

3745–21–25(R) Compliance dates—This paragraph requires affected operations for which installation commenced before December 14, 2009 (the effective date of an earlier version of this rule) to comply with the requirements of this rule by 12 months from December 14, 2009. Any affected operation for which installation commenced after December 14, 2009, must comply upon initial startup of the affected operation. These are reasonable compliance dates.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 14, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–1771 Filed 1–26–11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–210; FCC 11–3]

Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules for a pilot program to distribute funds for the National Deaf-Blind Equipment Distribution Program (NDBEDP) established by Congress in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The law directs the Commission to establish rules within six months of enactment of the new statute that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind. The goal of this NDBEDP is to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind.

DATES: Comments are due on or before February 4, 2011. Reply comments are due on or before February 14, 2011. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before March 28, 2011.

ADDRESSES: You may submit comments, identified by [CG Docket No. 10–210], by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) <http://fjallfoss.fcc.gov/ecfs2/> or the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 10–210. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. In addition, parties must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to fcc@bcpiweb.com. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners.

- Envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-

class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, document FCC 10–210 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via e-mail at PRA@fcc.gov and Cathy.Williams@fcc.gov and Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to Nicholas.A.Fraser@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–7126 or e-mail Diane.Mason@fcc.gov.

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via e-mail Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Notice of Proposed Rulemaking (NPRM), document FCC 11–3, adopted and released on January 14, 2011, in CG Docket No. 10–210.

The full text of document FCC 11–3 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: <http://www.bcpweb.com>. Document FCC 11–3 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–

418–0432 (TTY). To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed. Pursuant to 47 CFR 1.1200 *et. seq.*, this matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due March 28, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may

“further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–XXXX.

Title: Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210.

Form No.: N/A.

Type of Review: New collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit Institutions; Federal government; State, local or Tribal governments.

Number of Respondents and Responses: 106 respondents and 583 responses.

Estimated Time per Response: 15 to 120 hours.

Frequency of Response: Annual, on occasion, one-time, monthly, and semi-annually reporting requirements; Record keeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found at sections 1, 4, 225, 303(r), and 619 of the Communications Act of 1934, as amended (Act), 47 U.S.C. 151, 154, 225, 303(r), and 619 of the Communications Act of 1934, as amended.

Total Annual Burden: 22,472 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, “Informal Complaints and Inquiries.” As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 “Informal Complaints and Inquiries”, in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Act Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html. The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: In document FCC 11–3, the Commission proposes rules that would provide State equipment distribution programs (EDPs) and potentially qualifying public or private entities the opportunity to apply for Commission certification in order to be eligible to operate an equipment

distribution program under the NDBEDP. The proposed rules would also require program recipients of funding under the NDBEDP to submit the proposed data to the Fund Administrator every six months necessary to ensure that the Fund is being used for the purpose intended by Congress. Further, the proposed rules would require program recipients of funding under the NDBEDP to submit data and report on: (1) Administrative expenses incurred in participating in this program; (2) complaints received on the equipment and appeals on eligibility; and (3) other consumer related disputes. Finally, the proposed rules would require program recipients to retain electronic records of the proposed data at a reasonable period of time necessary for administrative review and audits.

Synopsis

1. In document FCC 11–3, the Commission proposes rules to implement section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Public Law 111–260. The CVAA authorizes the FCC to allocate \$10 million annually from the interstate relay fund (TRS Fund) for the NDBEDP. The need for an effective equipment distribution program for communications access for people who are deaf-blind has been well documented. While many States already distribute some specialized communications equipment to people with disabilities through their own State equipment distribution programs (EDPs), many, if not most, have been unable to afford the extremely high costs associated with communications equipment needed by people who are deaf-blind.

Comments received in response to the Public Notice that initiated this proceeding provide further evidence of the need for this program. See *Consumer And Governmental Affairs Bureau Seeks Comment On Implementation Of Requirement To Define Programs For Distribution Of Specialized Customer Premises Equipment Used By Individuals Who Are Deaf-Blind*, Public Notice, document DA 10–2112, released November 3, 2010 in CG docket number 10–210 (NDBEDP PN).

2. People who are deaf-blind may have varying levels of residual sight and hearing. While some may be born with significant levels of hearing and vision loss, others lose their sight and hearing gradually throughout their lifespan; and for some, deafness and blindness are experienced as a result of an illness,

injury, or aging. These varying levels of disability, together with the geographically diverse nature of this population, present novel challenges for the Commission in its efforts to develop a nationwide equipment distribution program that effectively meets the communication needs of these individuals. The establishment of permanent rules for this program must be informed by both data and experience.

