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United States Government Accountability Office
Washington, DC 20548

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April 24, 2007

The Honorable Daniel K. Inouye
Chairman
The Honorable Ted Stevens
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Commerce; National Telecommunications and Information Administration: Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Commerce; National Telecommunications and Information Administration (NTIA), entitled “Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes” (RIN: 0660-AA16).

The Digital Television Transition and Public Safety Act of 2005 (Act) directs the Federal Communications Commission to require full-power television stations to cease analog broadcasting and to broadcast solely digital transmissions after February 17, 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. The final rule implements 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 a Coupon-Eligible Converter Box.

On July 25, 2006, NTIA published a Notice of Proposed Rulemaking and Request for Comment in the *Federal Register* on ways to implement and administer such a

program pursuant to the Act. 71 Fed. Reg. 42,067. NTIA also held meetings on November 14 and 15, 2006, to afford interested parties the opportunity to clarify comments submitted in response to the proposed rule. It was published in the *Federal Register* as a final rule on March 15, 2007. 72 Fed. Reg. 12,097. We received the rule on April 10, 2007. The rule has an effective date of May 16, 2007. See 72 Fed. Reg. 18,400, April 12, 2007. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Congress and our Office did not receive the rule from the Department of Commerce until April 10, 2007, which means that the NTIA rule will not have the required 60-day delay in its effective date.

Enclosed is our assessment of the NTIA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, except for the delay in the effective date, NTIA complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Patricia Dalton, Managing Director, Physical Infrastructure. Ms. Dalton can be reached at (202) 512-2834.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Milton Brown
Deputy Chief Counsel, NTIA
Department of Commerce

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF COMMERCE;
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
ENTITLED
"RULES TO IMPLEMENT AND ADMINISTER A COUPON PROGRAM
FOR DIGITAL-TO-ANALOG CONVERTER BOXES"
(RIN: 0660-AA16)

(i) Cost-benefit analysis

NTIA performed a cost-benefit analysis of the final rule. The coupon program established by statute and implemented in the final rule is a DTV subsidy program, and, as the Government Accountability Office (GAO) has recognized in testimony on this program, "it is difficult to measure specific benefits and costs of undertaking a specific DTV subsidy program." (GAO-05-623T, May 26, 2005.) GAO estimated, however, that a subsidy would cost from about \$460 million to about \$2 billion depending on the price of a converter box and whether a means test was employed. NTIA is of the opinion, however, that the transition to digital TV broadcasting, of which the coupon program is a significant element, will confer greater economic benefits than costs—net benefits—to the American people.

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

A Final Regulatory Flexibility Analysis was prepared in connection with the final rule. The analysis complies with the requirements of the Act, including the steps taken to reduce the economic impact on small entities.

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

NTIA's compliance with the Act's documentary requirements regarding costs, benefits, and alternatives considered are contained in NTIA's Regulatory Impact Analysis, which was prepared for compliance with Executive Order 12866. Section 202 of the Unfunded Mandates Reform Act of 1995 authorizes such use of other analysis for compliance.

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

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

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Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The information collection requirements contained in the final rule have been reviewed by the Office of Management and Budget (OMB). The assigned OMB Control Number will be provided in a subsequent *Federal Register* notice.

Statutory authorization for the rule

The final rule is authorized by Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4, 21 (Feb. 8, 2006). This title is also known as the Digital Transition and Public Safety Act of 2005.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.