>1</sup> 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. We will consider all timely comments in drafting our final Regulatory Flexibility Analysis and in making our 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*

NTIA is promulgating this proposed rule because of a statutory mandate to create a subsidy program that will affect the public under section 3005 of Public Law 109–171.<sup>2</sup> This legislation, known as The Digital Television Transition and Public Safety Act of 2005 (the Act), requires the Federal Communications Commission (FCC) to require full-power television stations to cease analog broadcasting by February 18, 2009. After that date, households using analog-only televisions not connected to cable or satellite service will no longer be able to receive television broadcast unless the television is connected to a converter box that converts the digital signal to analog format. As a result, the Act authorizes NTIA to create a program whereby certain households can apply for \$40 coupons to be used towards the purchase of digital-to-analog converter boxes.

The proposed rule sets forth a framework to implement the coupon program as authorized by the Act. Moreover, the proposed rule provides public notice as well as an opportunity for the public to comment.

<sup>1</sup> See 5 U.S.C. 603(a).

<sup>2</sup> See Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4, 21 (Feb. 8, 2006).

The proposed rule provides clear guidelines to consumers, manufacturers and retailers regarding eligibility, responsibilities and certifications.

#### B. Legal Basis

The legal basis for any action taken pursuant to this proposed rule is contained in the Act. 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. The Act defines the term "converter box" to mean a stand-alone device used solely for digital-to-analog conversion.<sup>3</sup> The Act does not define "eligible household." To implement the coupon program, the Act authorizes NTIA to use up to \$990 million from the Fund for the program, including \$100 million for program administration. NTIA is also authorized to expend up to \$1.5 billion for the program, including \$160 million for administration, upon a 60-day notice and certification to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that the \$990 million is insufficient to fulfill coupon requests for eligible U.S. households.<sup>4</sup> This section also authorizes NTIA, beginning on October 1, 2006, to borrow not more than \$1.5 billion from the Treasury to implement the program. NTIA, however, must reimburse the Treasury for this amount, without interest, as recovered analog television spectrum auction proceeds are deposited into a new Treasury fund to be known as the Digital Television Transition and Public Safety Fund.

#### 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>5</sup> The RFA generally defines the term "small entity" to include "small business," "small organization," or "small governmental jurisdiction."<sup>6</sup> The Small Business Administration defines small entities in the "radio, television, and other electronic stores" sector as those organizations with less than \$8 million in annual revenue.<sup>7</sup> With respect to equipment manufacturers, the SBA

defines those small entities as those with less than 750 employees.

NTIA does not have precise information on the number of qualifying small businesses that are in the manufacturing or electronic retailing sectors that would be affected by the proposed rule. According to data from the U.S. Census Bureau, there were 1041 U.S. companies in 2002 that manufactured radio and television communications equipment, and approximately 1010 of these firms were classified as small entities having fewer than 750 employees.<sup>8</sup> Specific figures for the number of firms that manufacture television equipment are unavailable; however, NTIA believes that some of these companies are capable of manufacturing a digital-to-analog converter box and qualify as small entities. To the extent that there exists small entities capable of manufacturing a converter box pursuant to the standards provided in the proposed rule, the extent to which they participate in the coupon program will be a business decision and not based on any mandatory action resulting from the proposed rule. Thus we are unable to predict with any certainty as to the number of small firms that will view the coupon program as a business opportunity and thus be affected by the proposed rule. We anticipate that comments to the proposed rule and to this IRFA will be informative on this subject.

Likewise, it is difficult to ascertain the number of consumer electronics retailers that qualify as small entities. Certain data from trade associations, however, provide a glimpse of the type of small businesses that may participate in the coupon program. For example, the Professional Audio-Video Retailers Association (PARA) division of the Consumer Electronics Association (CEA) has more than 250 professional audio, video, home theater, and custom electronics specialty dealers.<sup>9</sup> CEA has also formed a partnership with the North America Retail Dealers Association (NARDA), a group of independent retailers that include consumer electronics retailers that represent approximately 3,500 storefronts and accounts for over \$11 billion in annual sales.<sup>10</sup> However, not all NARDA members may be interested in participating in the digital-to-analog converter box coupon program. In addition to consumer electronics, NARDA's members also sell and service kitchen and laundry appliances, consumer mobile electronics, computers and other home and small office products, furniture, sewing machines, vacuum cleaners, room air conditioners, and other consumer home products. NARDA's members, however, are not limited to retailers, but also include manufacturers, suppliers and vendors. Moreover, both PARA and NARDA members may be specialty electronic dealers not interested in selling converter boxes.