3. For this reason, the Commission proposes to implement an eighteen-month pilot program of the NDBEDP, with interim regulations. The Commission believes it is prudent to engage in such a trial program because the experiences gained and data gathered will provide us with a more complete and practical understanding of how to ensure the best use of the funds available under this program for the intended population. The Commission further proposes that it reserve the option to extend the pilot program for up to an additional six months, for a total of two years if the Commission determines that such additional time is needed for this assessment.

4. The proposed pilot program relies heavily on currently operating State EDPs, and turns to alternative local distribution efforts only where State entities are not available to participate in this national program. During this trial period, the Commission will be gathering extensive data to build a foundation for the development of permanent rules for the NDBEDP, which will be adopted through a future rulemaking proceeding.

Equipment Distribution Programs

5. The Commission has reviewed the benefits and disadvantages of utilizing the State equipment distribution programs (EDPs) and believes that on balance, the use of these programs for a pilot program would be appropriate, with certain safeguards to protect against State program eligibility criteria that are not consistent with the CVAA. Specifically, if a State has an established EDP that is willing to participate in this program and is approved by the Commission, the Commission proposes that such program become the sole authorized entity for the State to receive compensation from the TRS Fund for the distribution of equipment to that State's deaf-blind residents. For States that do not have an EDP or that have an EDP that is not approved to participate in this program, the Commission proposes allowing other programs (e.g., vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind)

or private entities (e.g., independent living centers, organizational affiliates, or private schools) to apply to the Commission for certification to distribute this specialized CPE in the State. The Commission further proposes that the factors to be considered in determining whether to grant certification of a local program—as well as in selecting among multiple applicants—include the extent to which each applicant has:

- Expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population;
- Adequate staffing and facilities to administer the program;
- Experience with the distribution of specialized CPE, especially to people who are deaf-blind;
- The ability to install specialized CPE covered under the program and train users on how to use that equipment;
- The ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and
- The ability to distribute equipment and related services to eligible individuals throughout the State (including to remote areas), either directly or in coordination with other local programs.

6. The Commission seeks comment on this approach as well as on other criteria it should add to this list. The Commission proposes to provide notice to the public of which States will participate in the NDBEDP pilot program via their State EDP, after which the Commission proposes to commence the process of accepting and reviewing applications from other eligible entities (for States in which a State EDP has either not applied or has not been deemed eligible to participate in the NDBEDP). The Commission further seeks comment on the length of time such certification should be granted at the conclusion of this pilot program if it continues utilizing this certification process. In addition, the Commission seeks comment on a proposal to permit coordinated State ventures, so long as a single entity—either the State's EDP or the certified entity discussed above—assumes full oversight and responsibility for all equipment distributed within its State under the NDBEDP and becomes the sole entity authorized to receive compensation from the TRS Fund.

Consumer Eligibility

(1) Definition of Individuals Who Are Deaf-Blind

7. The CVAA defines as eligible for the receipt of specialized CPE low income persons who meet the definition of “individuals who are deaf-blind” contained in the Helen Keller National Center Act (HKNC Act). See Pub. L. 111–260, Section 105, citing the Rehabilitation Act Amendments of 1992 (29 U.S.C. 1905(2)). The HKNC Act defines such individuals as persons:

(1) Who have a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions; (2) who have a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and (3) for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

8. The *NDBEDP PN* noted that under the HKNC Act, where individuals “cannot be measured accurately for hearing and vision loss because of cognitive and/or behavioral constraints, they may still be considered deaf-blind if, though functional, they are considered either by themselves or others to be both deaf and blind.” *NDBEDP PN* at 2.

9. Commenters largely proposed a flexible interpretation of this definition that would allow determinations of eligibility for equipment to turn on an individual’s functional abilities. While the Commission is bound by statute to use the definition of individuals who are deaf-blind in the HKNC Act, the Commission believes it would be appropriate to direct State programs that are authorized to distribute equipment under the NDBEDP to apply this definition in accordance with the underlying intent of the CVAA. To this end, the Commission proposes that when applying the second prong of this definition, which requires a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, local distribution programs take into consideration the settings in which the deaf-blind applicant is likely to establish communication with others. Similarly, the Commission proposes

that the third prong of the HKNC Act definition, which focuses on the difficulties that an individual with a combination of vision and hearing losses has in attaining independence in daily life activities, apply to the ability of such individual to use the communication services covered by section 105. The Commission seeks comment on this approach.

