DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket Number: 080324461-81121-02]

RIN 0660–AA17

Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities and Households that Utilize Post Office Boxes

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Final rule.

SUMMARY: In this document, the National Telecommunications and Information Administration (NTIA) adopts certain changes affecting section 301.3 of its Digital-to-Analog Converter Box Coupon Program regulations. *See* 47 CFR § 301.3. Specifically, NTIA waives the "eligible household" and application requirements in subsection 301.3(a) and subsection 301.3(e), respectively, for individuals residing in nursing homes, intermediate care facilities, and assisted living facilities, subject to alternative application requirements specified herein. NTIA also amends paragraph 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.

EFFECTIVE DATE: These regulations become effective October 20, 2008.

ADDRESSES: A complete set of comments filed in response to the Notice of Proposed Rulemaking is available for public inspection at the Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230. The comments can also be viewed at http://www.ntia.doc.gov and at http://www.regulations.gov.

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

SUPPLEMENTARY INFORMATION:

I. Background

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 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 that convert to digital-only transmissions.[1] 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 final regulations on March 15, 2007.[2]

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 post office boxes for mail receipt. Because these applicants do not meet the current eligibility criteria under the Coupon Program regulations, these applications have been denied. On April 24, 2008, NTIA published a Notice of Proposed Rulemaking (NPRM) and Request for Comment in the **Federal Register** that proposed to waive the "eligible household" and application requirements in subsection 301.3(e) for individuals residing in nursing homes or other senior care facilities, subject to alternative application requirements.[3] The NPRM also proposed to amend paragraph 301(a)(2) to permit an otherwise eligible household that utilizes a post office for mail receipt to apply for and receive coupons subject to providing satisfactory proof of a physical residence.

II. Discussion

A. 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.[4] Unfortunately, the current eligibility requirements of the program do not permit seniors living in nursing homes to avail themselves of the Coupon Program. In the NPRM, NTIA proposed 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 circumstances. In the NPRM, NTIA also sought public comments on the best way to distribute coupons to verifiable residents of nursing home facilities so that the Coupon Program could be administered effectively within its existing resources. Finally, NTIA sought comments on ways that the coupons could be distributed in a manner that minimizes waste, fraud and abuse.

IDENTIFICATION OF NURSING HOMES OR OTHER SENIOR CARE FACILITIES

The initial challenge presented in the proposed rule is identifying and defining what constitutes nursing homes or other senior care facilities. As NTIA recognized in the NPRM, the terms "nursing home" and "senior care facility" are 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, convalescent rest homes and long-term care facilities. In the NPRM, NTIA proposed to use a facility's inclusion in the Online Survey, Certification and Reporting (OSCAR) database which is maintained by the U.S. Department of Health and Human Services (HHS) Center for Medicare and Medicaid Services (CMS) in cooperation with the state long-term care surveying agencies, as a basis for identifying facilities that would be recognized by the Coupon Program.[5] Such databases determine 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.[6] However, recognizing that not all nursing homes in the United States are included within the OSCAR database, NTIA sought comments on ways to ensure that all appropriate facilities not otherwise in the OSCAR database are identified and included in the proposed waiver standards.

The comments submitted in response to the NPRM revealed that there is no

[1] Title III of Pub. L. No. 109-171, 120 Stat. 4, 21 (2006).

[2] 47 CFR Part 301.

[3] Notice of Proposed Rulemaking and Request for Comment: The Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes and Households that Utilize Post Office Boxes; Waiver, 73 Fed. Reg. 22120 (April 24, 2008).

[4] *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.

[5] 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/HealthPlanRepFileData/05_Inst.asp.

[6] *See generally*, 42 CFR Part 403.

clear definition for what constitutes a nursing home; rather there are many types of residential facilities that serve the elderly. Some commenters suggested that NTIA expand the proposed waiver to include facilities other than nursing homes. For example, the American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL) recommended that NTIA expand the definition of nursing homes to include assisted living and developmental disabilities facilities.[7] On the other hand, the Metropolitan Area Communications Commission (MACC) suggested that the definition of nursing home include any residential care facility that serves three or more elderly residents in a group setting.[8] Another commenter suggested that the term "eligible nursing home" should include "any asylum, institute, residence, lodging, annex, center, substitute home, house, mission or shelter devoted to the care of more than 2 elderly people, for 24 hours a day, for profit or non-profit."[9]

Numerous commenters sought the expansion of the proposed waiver eligibility through the use of the term "long-term care facility" as opposed to "nursing home."[10] The term "long-term care facility," as proposed by these commenters, would expand the eligibility of the proposed waiver request beyond nursing homes that care for the elderly. For example, some commenters' proposed definition of long-term facility could expand eligibility to include group homes, intermediate care facilities, schools, hospitals, and other institutional settings.[11] Moreover, commenters such as the National Citizen's Coalition for Nursing Home Reform, argue that age should not be an artificial barrier that would prevent some vulnerable adults and youths from having access to this benefit.[12] The Adult Home Advocacy Project (AHAP), citing a National Nursing Home Survey, stated that approximately 12 percent of nursing home residents are under 65 years of age.[13]

Some commenters focused on licensing by a state agency as a threshold for defining nursing homes for purposes of this action. For example, the University of Texas Houston Health Science Center, Center for Aging, stated that NTIA should define nursing home as any licensed facility that is in good standing with the state in which it operates.[14] Likewise, the AHAP stated that the waiver should include individuals residing in all licensed facilities, including adult homes, which are defined under New York state law as "'an adult care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator.'"[15] AHCA/NCAL recommended that if NTIA wanted a more comprehensive way of identifying and verifying care facilities, it should contact state assisted living residential care licensing agencies which are listed on NCAL's Assisted Living State Regulatory Review 2008.[16]

AHAP further suggested that NTIA refer to the eligibility requirements and definitions for the U.S. Department of Housing and Urban Development's (HUD) mortgage insurance program for nursing homes, intermediate care, board and care homes, and assisted-living facilities as provided in 12 U.S.C. § 1715.[17] HUD's regulations provide definitions for nursing homes, intermediate care facilities, board and home care facilities, and assisted living facilities. AHAP's recommendation was useful to NTIA in defining the eligibility criteria for the waiver.