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

The proposed rules place certain compliance requirements on manufacturers and retailers that choose to participate in the program. For example, the proposed rule requires retailers to certify under law that they: (1) Will educate their customers on the necessity for and the installation of a converter box; (2) have systems in place that can be easily audited as well as systems that have the ability to prevent fraud and abuse in the coupon program; (3) are willing to be audited at any time during the course of the coupon program; (4) have the ability to electronically provide NTIA with sales information related to coupons used in the purchase of converter boxes, specifically tracking each serialized coupon by number with a corresponding certified converter box purchase; and (5) will only submit coupons for redemption as a result of purchases made for converter boxes certified by NTIA. The Notice also requires retailers to submit coupons for redemption within 30 days after they have been used for a purchase, and to retain hard copies of sales information for one year after the purchase.

With respect to manufacturers, the proposed rule provides standards that will be required for converter boxes for the coupon program. These standards are necessary to comply with the Act and to ensure that converter boxes function properly. Manufacturers will be required to submit a self certification that affirms that these standards have been met.

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

The proposed rule has minimal economic impact on small entities. Participation in the coupon program on all levels—consumers, manufacturers, and retailers—is voluntary. Thus any significant economic impact would not be caused by the proposed rule that creates and implements the coupon program, as small entities are not required by the rules to participate in the program. However, if a small entity does participate in the program, there is no indication that they will incur significant economic impacts. Moreover, there does not appear to be any economic impact on small businesses by a decision not to participate in the program.

#### Associated Costs

Although there may be costs associated with accepting the coupons and distributing the converter boxes, the coupon program does not restrict the retailer in pricing the converter box. Manufacturers and retailers may consider these associated costs and establish the wholesale and retail price of the converter boxes to recoup any associated costs. In fact, the coupon program anticipates that there will be a co-pay element to the purchase price. Thus, to the extent that a small retailer or manufacturer incurs costs as a result of this program, those costs can be recouped through the retail or wholesale price which the retailer and manufacturer are at liberty to choose.

Section D of this IRFA provides the compliance requirements of the proposed

<sup>3</sup> Section 3005(d) provides that the term "digital-to-analog converter box" means "a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device." 120 Stat. at 24.

<sup>4</sup> See *supra* note 2 at Section 3005(c)(3).

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

<sup>6</sup> 5 U.S.C. 601(6).

<sup>7</sup> See U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes, <http://www.sba.gov/size>.

<sup>8</sup> See U.S. Census Bureau, 2002 Economic Census, Industry Statistics by Employment Size, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing (NAICS Code 334220), Table 4, available at <http://www.census.gov/econ/census02>.

<sup>9</sup> See <http://www.ce.org/Membership/Divisions/98.asp>.

<sup>10</sup> See <http://www.narda.com>.

rule that retailers must assume if they decide to participate in the coupon program. Besides the time that it takes to submit a certification form to NTIA, there will be actual costs associated with meeting these compliance requirements. These costs, however, are difficult to quantify because of many varying factors. However, we anticipate that the costs would be minimal because retailers and manufacturers may already have the ability to meet the requirements associated with participation in this program. For example, retailers would have to ensure that employees are capable of educating customers about the necessity for and installation of converter boxes. The costs for this compliance would be calculated by the number of hours it would take to train employees. The estimate would depend on a number of factors such as the existing sales force's expertise, number of employees, salary levels, type of converter box that is certified, and the consumer knowledge.