(2) Verification of Disability

10. While the Commission believes that some verification of a person’s disability is necessary to prevent fraud and abuse, given the physical limitations of persons covered under this program, the Commission understands the need to permit verification of one’s disability in a non-burdensome manner. Accordingly, the Commission seeks comment on its tentative conclusion that individuals claiming eligibility under the NDBEDP should be permitted to obtain verification from any practicing professional who has direct knowledge of the individual’s disability. Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician. Any of these professionals must be able to attest to the applicant’s physical disability (as defined above), and in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss. The Commission seeks comment on the content of the attestations of such professionals. The commission proposes that the professional provide his or her name, title, and contact information, including address, phone number and e-mail address in the certification. The Commission also seeks comment on whether such professionals should be required to certify to the best of their knowledge that the individual’s disability satisfies our eligibility requirements. Alternatively, should the Commission require such certifications be made under penalty of perjury?

(3) Income Eligibility

11. The CVAA limits eligibility in the NDBEDP to individuals who have low incomes. In the *NDBEDP PN*, the Commission sought comment on the appropriateness of applying to the NDBEDP the definition of “qualifying low-income consumer” that is used by the Lifeline and Link up universal service programs.

12. The Commission is concerned about achieving consistency across the

States, and unnecessarily complicating the equipment application process by requiring individual evaluations of personal expenses. At the same time, the Commission recognizes the extraordinarily high costs of the specialized equipment covered under this program (which virtually all commenters agree range from \$5,000 to \$10,000 per person), as well as the unusually high medical and related costs associated with being both deaf and blind. In order to effectively take these costs into consideration, the Commission seeks comment on its proposal to adopt an income threshold, to be applied nationwide, that is 400% of the Federal Poverty Guidelines (FPG). Alternatively, the Commission seeks comment on whether States that already have EDPs with income thresholds should be permitted to use their own low income criteria for distributing equipment under the NDBEDP during the pilot program. For States that do not have an EDP with an income threshold, the Commission seeks comment on a proposal that would allow such programs to use the proposed Federal default income threshold.

13. The Commission seeks comment on its proposal that individuals already enrolled in certain low income programs automatically be deemed eligible to receive equipment as long as the income threshold for eligibility in those programs does not exceed the threshold the Commission establishes for participation in this program. Where individuals are not already enrolled in any such programs, the Commission seeks proposals for a method of verification that is not unduly burdensome.

(4) Other Eligibility Requirements and Considerations

14. The Commission seeks comment on other eligibility requirements, unrelated to disability or income, that might be appropriate for the NDBEDP, such as access to telecommunications or Internet service. The Commission has tentatively proposed not to make employment status an eligibility requirement.

Covered Equipment and Related Services

(1) Scope of Specialized CPE

15. Section 105 of the CVAA authorizes the distribution of specialized CPE needed to make telecommunications services, Internet access service or advanced communications accessible to people who are deaf-blind. Given the varied nature of both the deaf-blind population

and breadth of communication technologies that can meet the individual and unique needs of these individuals, the Commission seeks comment on a proposal that certified NDBEDP programs be given the discretion to determine the specific equipment needed by individual consumers during the NDBEDP's pilot period.

16. The Commission seeks comment on the extent to which certain mainstream equipment should be considered "specialized customer premises equipment" under the statute and should be covered. The Commission also seeks comment on the extent to which funding caps should be imposed on the amount of money available for the purchase of equipment—whether mainstream or adaptive—for each individual who is eligible to receive equipment under the NDBEDP, what the appropriate funding caps should be, and the period of time to which such cap should apply.

17. Finally, seeking to balance the limited funding in this program with advances in technology, the Commission seeks comment on its proposal that individuals be permitted to obtain new equipment every five years and new software on an as needed basis.

(2) Research and Development

18. One of the purposes of the NDBEDP is to ensure that as 21st century communications technologies continue to be developed for the general public, people who are deaf-blind are not left behind. Yet the record in this proceeding suggests that even current communications technologies may not be meeting the needs of the full spectrum of people who are deaf-blind. However, at this stage of the NDBEDP, without a better grasp of the specific gaps in current technologies used by the deaf-blind community, and without a fuller understanding of what the costs of closing those gaps are likely to be, the Commission is concerned that it would be premature to set aside significant funds for research and development (R&D) efforts.

19. Accordingly, the Commission tentatively proposes not to allocate funding at this time for R&D. However, the Commission seeks further comment on the extent to which there is a basis for concluding that R&D is necessary to ensure an effective distribution program because solutions do not exist to meet the needs of certain individuals who make up the deaf-blind population.