NTIA agrees with commenters that the proposed waiver should be expanded to include facilities other than nursing homes. As noted in the NPRM, there are many facilities that care for elderly residents that may be considered "nursing homes" in the generic sense. While NTIA agrees that the residents of some of these facilities suggested by commenters, should be eligible for the waiver, commenters failed to define the scope of the facilities. For example, NTIA agrees with AHCA/NCAL that the waiver should be available to residents of assisted living facilities and developmental disabilities facilities who cannot currently obtain coupons under the current regulations. AHCA/NCAL, however, did not provide a definition of "assisted living facilities" or "developmental disabilities facilities." Both of those terms could encompass many different types of facilities which may not be responsive to the purpose of this waiver. A similar problem exists for those commenters that suggested that NTIA simply make the waiver available to residents of "long term care facilities."

Likewise, MACC's comment that NTIA should recognize any residential care facility that serves three or more elderly residents in a group setting failed to provide an adequate rationale for adoption for a standard to be used by the Program. Finally, NTIA disagrees with the comment from the Puerto Rico Telecommunications Board that "eligible nursing home should include 'any asylum, institute, residence, lodging, annex, center, substitute home, house, mission or shelter devoted to the care of more than 2 elderly people for 24 hours a day, for profit or non-profit." These terms provide no certainty for the Program to determine the scope of eligibility, or the function of these facilities.

Clear guidelines are necessary so that NTIA can effectively respond to a request for waiver. NTIA's intent is to ensure that individuals seeking a waiver, are indeed permanent residents of appropriate facilities. Accordingly, NTIA will make the waiver of eligibility under the Coupon Program only available to residents of nursing homes, intermediate care facilities, and assisted living facilities (collectively referred to hereafter as "facilities") as defined herein.[18] Intermediate care and assisted living facilities were added to the scope of eligibility because these facilities, as defined herein, provide many of these services for the elderly that are associated with nursing homes. NTIA also notes that these facilities encompass many of the facilities described by the commenters and may

[7] *See* American Health Care Association and the National Center for Assisted Living (AHCA/NCAL) Comments at 2.

[8] *See* Metropolitan Area Communications Commission (MACC) Comments at 1.

[9] *See* Puerto Rico Telecommunications Board (Puerto Rico) Comments at 4.

[10] *See* Office of the D.C. Long-Term Care Ombudsman Program (D.C. Ombudsman) Comments at 1.

[11] *See* Texas Long-Term Care Ombudsman Program, Texas Department of Aging and Disability Services (TX Ombudsman) Comments at 1; Ohio State Long-Term Care Ombudsman (OH Ombudsman) Comments at 1; D.C. Ombudsman Comments at 1; Advocacy Group for Elders Council at the Senior Source (Senior Source) Comments at 1.

[12] *See* National Citizen's Coalition for Nursing Home Reform (NCCNHR) Comments at 3-4.

[13] *See* Adult Home Advocacy Project of MFY Legal Services (AHAP) Comments at 3-4 (citing the National Nursing Home Survey 2008, Table 1, *available at* http://www.cdc.gov/nchs/data/nnhsd/Estimates/Estimates_Demographics_Tables.pdf#Table01.

[14] *See* University of Texas Houston Health Science Center, Center for Aging (Houston Center for Aging) Comments at 1.

[15] *See* AHAP Comments at 2; see also 18 N.Y. Comp. Codes R. & Regs. § 485.2(b).

[16] *See* Comments of AHCA/NCAL at 2; *see also* www.ncal.org for a list of state assisted living/residential care licensing agencies.

[17] AHAP Comments at 5.

[18] As recommended by AHAP, NTIA referred to the eligibility requirements and definitions for the U.S. Department of Housing and Urban Development's (HUD) mortgage insurance program for nursing homes, intermediate care, board and care homes, and assisted-living facilities as provided in 12 U.S.C. § 1715 to craft its definitions for eligibility for the waiver.

include residents who vary in age and needs.

Accordingly, NTIA will make the waiver of eligibility available to residents of *nursing homes* which are defined as "a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed by the State for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located." The waiver will also be available to residents of *intermediate care facilities* defined as "a proprietary facility or facility of a private nonprofit corporation or association licensed by the State for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services." Finally, NTIA will make the waiver available to residents of an *assisted living facility* defined as "a public facility, proprietary facility, or facility of a private nonprofit corporation that: is licensed by the State and makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility."

Each facility described above must be licensed by a State. We agree with those commenters that focused on licensing by a state agency as a threshold for defining eligibility for the purpose of this waiver. Licensure of the facilities requires that they meet standards in service and care, that they are legitimate and verifiable operations, and are held to a higher standard as a long-term care facility. Licensure also ensures that facilities have passed state scrutiny, reducing the risk of fraud in applications for coupons. Moreover, licensing enables NTIA to verify that a facility is in fact one that caters to individuals that the program is attempting to reach.

