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July 29, 2009

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Agriculture, Rural Utilities Service, and Department of Commerce, National Telecommunications and Information Administration: Broadband Initiatives Program and Broadband Technology Opportunities Program*

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 Agriculture, Rural Utilities Service, entitled “Broadband Initiatives Program” and Department of Commerce, National Telecommunications and Information Administration (agencies), entitled “Broadband Technology Opportunities Program” (RINs: 0572-ZA01; 0660-ZA28). We received the rule from the Department of Commerce on July 9, 2009. It was published in the *Federal Register* as a “Notice of Funds Availability (NOFA) and solicitation of applications” on July 9, 2009. 74 Fed. Reg. 33,104. On July 15, 2009, we received the rule from the Department of Agriculture.

The notice announces general policy and application procedures for broadband initiatives established pursuant to the American Recovery and Reinvestment Act of 2009. In the notice, the Department of Agriculture's Rural Utilities Service establishes the Broadband Initiatives Program (BIP) which may extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In the notice, the Department of Commerce's National Telecommunications and Information Administration (NTIA) establishes the Broadband Technology Opportunities Program (BTOP), which makes available grants for deploying broadband infrastructure in unserved and underserved areas in the United States,

enhancing broadband capacity and public computer centers, and promoting sustainable broadband adoption programs. The programs will be accepting applications between July 14, 2009, and August 14, 2009.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the notice. Our review of the procedural steps taken indicates that the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the notice, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Lawrence E. Strickling
Assistant Secretary for Communications
and Information, NTIA
Department of Commerce

James R. Newby
Acting Administrator, Rural
Utilities Service
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
RURAL UTILITIES SERVICE, AND
DEPARTMENT OF COMMERCE,
NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION
ENTITLED
"BROADBAND INITIATIVES PROGRAM" AND
"BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM"
(RINS: 0572-ZA01; 0660-ZA28)

(i) Cost-benefit analysis

The Department of Agriculture, Rural Utilities Service (RUS), and Department of Commerce, National Telecommunications and Information Administration (NTIA) (together, the agencies) prepared a cost-benefit analysis for the broadband initiatives announced in the notice. The costs associated with the notice were set by the Recovery Act in its appropriations for the programs. The Recovery Act appropriated \$4.7 billion to NTIA for broadband grants and other programs. The Recovery Act also appropriated \$2.5 billion to RUS for broadband grants and loans. The agencies are required to make awards no later than September 30, 2010.

The benefits include contributing toward stimulating the American economy by creating a variety of jobs for broadband equipment manufacturers and others. Also, the development of a faster, more extensive broadband infrastructure will help U.S. businesses operate more efficiently and better compete with businesses in foreign countries. In addition, the grants to public computer centers will allow vulnerable populations to take advantage of the benefits of broadband. Finally, the overall outreach efforts will help to alleviate the disenfranchisement of certain populations who are currently unaware of the benefits of broadband, cannot afford it, or do not know how to use a computer.

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

The Regulatory Flexibility Act requires agencies to prepare an analysis in conjunction with any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 5 U.S.C. § 604. The agencies did not issue a notice of proposed rulemaking in conjunction with this notice; therefore, they were not required to prepare a Regulatory Flexibility Act analysis.

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

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare an analysis before promulgating any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 2 U.S.C. § 1532(a). The agencies did not issue a notice of proposed rulemaking in conjunction with this notice; therefore, they were not required to prepare an Unfunded Mandates Reform analysis.

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

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

The Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. However, an agency may find good cause to issue a final rule without rulemaking procedures where withholding action would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 553. In this instance, the agencies determined that making these funds available under the notice for broadband development as mandated in the Recovery Act, is in the public interest, and that notice and comment procedures would unduly delay the provision of benefits associated with these broadband initiatives and be contrary to the public interest.

Additionally, the Administrative Procedure Act generally requires an agency to have a 30-day delay in effectiveness for a final action. An agency may waive the 30-day delay if it finds good cause. 5 U.S.C. § 553(d). The agencies found good cause to waive the 30-day delay for the same reasons discussed above.

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

The notice contains information collection requirements as defined under the Paperwork Reduction Act. The agencies have submitted the grant application forms for BTOP Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption projects, and the subsequent step two filings, to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act.

The agencies determined that the Broadband Initiatives Program (BIP) Infrastructure paperwork requirements would result in an estimated total annual burden hours of 189,837, with an estimated average of 116 hours per response, an estimated 500 respondents, and an estimated total of 1,639 estimated responses. The agencies determined that the Broadband Technology Opportunities Program (BTOP) Infrastructure program would result in an estimated total annual burden hours of 371,187, with an estimated average of 117 hours per response, an estimated 1,500 respondents, and an estimated total of 3,164 responses. The Public Computer Center program's paperwork requirements would result in an estimated total annual burden hours of 130,750, with an estimated average of 47.6 hours per response, an estimated

2,500 respondents, and an estimated total of 2,750 responses. Finally, the Sustainable Adoption program's paperwork requirements would result in an estimated total annual burden hours of 65,750, with an estimated average of 23.9 hours per response, an estimated 2,500 respondents, and an estimated total of 2,750 responses.

Statutory authorization for the rule

The notice was authorized by the American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq.

Executive Order No. 12866 (Regulatory Planning and Review)

The notice was determined to be economically significant under the Executive Order. In accordance with the Executive Order, the agencies prepared an economic analysis outlining the costs and benefits of implementing each of these programs.

Executive Order No. 13132 (Federalism)

The agencies determined that the notice does not contain policies with federalism implications.