20. With respect to conducting inquiries on the equipment needs and preferences of the deaf-blind

community, the Commission does not propose setting aside funding for market research at this time. Rather, it is the Commission's expectation that it will be able to collect much of the information that such research would gather through the various reporting requirements that it proposes below. To the extent that the reporting obligations are not adequate for this purpose, the Commission proposes reconsidering the need for specific market research in the context of a future rulemaking proceeding on this program. The Commission seeks comment on this approach, and solicits as well input on ways to encourage and facilitate innovations on a long-term basis, to fully address the communications access needs of the deaf-blind population.

(3) Individualized Assessment of Communication Needs

21. The Commission recognizes a definite need for qualified assistive technology specialists, familiar with both the manner in which deaf-blind people communicate and the range of specialized equipment available, to conduct such assessments to ensure that the equipment given out effectively meets each recipient's unique communications needs. The Commission seeks comment on its proposal that the State EDPs or certified NDBEDP programs (where there is no State EDP) be given the discretion to determine the need for such assessments on a case-by-case basis, and to select the appropriate personnel within their programs to carry out this responsibility. The Commission also seeks comment on its proposal that the costs for such assessments be reimbursable as necessary to facilitate the efficient and effective distribution of equipment for use by people who are deaf-blind.

(4) Installation and Training

22. Given the highly specialized nature of the equipment to be distributed under this program, and the lack of communications experience by its future participants, the Commission proposes that funding be available for the installation of equipment and individualized training of end users associated with equipment distributed under the NDBEDP. The Commission seeks comment on how such training can best be achieved, given the scarcity of experienced trainers, especially in remote and rural areas. The Commission also seeks comment on the extent to which equipment and software manufacturers whose equipment is purchased for the program should provide training or contribute to the

costs of providing training for their products.

(5) Maintenance, Repairs and Warranties

23. Given the past practices of State EDPs to include the costs of maintenance and repairs within their local distribution programs, the Commission tentatively concludes that such expenses should be compensable under the NDBEDP where these are not incurred as a result of negligence or misuse on the part of the consumer or distribution program, and seeks comment on this approach. In addition, the Commission seeks comment on the appropriateness of loaning equipment and whether participants in the NDBEDP should have a means of allowing consumers to return equipment that they no longer need so that it can be re-furnished and re-distributed to other individual program participants on an as needed basis.

Outreach and Education About the NDBEDP

24. The Commission seeks comment on the level and types of outreach that will be needed to enable the NDBEDP to fulfill Congress's objective of bringing communication technologies to the deaf-blind community. It is the Commission's expectation that States will have their own incentives to conduct the outreach necessary to get this equipment into the hands of their deaf-blind citizens so they can spend, rather than forfeit, the money allotted to them in any given year. However, because not all States have EDPs, and because some States may not act on this incentive, the Commission seeks comment on whether to set aside a portion of the \$10 million for a contract that would be awarded to a national organization to conduct outreach.

Funding

25. In addition to seeking comment on its authority to set aside specific funding portions, the Commission seeks input on suggested amounts for each of their allocations, with a goal of not unduly limiting the amount of money left for the principal purpose of the program, equipment distribution. The Commission tentatively proposes a funding allocation that is proportional to the population at large of each State and seeks comments on this approach. The Commission proposes to require that all costs incurred through participation in the NDBEDP pilot program be reasonable, and seeks comment on whether caps should be placed on the administrative functions related to participation in this program,

and if such caps should vary based on factors such as State deaf-blind population numbers.

26. Distribution of funding can occur in one of two ways: By advance distribution of one-time allocations to eligible programs or via a reimbursement mechanism that pays for equipment already distributed (up to each State's allotment). The Commission tentatively concludes that the latter approach would provide greater accountability, as well as provide the incentives needed for local distribution programs to actively locate and provide equipment to their deaf-blind communities. The Commission seeks comment on this approach, which would periodically reimburse authorized distribution programs for equipment distributed in their States up to the allocable ceiling for that State, and asks at what intervals such payments should be made. The Commission further seeks comment on a proposal to require that any money allocated to a State that is not spent in any given year be returned to the TRS Fund, to be re-distributed to all of the States during subsequent funding years. This approach would ensure that the failure of any program to fulfill its commitment to distribute devices would not penalize people who are deaf-blind because unused funds would continue to be available in future years for their communication needs. Nevertheless, section 105 of the CVAA limits the total amount of support that the Commission may provide to this program for any fiscal year to \$10 million. In light of this statutory restriction, the Commission seeks comment on whether it has the discretion to carry over unused allotments to subsequent years.