The proposed rule also requires retailers to have systems in place that can be easily audited as well as systems that have the ability to prevent fraud and abuse in the coupon program. We assume that most businesses would have systems in place that can be easily audited, and therefore, we do not anticipate that small businesses will have to assume a cost to purchase a new system for the coupon program. Retailers must also have systems in place that have the ability to prevent fraud and abuse in the coupon program. We assume that most retailers are familiar with and accept coupons for merchandise, and that they have in place systems to prevent fraud. The nature of this coupon program, however, may require participating retailers to assume additional costs associated with preventing fraud. These costs cannot be estimated at this point in the rulemaking process. There may be costs associated in complying with an audit. These costs would most likely be calculated in terms of employee hourly rates. The associated costs depends on the nature and extent of an audit.

There are also costs associated with handling coupons, that is, accepting the coupons, submitting the coupons for redemption, and retaining hard copies of the coupons pursuant to the regulations. Again, these associated costs depend on a number of factors such as the particular systems that retailers currently have in place, as well as the extent to which these costs can be absorbed within existing procedures that the retailer has in place.

Likewise there are costs associated with small manufacturers complying with the

proposed rule. Manufacturers must ensure that the converter box meet the standards outlined in the final rule. Manufacturers would also have to assume up front costs of manufacturing and distributing the boxes to certified retail outlets. These costs are dependent upon a number of factors such as the cost to the manufacturer to build the converter box pursuant to regulations, the manufacturer's established distribution lines, the number of retailers participating, and any relationship that may or may not exist between the manufacturer and the retailer.

#### Exemptions and Waivers

The proposed rule does not provide a small business exemption for any compliance requirements. To the extent possible, the proposed rule limits reporting and recordkeeping requirements to only those necessary to provide the coupons in accordance with the Act. Any exemption or waiver of the requirements imposed on manufacturers or retailers would potentially subject the program to waste, fraud and abuse.

It is not essential that small businesses obtain a waiver of the certification requirement outlined in the section above. It is important for small retail businesses participating in the program to be knowledgeable on the particular converter boxes certified by the program, and for their sales staff to be able to provide direction and guidance for consumers. Moreover, these retailers would have to utilize systems that accommodate the government issued coupons. In the long run, the certification program may provide some protection from consumer liability for small businesses that provide converter boxes consistent with the government-established certification requirement. As such, a small business could assure customers that the converter box meets government standards, which may offset returns and other issues that could cause additional costs for the business.

The requirement for retailers to submit coupons for redemption within 30 days after they have been used for purchase, and the requirement to retain hard copies of sales information for one year after the purchase also should not be waived for small businesses. These redemption and record-keeping requirements are necessary to keep track of the number of coupons used and to ensure that the program can be properly audited at any time. The ability of the agency to monitor the program and to audit the program outweighs any burden on small businesses to comply with these requirements. Again, any costs imposed on

small businesses to comply with these requirements can be recouped through the retail price of the converter box.

Likewise, compliance requirements cannot be waived for small businesses that manufacturer converter boxes. The standards outlined in the proposed rule are necessary to comply with the Act and to ensure that the converter boxes certified by the program function properly.

Regarding alternatives considered, the proposed rule requests comment on whether a paper coupon or an electronic coupon card should be used. If an electronic coupon card is used, small businesses may not be able to participate in the coupon program if they do not have a system in place that accepts coupons electronically. On the other hand, paper coupons may present an additional burden on small businesses in processing the sale and submitting the hard copy for redemption. Either of these alternatives will only affect small businesses to the extent that they choose to participate in the coupon program.

#### Alternatives To Minimize Burdens

NTIA has taken steps to minimize burdens on small retailers and manufacturers in its proposed rule. For example, NTIA has proposed a self-certification process for both retailers and manufacturers for the compliance requirements discussed above. Alternatively NITA could require a third-party certification process, or institute a procedure whereby NTIA certifies the compliance requirements. Either option includes additional steps in the certification process and therefore would increase time and cost.

We have also sought to minimize burdens on small retailers by proposing clear rules with respect to the redemption process. Retailers have certainty that if they submit their coupons within the time established in the rules, they will be reimbursed in a timely manner. This proposal removes any uncertainty on the part of the retailer as to when they can receive full payment.

#### *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 rules.

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

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