ADMINISTRATION OF COUPON PROGRAM FOR RESIDENTS

Another challenge recognized in the NPRM is the application process for coupons by facility home residents. NTIA recognized that residents may need assistance in the application process to receive coupons. Therefore, NTIA proposed to allow residents to apply for a coupon, or an administrator of a nursing home facility or other persons designated to act on behalf of a nursing home resident.

To mitigate risks associated with the lack of readily available information to authenticate requests from or on behalf of nursing home residents, NTIA proposed an exception to our existing coupon eligibility and application requirements that would enable residents of eligible nursing homes, as defined herein, to apply for and receive coupons subject to certain additional information requirements not otherwise applicable to eligible households. Specifically, NTIA proposed to permit coupon applications to be submitted by, or on behalf of, a resident of an eligible nursing home using one of three methods, provided that only one application may be submitted for any individual.

INDIVIDUAL

NTIA proposed to permit an individual residing in an eligible nursing home (nursing home resident) to apply for one (1) coupon on his or her own behalf. In such circumstances, NTIA proposed that the coupon applicant 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 the NPRM, NTIA noted that in accordance with the Privacy Act of 1974, disclosure of an individual's SSN for purposes of this waiver process would be voluntary; however, additional information to verify the resident's identity will be solicited if the individual chooses not to disclose the SSN.[19] NTIA noted, however, that such additional process may delay the resident's receipt of a coupon.

A majority of commenters opposed the collection of a nursing home resident's SSN and date of birth.[20] These commenters argued that the collection of this information violates a nursing home resident's privacy and could lead to identity theft or fraud. Other commenters argued that this requirement should not be imposed on nursing home residents if it is not imposed on other coupon program applicants.[21] AHCA/NCAL argued that because the potential for fraud in this program is very low, NTIA should take the applicant's word on the application form, just as the agency takes the information of persons living in individual homes at face value.[22] One commenter agreed that NTIA should be allowed to collect SSNs and birthdates of nursing home residents, as well as the people applying on their behalf, but proper precautions should be in place to protect against identity theft.[23]

However, after careful consideration has been given to all of the arguments raised in the comments, NTIA has decided *not* to require facility residents to provide SSNs as part of the application process. NTIA's concern, when it initially proposed to require SSNs, was to reduce opportunities for fraud, waste and abuse in the program. NTIA believes that there are legitimate concerns regarding privacy and identity theft, which outweigh the potential for fraud in the program, and thus has determined that it is not necessary to collect this information. Likewise, NTIA will not require facility residents to provide their date of birth as part of the application process. All other provisions published in the proposed rule are adopted without change.

PERSON DESIGNATED TO ACT ON A RESIDENT'S BEHALF

As stated above, NTIA recognizes that nursing home residents may need assistance in the application process to receive coupons. Therefore, NTIA proposed to permit a person designated to act on behalf of a nursing home resident (the designee) to request one (1)

[19] 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.

[20] *See* Tiffany Smith Comments at 1; D.C. Ombudsman Comments at 2; MACC Comments at 2; AHCA/NCAL Comments at 3; National Association of Telecommunications Officers and Advisors (NATOA) Comments at 4; State of New York Consumer Protection Board (NY CPB) Comments at 2; AARP Comments at 5; Senior Source Comments at 1; City of Seattle Comments at 2; NCCNHR Comments at 2.

[21] *See* NATOA Comments at 4; City of Seattle Comments at 2.

[22] *See* AHCA/NCAL Comments at 2.

[23] *See* Houston Center for Aging Comments at 1.

coupon for that resident. In that case, NTIA proposed that the designee be required to provide all of the information required of the nursing home resident. In addition, NTIA propose that the designee supply: (i) his own name, address, SSN, and date of birth; and (ii) evidence that he is empowered to act on behalf of the resident (*e.g.*, power of attorney or birth certificate indicating familial relationship).

Commenters opposed the proposed requirement that third parties acting on a nursing home resident's behalf should provide SSNs and date of birth. For example, the Advocacy Group for Elders Council at the Senior Source argued that legally authorized representatives should not have to provide more information than their name and address to request coupons on behalf of a nursing home resident.[24] Some commenters argued that such a requirement was not only onerous, but may well convince a third party to withdraw the offer of assistance.[25] Other commenters complained that proof of power of attorney or proof of a familial relationship is also too burdensome.[26] Still others recommended that a box on the application indicating the relationship of the filer to the applicant would be sufficient.[27]

NTIA recognizes that residents of these facilities will need assistance from family and friends and, therefore, it will not implement a procedure that may deter that assistance. Requiring family members and friends to provide personal information may have the unintended consequence of deterring them from assisting residents in filling out an application and procuring a converter box. NTIA will permit family members and friends of the residents of the eligible facilities to apply on behalf of those residents, but it will not collect any personal information about the family member or friend. The family member or friend will only have to provide information as it relates to the resident. In other words, the family member or friend would provide the same information on an application that the resident would provide. All other requirements published in the proposed rule are adopted without change.

[24] *See* Senior Source Comments at 1.

[25] *See* D.C. Ombudsman Comments at 2; NATOA Comments at 5 (requirements for third-parties filing on behalf of residents could have chilling effect on the willingness of parties to assist residents in submitting applications).

[26] *See* AHCA/NCAL Comments at 3; Comments of AARP at 6.

[27] *See* Texas Ombudsman Comments at 2 (The application should include an additional line stating: "I am completing this application for a resident in a long-term care facility.")

ADMINISTRATOR OF A NURSING HOME OR OTHER SENIOR CARE FACILITY

NTIA also proposed in the NPRM that an administrator of an eligible nursing home may request one (1) coupon on behalf of a nursing home resident of the facility. As with the designee, 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, NTIA proposed that the administrator be required to provide: (i) the name and address of the residents' eligible nursing home; (ii) the administrator's own name, SSN, 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.

Many commenters disagreed with the proposed requirements on administrators of nursing homes that would submit applications on behalf of nursing home residents. With respect to a copy of a facility's operating license, commenters argue that such a requirement would be onerous, and takes time away from providing care to nursing home residents.[28] Other commenters opposed NTIA's proposal to request the administrator's SSN.[29] The Office of the D.C. Long-Term Care Ombudsman Program, Legal Counsel to the Elderly, however, argued that requiring an administrator to produce an operating license would be sufficient, but requiring the submission of a SSN in addition to the license would be overly burdensome.[30]

Some commenters suggested that NTIA permit administrators or local coalition of senior care provider agencies to submit batch applications to NTIA for coupons on behalf of seniors that the coalition represents and that the coupons should be returned to the administrator or coalition rather than the individual seniors.[31] Another commenter suggested that if a facility administrator is given the right to request coupons on behalf of residents, others should be able to submit applications as well including social workers, long-term ombudsmen, and other medical staff who work at the facility.[32]

Based on the comments submitted, NTIA decided that it will permit administrators of long-term care facilities to apply on behalf of its residents, but it will not collect any personal information about the administrator. NTIA agrees with the commenters that there are legitimate concerns regarding privacy, identity theft and application burdens, which outweigh the potential for fraud in the program. The administrator will only have to provide information as it relates to the long-term care resident. In other words, the administrator would provide the same information on an application that the resident would provide. Moreover, NTIA will not require the administrator to provide a copy of the facility's operating license indicating the administrator's authorization to administer the facility as part of the application process. All other requirements published in the proposed rule are adopted without change.

[28] *See* AHCA/NCAL Comments at 3; ACTS Retirement-Life Communities (ACTS) Comments at 1; Wesley Manor Inc. Comments at 1.

[29] *See* Stephen Eggles Comments at 1.

[30] *See* D.C. Ombudsman Comments at 2.

[31] *See* Bridget Samuel Comments at 2; City of Seattle Comments at 2.

[32] *See* Houston Center for Aging Comments at 1.

APPLICABILITY OF OTHER PROVISIONS OF THE COUPON PROGRAM RULE

Consistent with section 301.4(d) of the Coupon Program rules, NTIA proposed 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 proposed to mail the coupon directly to the requesting administrator at the address provided for the facility in the application. Because of NTIA's decision not to collect any personal information from an administrator, family member or friend that assists a resident in applying for a coupon, NTIA will mail the coupon directly to the nursing home resident at the address provided on the application. In any case, NTIA will only mail one (1) coupon in response to a successful waiver application.

NTIA also proposed 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. Moreover, CECBs purchased with coupons issued under this process may not be connected to television sets owned by the nursing home or senior care facility. One commenter recommended that the coupon program permit reimbursement for common area televisions because in many cases, these televisions are the only sets available to residents of very limited means.[33] NTIA was not persuaded by this comment. Televisions in common areas are more than likely owned by the facility, not the resident.

[33] *See* City of Seattle Comments at 2.

There is nothing in the record that indicates that businesses owning these facilities are vulnerable and in need of the assistance provided by the waiver. Therefore, coupons issued pursuant to this waiver may only be used to purchase converter boxes to be connected to a television set individually owned by a resident. Coupons are not to be used to purchase converter boxes for television sets owned by nursing homes, intermediate care facilities or assisted living facilities.

Finally, the NPRM made it clear that the Coupon Program would not 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. There were no comments submitted in response to that proposal. Therefore, NTIA will not, as part of this waiver, reimburse individuals, family members, nursing home administrators or others who may be designated to act on behalf of residents for costs incurred in obtaining coupons or providing other assistance related to applying for a coupon, or obtaining and installing a converter box.

Notwithstanding the proposals adopted as part of this waiver process, all other provisions of the Coupon Program regulations apply to nursing home residents.

WASTE, FRAUD AND ABUSE

NTIA is aware that residents of nursing homes, intermediate care and assisted living facilities constitute a vulnerable community in the United States.[34] In adopting this waiver, NTIA recognizes that it must be aware of the opportunities for fraud that this waiver may present. Vigilant methods to prevent and detect fraudulent coupon requests are a critical part of the coupon application process. Under the current application process, each household application for coupons is verified against certified U.S. Postal Service software to assure that the household is an authentic address, which is compared against a database of names and addresses of households who have already received coupons to prevent duplication.

In the NPRM, NTIA recognized the administrative challenges of providing coupons to residents of nursing homes. Accordingly, we requested information on ways that the agency could confirm that an individual making a coupon request actually resides in a nursing home. There were no comments submitted and NTIA is not aware of any databases of names that can be used to verify that an applicant is in fact a resident of a nursing home. Thus, there is no readily available method to verify whether the applications submitted under this waiver are indeed those of nursing home residents. For these reasons, NTIA will be vigilant of applicants filed under this waiver and will deny those applications that do not fall within the limitations of this waiver or appear to be fraudulent. NTIA will also immediately report all suspicious behavior to the appropriate authorities.