Oversight and Reporting

27. Data on the distributed equipment and related services in the NDBEPD pilot program will provide the Commission with much needed information about the technology needs and preferences of the deaf-blind community, along with how local distribution programs are able to meet those needs. To this end, the Commission proposes to require that State EDPs and certified program recipients in States without EDPs submit data every six months until the completion of the pilot program on the following:

- For each piece of equipment distributed, its name, serial number, brand and function (*e.g.*, amplifier, Braille embosser), its cost, the type of service with which it is used (*e.g.*, telephone, Internet), and the type of

relay service it can access (*e.g.*, TRS, video relay, *etc.*);

- For each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment;
- For each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind;
- The cost, time and any other resources allocated to assessing an individual's equipment need;
- The cost, time and any other resources allocated to installing equipment and training deaf-blind participants on using equipment;
- The cost, time and any other resources allocated to repair and maintenance of equipment;
- The cost, time and any other resources allocated to outreach activities related to the NDBEDP;
- The cost, time and any other resources allocated to upgrading the distributed equipment during the pilot program, along with the nature of such upgrades (*e.g.*, software upgrade; replacement part); and
- Any research and development performed.

28. The Commission seeks comment on its proposal for the collection of the above information, and solicit recommendations on any additional data it should require local distribution programs to submit. For example, should these semi-annual reports also contain proposed best practices for each of the obligations noted above, including which equipment is most effective in terms of usability and reliability for deaf-blind participants? Should programs be required to report on the administrative expenses incurred in participating in this program? Should programs be required to report complaints received on the equipment and appeals on eligibility, as well as other consumer related disputes? The Commission also seeks comment on how long programs should be required to retain electronic records with the above information, as well as what specified period of time—for example, 5 years—is appropriate for the retention of these records.

29. The Commission proposes that certified distribution programs be subject to regular audits by an independent entity to prevent fraud, waste and abuse, and asks what would be an appropriate interval of time for such audits to be conducted. Additionally, the Commission tentatively concludes that equipment distribution programs covered under the NDBEDP not be permitted to accept any

type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment. Such arrangements could run counter to the program's purpose, which is to provide equipment that meets each individual's unique needs.

30. Finally, the Commission tentatively proposes that program administrators who submit any data to the Commission certify such data to be true and accurate under penalty of perjury.

Logistics and Division of Responsibilities

31. The Commission proposes to delegate authority to the Consumer and Governmental Affairs Bureau to designate a NDBEDP Program Administrator. This individual would work in collaboration with the TRS Fund Administrator, and be responsible for:

- Identifying, verifying and contacting current State EDPs to notify them of their eligibility for program participation.
 - Reviewing program applications and certifying local programs to administer the distribution of equipment in each of the States.
 - Serving as the Commission point of contact and overseeing all of the certified distribution programs.
 - Overseeing any national training programs.
 - Reviewing and evaluating State data for best practices.
 - Working with Commission staff to adopt permanent rules for the NDBEDP.
32. The Commission further proposes that the Fund Administrator (as directed by the NDBEDP Program Administrator) have responsibility for:
- Reviewing cost submissions and releasing funds for equipment purchases and authorized associated services.
 - Releasing funds for a nationwide training program.
 - Releasing funds for a nationwide outreach effort.
 - Releasing funds for other purposes, as directed by the Commission.
 - Collecting data as needed for delivery to the NDBEDP Program Administrator.

Other Considerations

33. *Advisory Body.* Because of the specialized nature of this program, the Commission seeks comment on the need for a newly created advisory body that could work with the NDBEDP Program Administrator and Fund Administrator to evaluate consumer experiences with the program, assess the program's benefits, explore new technologies, and consider changes to the program's

features. Alternatively, the Commission seeks comment on whether this advisory function can be satisfactorily accomplished by charging one of the following existing advisory bodies to monitor the operations and effectiveness of the NDBEDP: the FCC's Consumer Advisory Committee, whose purpose is to make recommendations to the Commission regarding consumer issues or the Interstate TRS Fund Advisory Council, whose purpose is to monitor TRS cost recovery matters.

34. *Central Repository.* The Commission seeks comments on use of a future clearinghouse for the purpose of a central repository, including ways in which the NDBEDP and clearinghouse could work together to inform the deaf-blind public about the local equipment distribution programs available to them.

35. *Whistleblower Provision.* The Commission recognizes that the NDBEDP involves the use and management of funds which may, like any funding program, be susceptible to waste, abuse and fraud. As part of the Commission's obligation to ensure that this fund is being used for its targeted consumers, it proposes to adopt a specific whistleblower protection rule for the employees of State and local programs authorized to distribute equipment under the NDBEDP.

36. *NDBEDP as a Supplemental Funding Source.* When it is established, the NDBEDP will be one of several governmental programs that either authorize or direct the distribution of specialized CPE to the deaf-blind community. The Commission proposes that where existing Federal or State programs already direct or fund equipment distribution for the deaf-blind community, or are required to provide equipment to certain eligible deaf-blind persons, the NDBEDP work along side these programs, to serve as a supplement to, rather than as a replacement for, their distribution efforts. In this manner, the Commission will be able to maximize the availability of these funds for those who are unable to qualify for such other programs. The Commission seeks comment on this proposal. In addition, the Commission seeks comment on the need for safeguards to ensure that individuals seeking equipment under the NDBEDP do not "double dip" into multiple equipment distribution programs for the same devices. For example, as part of the application process, should the Commission require that individual applicants be required to certify that they have not otherwise received the same equipment from other Federal and State program sources? Given that many people who are deaf-blind may require

multiple devices to achieve the communications accessibility intended by Congress under the CVAA, how should the Commission define such "double dipping?" Finally, given the Commission's overall goal to distribute end-user equipment under this program to individuals who have not been able to otherwise receive such equipment, should the Commission adopt a rule that disqualifies from participation, during this pilot program, those individuals who are eligible under or have already received equipment from these other equipment distribution programs? The Commission seeks comment on whether such an approach during our pilot program would assist in reaching portions of this population that have never been served by any equipment distribution source.

Initial Regulatory Flexibility Analysis

37. The Regulatory Flexibility Act of 1980, as amended (RFA), *see* 5 U.S.C. 603 (b), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA), 15 U.S.C. 632.

38. In document FCC 11-3, the Commission seeks comment on its proposal to implement section 105 of The Twenty-First Century Communications and Video Accessibility Act of 2010 (Communications Accessibility Act or CVAA), signed into law by President Obama on October 8, 2010, that requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century. Section 105 of this law directs the Commission to establish rules within six months of enactment of the new statute that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind. The goal

of this NDBEDP is to make equipment used with telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind. This item proposes rules to create an effective and efficient process governing the distribution of specialized CPE to enhance and promote access to telecommunications and related communications services by low-income individuals who are deaf-blind.

39. Specifically, the Commission seeks comment on a proposed definition of individuals who are deaf-blind for purposes of eligibility in the NDBEDP, proposed criteria for verifying a person's disability, proposed income criteria, and other eligibility considerations. In addition, the Commission seeks comment on the scope of specialized CPE covered under this program; and whether any portion of the funding should be allocated to research and development, individualized assessment of communication needs, installation and training, maintenance, warranties, repairs, outreach, or education. The Commission seeks comment on the appropriate allocation of funding, and on a proposal for specific reporting requirements to be imposed on recipients of NDBEDP funding. The Commission also seeks comment on the logistics of administering the program. Finally, the Commission seeks comment on several other considerations including the establishment of: an advisory body to provide input on the program; a central repository of information; whistleblower protections for individuals who provide information on fraud, waste and abuse; and a vehicle for the NDBEDP to be used as a supplemental funding source to other Federal programs.

40. The Commission proposes to require that recipients of NDBEDP funding seeking to distribute specialized CPE and receive compensation for the distribution of such equipment under the NDBEDP pilot program first receive certification from the Commission. The Commission proposes the following factors to be considered in determining whether to grant certification: (i) Expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population; (ii) adequate staffing and facilities to administer the program; (iii) experience with the distribution of specialized CPE, especially to people who are deaf-blind; (iv) the ability to install specialized CPE covered under the program and to train users on how

to use that equipment; (v) the ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and (vi) the ability to distribute equipment and related services to eligible individuals throughout the state (including to remote areas), either directly or in coordination with other local programs.

41. In addition, the Commission proposes to require that each program certified under the NDBEDP pilot program must: (1) Distribute specialized customer premises equipment needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible to individuals who are deaf-blind; (2) verify that each individual applying to the NDBEDP pilot program for equipment meets the definition of an individual who is deaf-blind contained at § 64.610(b) of the Commission's rules; and (3) verify that each individual applying to the NDBEDP pilot program for equipment meets the income eligibility requirements established by the Commission. The Commission proposes to allow each program certified under the NDBEDP pilot program to: (1) Use a portion of the funds received under the NDBEDP pilot program for individual needs assessments; (2) use a portion of the funds received under the NDBEDP pilot program for installation of equipment and consumer training; and (3) use a portion of the funds received under the NDBEDP pilot program for maintenance, repairs, and warranties on equipment distributed to consumers.