III. Applicants Utilizing Post Office Boxes for Mail Receipt

In this Final Rule, NTIA also revisits the Coupon Program regulations regarding the use of post office boxes for the receipt of coupons. The current Coupon Program regulations required 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. NTIA has learned from consumer complaints 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 at a post office box. As a consequence, NTIA believes it was appropriate to revisit the regulations concerning the treatment of applications using post office boxes.

In the NPRM, NTIA proposed to amend subsection 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. NTIA believes that requiring proof of physical residence will balance the need for preventive controls to protect the Coupon 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 proposed 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 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 proposed to only use this information for identification, verification and tracking purposes for the Coupon Program. This information would be collected and maintained in a manner meeting the appropriate level of security required for personally identifiable information. Similar information is routinely collected by governmental agencies to verify residency.[35]

NTIA requested comments on other methods by which it could verify the physical address of an applicant who utilizes a post office box for mail receipt. NTIA also sought information about and estimates of the number of consumers with post office boxes that would apply for coupons if the proposed rule is implemented. The majority of commenters supported NTIA's proposal to permit a household utilizing a post office box for mail receipt to become eligible to apply for and receive coupons. Commenters cited privacy concerns, security reasons and potential identity theft as reasons for choosing to receive mail via post office boxes.[36]

NATOA argued that because NTIA has already adopted regulations that permit post office box use by those who live on Indian reservations, Alaskan Native Villages, and other rural areas, similar regulations should be adopted for others who use post office boxes. Thus, NATOA concludes that the proposed proof of residence requirement is an unnecessary hurdle to consumers who opt to make use of post office delivery. Another commenter suggested a cross-reference of applications to find matching or substantially similar physical address and post office boxes.

[34] The websites of the Office of the Inspector General of the U.S. Department of Health and Human Services contains many fraud alerts and advisory opinions detailing unfair practices targeted at residents of nursing homes and other long-term care facilities. *See* http://www.oig.hhs.gov/fraud.html.

[35] *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).

[36] *See* Foster B. Lewis Comments at 1; Anonymous Comment from Orlando, Florida at 1.

Upon careful consideration of the arguments raised in the comments, NTIA has decided to modify some of the requirements for Coupon Program applicants that utilize post office boxes for mail delivery. NTIA agrees with NATOA that because regulations are already in place for some groups that receive mail via post office boxes, similar regulations should also be adopted for others who use post office boxes. Applicants using post office boxes instead of home delivery will not be required to provide documentation to show proof of a physical residence. However, such applicants will be required to provide an actual physical address location along with their post office box number as part of the application process to allow NTIA to verify the legitimacy of the address.

WASTE, FRAUD AND ABUSE

NTIA remains concerned about waste, fraud, and abuse in the Coupon Program. As noted in the proposed rule, the Government Accountability Office (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.[38] Specifically, GAO recommended that applicants should be required to provide their physical address.[39] Consistent with GAO's recommendation, the Coupon Program's regulations retain the requirement that applicants be required to provide their physical residence in addition to their post office box number. Moreover, as recommended by GAO, the address of each applicant will be checked by NTIA's contractor against a third-party database to assist in validating eligibility.

Procedural Matters

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. This document contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The collection of information referenced in the preamble has been submitted to the Office of Management and Budget and the approval will be published in a separate **Federal Register** notice.

In the NPRM, NTIA invited comment on providing additional information to identify residents in nursing homes. NTIA requested approval on three collection requirements including: (1) modified applications for individuals residing in nursing homes; (2) certifications from persons designated to act on behalf of the nursing home resident; and (3) certifications from the administrator of a nursing home or other senior care facility. In addition, NTIA invited comments on providing additional information to identify individuals utilizing post office boxes. NTIA requested approval on the collection requirement for individuals to product verification of the physical address.

Specifically, comments were invited on (a) whether the collection of information is necessary for the proper performance of the functions for 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 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 of other forms of information technology.

NTIA received a total of thirty-nine comments and one late response to the NPRM. NTIA received a total of 24 comments (favorable and unfavorable) regarding information collection and recordkeeping requirements.

Nursing Homes

On the first PRA issue, 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, NTIA received thirteen (13) comments relating to the collection of personal information such as SSNs and birth dates. Most commenters who addressed this issue disagreed with the NTIA proposal to collect SSNs with the exception of the National Association of Broadcasters. Commenters argued that collecting the SSN was excessive,[40] a violation of privacy,[41] unnecessarily complicated and intrusive,[42] and unfair.[43] Several commenters argued that requiring the SSN for nursing home residents was discriminatory because other applicants were not required to provide such information.[44] Commenters also argued that collecting SSNs and date of birth information would expose a "vulnerable community" to identity theft.[45] One commenter stated that while collecting SSNs and date of birth information would be beneficial to prevent fraud some applicants may be reluctant to apply out of fear of identity theft.[46] Other commenters argued that collecting SSNs and date of birth information would have a chilling effect on willingness to apply on behalf of themselves or others.[47] Another commenter disagreed with the statement that SSNs are unique identifiers and suggested that NTIA at the very least consider using a portion of the SSN.[48]

NAB acknowledges that NTIA was taking measures to protect against the potential increased risk of waste, fraud or abuse.[49] One commenter argued that the need of senior citizens to continue their valued television service was heavily outweighed by the potential increase of risk.[50] One commenter argued that the rule exceeded congressional intent by requiring excessive personal information that would serve as a barrier to applying.[51]

One commenter suggested allowing third parties, such as senior service providers, to complete applications for seniors and/or nursing facilities. The commenter suggested that these providers visit facilities to determine which seniors need converters; file a batch application for each facility that would include the names of the seniors requiring coupons; receive coupons sent to the providers; and purchase and install the converter boxes.[52]

On the issue of collecting licensing information from each nursing home facility, one commenter argued that

[38] Hurricane 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).

[39] *Id.*

[40] Stephen Eggles Comments at 1.

[41] Tiffany Smith Comments at 1.

[42] MACC Comments at 2.

[43] AARP Comments at 5.

[44] Senior Source Comments at 1; The City of Seattle Comments at 2; NATOA Comments at 4; AARP Comments at 5; AHCA/NCAL Comments at 3.

[45] NATOA Comments at 4; AARP Comments at 5; AHCA/NCAL Comments at 3.

[46] Houston Center for Aging Comments at 1.

[47] NCCNHR Comments at 2; NY CPB Comments at 2.

[48] NY CPB Comments of at 2.

[49] National Association of Broadcasters (NAB) Comments at 11.

[50] *Id.*

[51] AARP Comments at 6.

[52] Bridget Samuel Comments at 1.

providing licensing information with each application was erroneous and unnecessary while another argued the requirement was overreaching.[53] NTIA did not receive any comments on the second PRA issue, *i.e.*, the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used.

NTIA received seven comments on ways to enhance quality, utility, and clarity of the information collected. One commenter agreed that NTIA should conduct audits to minimize fraud and abuse. Another commenter was concerned whether audits would account for converter boxes that were no longer at the facility due to residents moving or passing away.[54] Other commenters argued that NTIA should modify the application to include: a question regarding the type of living arrangements in which the individual resides; a signature line for the nursing home administrator; and a line to fill in the name of the facility.[55] One commenter argued that NTIA could verify information regarding eligible facilities by utilizing the OSCAR database, state licensing and certification agencies, accrediting organizations, and trade associations.[56]

On the fourth PRA issue, 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 of other forms of information technology, NTIA received twenty-one comments. Commenters agreed with NTIA that the application should be modified. However, several commenters argued that requiring the SSN and date of birth from the applicant or the person acting on behalf of the resident were unnecessarily complicated,[57] burdensome,[58] time-consuming,[59] and "places a substantially higher burden of proof for identifying and confirming the eligibility of long-term care residents and those individuals applying on behalf of seniors than for the general populations."[60]

Some commenters argued that NTIA should submit applications to nursing home administrators who would verify residency and coupon eligibility.[61] Two commenters argued that NTIA should allow third parties to submit electronic batch applications on behalf of nursing home residents.[62] On the other hand, some commenters argued that requiring administrators to collect and verify the eligibility of applicants was excessive[63] and would unduly burden administrators.[64]

Several commenters argued that NTIA should utilize online databases and other resources to verify the applicant's eligibility.[65] One commenter argued that the onus is on NTIA to verify eligibility and should not be the obligation of the applicant to prove his or her qualifications.[66]

Post Office Boxes

On the first PRA question, 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, commenters were divided on this issue. Some commenters agreed with NTIA's proposed rule requiring proof of the physical address.[67] One commenter argued that the proposed rule is unfair and discouraging.[68]

NTIA did not receive comments on the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used. On the third PRA question, ways to enhance quality, utility, and clarity of the information collected, one commenter argued that NTIA should cross-reference the post office box number with one physical address to prevent duplication.[69]

On the fourth PRA question, 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, some commenters endorsed NTIA's proposed rule and agreed that the requirement is not burdensome or erroneous.[70]

The comments to the NPRM and the analysis of the NPRM have resulted in changes or modifications from the proposed rule to the final rule. Accordingly, NTIA has modified certain aspects of the information collection and recordkeeping requirements. These modifications are discussed below:

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 20 minutes per respondent.

Respondents: Individuals residing in nursing homes, intermediate care facilities, and assisted living facilities or other individuals submitting this information on behalf of those residents

Estimated Number of Respondents: 420,000

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 20 minutes

In the NPRM, NTIA proposed to request residents of nursing homes to submit his or her name, date of birth, and SSN, the name of the nursing home and a certification from the resident as to whether he or she receives television exclusively over the air or through cable, satellite or other pay television service. The NPRM also proposed that persons designated to act on nursing home resident's behalf be required to provide all of the information required with respect to the resident, *as well as* his or her own name, address, SSN, date of birth, and evidence that he or she is empowered to act on behalf of the resident (*e.g.* power of attorney or birth certificate indicating familial relationship). Finally, the NPRM proposed that Administrators of nursing facilities be required to provide all of the information required with respect to the resident as well as the administrator's own name, SSN, date of birth and a copy of each facility's operating license indicating the administrator's authorization to administer the nursing facility.

As discussed in the preamble, the overwhelming number of commenters opposed the collection of a nursing home resident's SSN and date of birth. Likewise, commenters opposed the collection of personal information from persons designated to act on behalf of the residents and nursing home administrators. As a result of the comments, NTIA will only seek

[53] ACTS Comments at 1; AHCA/NCAL at 3.

[54] The Good Samaritan Comments at 1.

[55] AHCA/NCAL at 2; Texas Ombudsman Comments at 2; Ohio Ombudsman Comments at 2.

[56] NCCNHR Comments at 2.

[57] MACC Comments at 2.

[58] AHCA/NCAL Comments at 3.

[59] AARP Comments at 6.

[60] NCCNHR Comments at 2.

[61] Tiffany Smith Comments at 1; Buttonwood Hospital of Burlington County (Buttonwood) Comments at 1; Kathleen Cianci Comments at 1.

[62] Bridget Samuels Comments at 1-2.; The City of Seattle Comments at 2.

[63] Stephen Eggles Comments at 1.

[64] NCCNHR Comments at 2; ACTS Comments at 1.

[65] Texas Ombudsman Comments at 1; Ohio Ombudsman Comments at 1; AHCA Comments at 2-3; NCCNHR Comments at 2; AHAP at 6.

[66] AARP Comments at 6.

[67] NY Consumer Protection Board Comments at 3; National Association of Broadcasters Comments at 2-3; Puerto Rico Telecommunications Regulatory Board Comments at 4.

[68] Andrew Juchonowski Comments at 1; NATOA Comments at 5-6.

[69] Andrew Juchonowski Comments at 1.

[70] NY CPB Comments at 3; NAB Comments at 2-3; Puerto Rico Comments at 4.

information from the resident. The only information that will be required is the name, address of the facility, and a certification as to whether he or she receives television exclusively over the air or through cable, satellite or other pay television service.

2.) *Title*: Applications for Households that Utilize Post Office Boxes for Mail Receipt

Type of Request: New Collection

In the NPRM, NTIA proposed to permit a household utilizing a post office box for mail receipt to become eligible to apply for and receive coupons if it could provide proof of physical residence. Specifically, NTIA proposed that an applicant that utilizes a post office box for mail receipt provide a copy of one or more of such documents as 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 submitted or a government-issued property tax bill for the applicant's residence. As a result of comments received in the proceeding, NTIA decided not to impose this requirement on households that utilize Post Office boxes for mail receipt, but to permit these households to provide the same information that similarly situated applicants currently use.

Executive Order 12866

This 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 not major under the Congressional Review Act, 5 U.S.C. § § 801 *et seq.*

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) was prepared and published in the NPRM. A copy of the IRFA was provided to the Chief Counsel for Advocacy of the Small Business Administration. Although NTIA specifically sought comment on the costs to small entities of complying with the Final Rule, no comments provided specific cost information. NTIA has carefully considered whether to certify that the Final Rule will not have a significant impact on a substantial number of small entities. NTIA continues to believe the Final Rule's impact will not be substantial in the case of small entities. However, NTIA cannot quantify the impact the Final Rule will have on such entities. Therefore, in the interest of thoroughness, NTIA has prepared the following Final Regulatory Flexibility Analysis (RFA) with this Final Rule in Accordance with the Regulatory Flexibility Act.[71]

1. *Succinct Statement of the Need for, and Objectives of the Rule*:

NTIA is issuing this Final Rule so that residents of nursing home facilities may apply for and receive a $40 coupon towards the purchase of a digital-to-analog converter box. Under current NTIA regulations, only U.S. households are eligible to receive coupons. Therefore, current regulations do not extend eligibility to residents of nursing home facilities. This rule allows seniors that reside in nursing home facilities and rely on free, over-the-air television, to apply for and receive coupons to purchase digital-to-analog converter boxes. The rule also permits an otherwise eligible household that utilizes a post office box for mail receipt to apply for and receive coupons.

2. *Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA: Summary of the Assessment of the Agency of Such Issues; and Statement of Changes Made in the Rule as a Result of Such Comments*:

There were no comments raised in response to the IRFA.

3. *Description and Estimate of the Number of Small Entities to Which the Rule will Apply Or an Explanation of Why no Such Estimate is Available*:

The RFA requires agencies to provide a description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.[72] Under the RFA, the term "small entity" has the same meaning as the terms "small business," "small organization" and "small governmental jurisdiction."[73] To the extent that this rule affects small businesses, it would affect nursing home facilities that are deemed to be small businesses. 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.[74] 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.[75] 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 rule.

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

The rule has no significant economic impact on small entities. Participation in the program is voluntary, thus any economic impact would not be caused by the rule as small entities are not required to participate in the program. NTIA notes that many nursing home facilities, small or otherwise, may not participate in the program because residents may already receive television service through one of the multichannel video programming distributors, such as cable or satellite service. To the extent that small entities participate in the program, the impacts are estimated to be small. Long term care facilities are only impacted by this program to the extent that an administrator may choose to apply for a coupon on behalf of a resident. NTIA estimates that it would take approximately 20 minutes to submit this application on the resident's behalf. There is no indication that this time commitment would result in significant economic impact to a nursing home facility.

In any case, as a result of the comments received in this proceeding and the decisions made based on those comments, the actual burden on nursing home facilities has actually been reduced. In the NPRM, NTIA proposed to require administrators of nursing home facilities to provide the administrator's own name, SSN, and

[71] 5 U.S.C. § 604.

[72] 5 U.S.C. § 604(a)(3).

[73] 5 U.S.C. § 601.

[74] 13 CFR § 121.201.

[75] 13 CFR § 121.201.

date of birth. Under the proposed rule, the administrator would also have to provide a copy of the facility's operating license indicating the administrator's authorization to administer the nursing home. As a result of the comments submitted in this proceeding, NTIA is only requesting that an administrator submitting an application on behalf of the resident to submit the same information that the resident would submit. In other words, the administrator would only have to submit the information that pertains to the resident requesting a coupon. This action has resulted in a reduced burden in terms of time and money for those administrators of facilities that happen to be small entities.

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 to 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 Federalism Impact Statement.

Regulatory Text

List of Subjects in 47 CFR Part 301

■ For the reasons set forth in the preamble, NTIA amends title 47, Part 301 as follows:

PART 301—DIGITAL-TO-ANALOG CONVERTER BOX COUPON PROGRAM

■ 1. The authority citation continues to read as follows:

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

■ 2. Paragraph 301.2 is amended by adding new definitions in alphabetical order to read as follows:

§ 301.2 Definitions.

* * * * *

Assisted living facility means a public facility, proprietary facility, or facility of a private nonprofit corporation that: is licensed by the State and makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

* * * * *

Intermediate care facility means a proprietary facility or facility of a private nonprofit corporation or association licensed by the State for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.

Nursing Home means a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed by the State for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

Nursing Home Resident means an individual who lives on a permanent basis at a Nursing Home, Intermediate Care Facility, or Assisted Living Facility. A Nursing Home Resident does not have a permanent address that is separate from the Nursing Home, Intermediate Care Facility, or the Assisted Living Facility.

* * * * *

■ 3. Section 301.3 is amended by revising paragraph (a)(2) to read as follows:

§ 301.3 Household eligibility and application process.

(a)* * *

(2) A Post Office Box will not be considered a valid mailing address unless the applicant supplies information to identify the physical location of the household, as required.

* * * * *

■ 4. Section 301.7 is added to read as follows:

§ 301.7 Waiver of Household Eligibility

(a) A resident of a Nursing Home, Intermediate Care Facility or Assisted Living Facility may apply for a limited waiver of the household eligibility requirement for the Coupon Program and be eligible for one coupon. Anyone may apply for a coupon on behalf of the Resident including the Resident, a family member, an employee of the Nursing Home, Intermediate Care Facility or Assisted Living Facility.

(b) The application must be in the name of the Nursing Home Resident and must include the resident's name, the name of the facility and the street address. The Nursing Home Resident must also certify that their television set is over-the-air-reliant or whether they subscribe to satellite, cable or other pay television service.

(c) Applications will be accepted by mail only on pre-printed form. In the alternative, a letter will be accepted as an application if all of the required information for the waiver is contained therein.

(d) A Nursing Home Resident seeking a waiver is entitled to only one coupon.

(e) Coupons for approved applications will be mailed individually to each Nursing Home Resident, addressed and mailed "in care of" to the Nursing Home Resident at the address of the Nursing Home, Intermediate Care Facility, or Assisted Living Facility.

Dated: September 15, 2008.

Meredith Attwell Baker,

Acting Assistant Secretary for Communications and Information.

[FR Doc. E8–21892 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–60–S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 516, 532, 538, 546, and 552

[GSAR Amendment 2008–02; GSAR Case 2008–G517; (Change 23); Docket 2008–0007; Sequence 01]

RIN 3090–AI68

General Services Administration Acquisition Regulation; GSAR Case 2008–G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement Pub.L. 110–248, The Local Preparedness Acquisition Act. The Act authorizes the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

DATES: *Effective Date:* September 19, 2008.

Applicability Date: This amendment applies to solicitations and existing contracts for Schedule 84, as defined in GSAM 538.7001, Definitions, Schedule 84. Further, this amendment applies to contracts awarded after the effective date of this rule for Schedule 84. Existing Schedule 84 contracts shall be modified by mutual agreement of both parties.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 18, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR case 2008–G517, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "GSAR case 2008–G517" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with GSAR case 2008–G517. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "GSAR case 2008–G517" on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR case 2008–G517, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. Please cite GSAR case 2008–G517. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends GSAM Parts 511, 516, 532, 538, 546, and 552 to implement Pub.L. 110–248, The Local Preparedness Acquisition Act. The public law amends the "Cooperative Purchasing" provisions of the Federal Property and Administrative Services Act where the Administrator of GSA provides States and localities access to certain items offered through GSA's supply schedules. The Public Law amends 40 U.S.C. 502(c) that allows, to the extent authorized by the Administrator, a State or local government to use Federal Supply Schedules of the General Services Administration to purchase alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

The GSA Schedules Program is also known as the Federal Supply Schedule (FSS) or Multiple Award Schedules (MAS) Program. Under the FSS/MAS Program, Federal agencies are able to purchase goods and services under contracts that are pre-negotiated by GSA. These contracts cover more than 11 million commercial goods and services and are listed in broad categories known as Schedules. Under current law, State and local governments are authorized to purchase goods and services off the GSA Schedules, in limited circumstances, under special procurement authority. This interim rule allows for State and local purchasing under GSA Schedule 84, which covers products and services related to law enforcement and security. Schedule 84 includes items such as fire alarm systems, door entry control devices, intrusion detection sensors, bomb detection equipment, perimeter security and video surveillance systems. Use of the GSA Schedules allows State and local governments to reduce time and resources spent on negotiating and awarding contracts for needed goods and services and gives them access to the pre-negotiated prices on the Federal Supply Schedules. Access to Schedule 84 will help State and local governments meet growing homeland security and public safety needs.

Cooperative Purchasing was added to the GSAR in 2003, covering automated data processing equipment (including firmware, software, supplies, support equipment, and services) (Schedule 70). A proposed rule was published in the **Federal Register** at 68 FR 3220, January 23, 2003; an interim rule was published in the **Federal Register** at 68 FR 24372, May 7, 2003; and a final rule was published in the **Federal Register** at 69 FR 28063, May 18, 2004. The rule authorized State and local governments to procure IT products and services from Schedule 70, Information Technology and the Consolidated Schedule, contracts containing the IT Special Item Numbers (SINs).

A related interim rule on Recovery Purchasing was published in the **Federal Register** at 72 FR 4649, February 1, 2007. That interim rule implemented Section 833 of P.L. 109–364, which authorized the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster, terrorism, or