42. Finally, the Commission proposes to require each program certified under the NDBEDP pilot program to submit data every six months until the completion of the pilot program on the following: (1) For each piece of equipment distributed, its name, serial number, brand and function, its cost, the type of service with which it is used, and the type of relay service it can access; (2) for each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment; (3) for each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind; (4) the cost, time and any other resources allocated to assessing an individual's equipment needs; (5) the cost, time and

any other resources allocated to installing equipment and training deaf-blind participants on using equipment; (6) the cost, time and any other resources allocated to repair and maintenance of equipment; (7) the cost, time and any other resources allocated to outreach activities related to the NDBEDP; and (8) the cost, time, and any other allocation related to upgrading the distributed equipment during the pilot program, along with the nature of such upgrades.

43. With regard to whether a *substantial number* of small entities may be economically impacted by the requirements proposed in document FCC 11-3 the Commission notes that, a substantial number of small entities will be likely be affected; however, the economic impact on such entities will be de minimis. Most participating entities are likely meet the definition of a small entity as a "small organization," or a "small governmental jurisdiction." Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small. In addition, it is possible that some entities that fall under the category of "advanced communications services" may be participants in the NDBEDP pilot program. Section 101 of Title I of the Act, defines "advanced communications services" to mean (A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service. See Pub. L. 111-260, 101(1) (amending Section 3 of the Communications Act). While the

Commission's rules already define interconnected VoIP service, the Act provides new definitions for non-interconnected VoIP service, "electronic messaging service" and "interoperable video conferencing service."

44. While the Congressional mandate has led us to list the above entities as the ones that in all reasonable likelihood will function as EDPs, there exists the possibility that our list herein of entities that will foreseeably function as EDPs may not be complete and/or may subsequently include entities not listed above. This includes entities which may not fit into traditional categories currently under the Commission's jurisdiction. However, as noted above, section 105 of the CVAA gives the Commission broad authority to establish rules that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind.

45. In addition, given that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA's standard, would be entitled to receive prompt reimbursement for their reasonable costs of participation and compliance, the Commission concludes that document FCC 11-3, if adopted, will not have a significant economic impact on these small entities.

46. Therefore, the Commission certifies that the proposals in document FCC 11-3, if adopted, will not have a significant economic impact on a substantial number of small entities.

47. The Commission will send a copy of document FCC 11-3, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and The Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, that document FCC 11-3 *is adopted*.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 11-3, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 619, unless otherwise noted.

Subpart F—Telecommunications Relay Services ABD Related Customer Premises Equipment for Persons with Disabilities

2. The authority citation for subpart F is revised to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), and 619.

3. Section 64.610 is added to subpart F to read as follows:

§ 64.610 Establishment of a National Deaf-Blind Equipment Distribution Pilot Program.

(a) *Certification to receive funding from the NDBEDP.* All programs seeking to distribute specialized customer premises equipment and receive compensation for the distribution of such equipment from the Interstate TRS Fund, pursuant to the National Deaf-Blind Equipment Distribution Pilot Program (NDBEDP pilot), must first receive certification from the Commission.

(1) Any State with an established equipment distribution program (EDP), may have such EDP apply for certification as the sole authorized entity for the State to receive compensation for the distribution of equipment to the deaf-blind residents of that State.

(2) In States without an EDP, States that have an EDP that chooses not to apply for certification or States that have an EDP that is not deemed eligible to participate in the NDBEDP by the Commission under this section, other public programs, including, but not limited to, vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind; or private entities,

including but not limited to, organizational affiliates, independent living centers, or private educational facilities, may apply to the Commission for certification to distribute the specialized CPE covered by the NDBEDP.

(3) The Commission shall review applications and determine whether to grant certification based on the following factors:

(i) Expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population;

(ii) Adequate staffing and facilities to administer the program;

(iii) Experience with the distribution of specialized CPE, especially to people who are deaf-blind;

(iv) The ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and

(v) The ability to distribute equipment and related services to eligible individuals throughout the State (including to remote areas), either directly or in coordination with other local programs.

(b) *Definition.* For purposes of this section, the following definitions shall apply:

(1) *Individual who is deaf-blind.* Any person: (i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions;

(ii) Has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(iii) For whom the combination of impairments described in paragraphs (b)(1)(i) and (b)(1)(ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

(2) *Individuals claiming eligibility.* Individuals claiming eligibility under the NDBEDP are permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability.

(i) Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist,

speech pathologist, educator, hearing instrument specialist, or physician.

(ii) Any of these professionals must be able to attest to the applicant's physical disability (as defined above), and, in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss.

(3) *Low-income.* 400 percent of the Federal Poverty Guidelines as defined at 42 U.S.C. 9902(2) or enrolled in for one of the following subsidy programs: Federal Public Housing Assistance (FPHA) or Section 8; Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps; Low Income Home Energy Assistance Program (LIHEAP); Medicaid; National School Lunch Program's free lunch program; Supplemental Security Income (SSI); or Temporary Assistance for Needy Families (TANF).

(c) *Verification of disability.* Individuals claiming eligibility under the NDBEDP are permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability.

(1) Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician.

(2) Any of these professionals must be able to attest to the applicant's physical disability, and, in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss.

(d) *Prohibition against requiring employment.* No EDP or other program authorized to distribute equipment under the NDBEDP may impose as a qualification for eligibility in this program the extent to which a person who is deaf-blind is employed or actively seeking employment.

(e) *Equipment distribution and related services.* Each program certified under the NDBEDP pilot program must:

(1) Distribute specialized customer premises equipment needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible to individuals who are deaf-blind;

(2) Verify that each individual applying to the NDBEDP pilot program for equipment meets the definition of an individual who is deaf-blind contained at § 64.610(b); and

(3) Verify that each individual applying to the NDBEDP pilot program

for equipment meets the income eligibility requirements established by the Commission.

(f) Each program certified under the NDBEDP pilot program may:

(1) Use a portion of the funds received under the NDBEDP pilot program for individual needs assessments;

(2) Use a portion of the funds received under the NDBEDP pilot program for installation of equipment and consumer training; and

(3) Use a portion of the funds received under the NDBEDP pilot program for maintenance, repairs, and warranties on equipment distributed to consumers.

(g) *Reporting requirements.* Each program certified under the NDBEDP pilot program must submit data every six months until the completion of the pilot program on the following:

(1) For each piece of equipment distributed, its name, serial number, brand and function, its cost, the type of service with which it is used, and the type of relay service it can access;

(2) For each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment;

(3) For each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind;

(4) The cost, time and any other resources allocated to assessing an individual's equipment needs;

(5) The cost, time and any other resources allocated to installing equipment and training deaf-blind participants on using equipment;

(6) The cost, time and any other resources allocated to repair and maintenance of equipment;

(7) The cost, time and any other resources allocated to outreach activities related to the NDBEDP; and

(8) The cost, time and any other resources allocated to the need for upgrading the distributed equipment during the pilot program, along with the nature of such upgrades.

(h) *Administration of the program.* The Consumer and Governmental Affairs Bureau shall designate the NDBEDP Program Administrator.

(1) This Commission official will work in collaboration with the TRS Fund Administrator, and be responsible for:

(i) Identifying, verifying and contacting current State EDPs to notify them of their eligibility for program participation;

(ii) Reviewing program applications and certifying local programs to administer the distribution of equipment in each of the States;

(iii) Serving as the Commission point of contact and overseeing all of the certified distribution programs;

(iv) Overseeing training programs established under this program;

(v) Reviewing and evaluating State data for best practices; and

(vi) Working with Commission staff to adopt permanent rules for the NDBEDP.

(2) The Fund Administrator, as directed by the NDBEDP Program Administrator, shall have responsibility for:

(i) Reviewing cost submissions and releasing funds for equipment purchases and authorized associated services;

(ii) Releasing funds for a nationwide training program;

(iii) Releasing funds for a nationwide outreach effort;

(iv) Releasing funds for other purposes, as requested by the Commission; and

(v) Collecting data as needed for delivery to the NDBEDP Program Administrator.

(i) *Payments to certified NDBEDP participants.* Payments to certified program participants under the NDBEDP shall be made in connection with equipment that has been distributed to eligible individuals, up to a State's funding allotment under this program.

(j) *Expiration of rules.* These rules expire at the termination of the pilot program.

[FR Doc. 2011-1405 Filed 1-26-11; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA-2009-0303 (HM-213D)]

RIN 2137-AE53

Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA is proposing to amend the Hazardous Materials Regulations to prohibit the transportation of flammable liquids in unprotected external product piping on DOT specification cargo tank motor vehicles. If adopted as proposed, these amendments will reduce fatalities and

injuries that result from accidents during transportation involving the release of flammable liquid from unprotected external product piping.

DATES: Written comments should be submitted on or before March 28, 2011.

ADDRESSES: You may submit comments identified by the docket number (PHMSA-2009-0303 (HM-213D)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

FOR FURTHER INFORMATION CONTACT: Dirk Der Kinderen, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366-8553; or Leonard Majors, Engineering and Research Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366-4545.

SUPPLEMENTARY INFORMATION: