''Diesel Inspection and Maintenance Program,'' as submitted by the State on February 6, 1996.

III. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. Accordingly, this action merely approves state law that meets federal requirements and disapproves state law that does not meet federal requirements; this action 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 Clean Air Act; 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 19, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart TT—Utah

■ 2. Amend § 52.2320 by adding paragraph (c)(77) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(77) On February 6, 1996, Utah submitted as a revision to its State Implementation Plan (SIP) a ''Diesel Inspection and Maintenance Program,'' Section XXI of the Utah SIP. EPA is disapproving the Utah Diesel Inspection and Maintenance Program as submitted on February 6, 1996. On September 20, 1999 the State of Utah submitted revisions to its SIP that revised the numbering and format of the Utah Administrative Code rules within Utah's SIP. From the September 20, 1999 submittal, EPA is approving R307–110–16, ''Section IX, Control Measures for Area and Point Sources, Part G, Fluoride,'' and disapproving R307–110–29, ''Section XXI, Diesel Inspection and Maintenance Program,'' which incorporated Utah's Diesel Inspection and Maintenance Program by reference into Utah's rules. EPA has previously acted on other provisions from the September 20, 1999 submittal.

(i) Incorporation by reference.

(A) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–110, *General Requirements: State Implementation Plan,* R307–110–16, *Section IX, Control Measures for Area and Point Sources, Part G, Fluoride;* effective September 15, 1998; as published in the Utah State Bulletin on June 1, 1998 and October 1, 1998.

* * * * *

[FR Doc. 2014–04336 Filed 2–27–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[GN Docket No. 13–5; WC Docket No. 10–90; FCC 14–5]

Technology Transitions; Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts an experiment to test how tailored economic incentives can advance the deployment of next generation networks, both wireline and wireless, in rural, high-cost areas of the country, including Tribal lands. In this experiment, Connect America funding will be available to entities to deploy high-speed, scalable, IP-based networks.

DATES: Effective March 31, 2014, except for § 54.313(e)(1) through (3) which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–0428 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 10–90; FCC 14–5, adopted on January 30, 2014 and released on January 31, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-14-5A1.pdf*. The Further Notice of Proposed Rulemakings (FNPRM's) that were adopted concurrently with the Report and Order are published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. The Commission's Orders, Report and Orders, Further Notices of Proposed Rulemaking, and Proposal for Ongoing Data Initiative (Order) kickstarts the process for a diverse set of experiments and data collection initiatives that will allow the Commission and the public to evaluate how customers are affected by the historic technology transitions that are transforming our nation's voice communications services—from a network based on time-division multiplexed (TDM) circuit-switched voice services running on copper loops to an all-Internet Protocol (IP) network using copper, co-axial cable, wireless, and fiber as physical infrastructure. Americans have come to expect secure, reliable, and innovative communications services. The purpose of these experiments is to speed market-driven technological transitions and innovations by preserving the core statutory values as codified by Congress—public safety, ubiquitous and affordable access, competition, and consumer protection—that exist today. The experiments and initiatives will collect data that will permit service providers and their customers, and independent analysts and commentators—as well as the federal, State, local, and Tribal officials charged with oversight—to make data-driven decisions about these technology transitions. By using an open and deliberative process to identify and address challenges, all stakeholders will benefit as we together learn how we may ensure that our values flourish as providers implement new technologies at scale and, ultimately, seek to discontinue legacy services and facilities.

II. Experiments and Research Targeted to Network Values

2. The Commission adopts a targeted experiment in it which will solicit proposals to bring advanced services to rural Americans, including residents of Tribal lands, with support from the Connect America Fund, which will allow the Commission to examine different approaches to ensuring universal access to these advanced services in an all-IP world.

3. These targeted experiments will be guided by basic principles. They are not intended to resolve legal or policy questions arising from the transition. Rather, they are intended to help the Commission gather a factual record of information to inform such decisions. As the Commission pursues these initiatives, the Commission will work collaboratively with other governmental and non-governmental entities to leverage expertise and experience where appropriate. These processes will be transparent, open, and responsive. They will allow for broad public input from all interested parties and yield data and information that will be publicly available, subject to appropriate privacy protections.

4. These efforts are not exhaustive. The Commission welcomes ideas from other interested parties on ways the Commission can engage in targeted experiments and cooperative research to learn about and anticipate the impacts of transitioning technologies.

A. Next Generation Network Experiments in Rural America (Report and Order in WC Docket No. 10–90)

5. Preserving universal access to communications during these historic technology transitions is one of the Commission's core values. In the last several years, the Commission has undertaken major reforms to each of its universal service programs to modernize those programs in light of marketplace changes and technological advancements.

6. The Commission recognizes that such reforms, along with ongoing efforts of existing providers in rural, high-cost areas, have already resulted in the deployment of new technologies and IP-based networks in some areas, and the Commission expects technology transitions will continue to occur organically. At the same time, consistent with the statutory principles set forth in section 254 of the Act, it is critical that the Commission takes steps to ensure that all Americans benefit from the technology transitions, and that the Commission gain data on the impact of technology transitions in rural areas, including Tribal lands, where residential consumers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services. As networks transition, the Commission needs to make sure that rural Americans are not left behind.

7. The Commission recognizes that rural America poses particular challenges for the deployment of next generation communications services. By definition, rural areas are geographically dispersed, with lower population density. Often they are in areas with geological and topographical challenges; in addition, some rural areas experience particularly extreme seasonal and meteorological conditions. For various reasons, rural areas have lower broadband adoption rates than urban areas. For instance, rural areas have a higher percentage of elderly residents, who tend to have lower broadband adoption. Since the 1960's, when poverty rates were first officially recorded, rural areas have been home to a disproportionate number of low-income Americans. In 2012, 17.7 percent of the population, or about 8.5 million people, living in nonmetropolitan (nonmetro) areas were poor as compared to a poverty rate of 14.5 percent in metro areas. And this gap between nonmetro and metro poverty rates has widened in recent years, from 2.4 percentage points in 2011 to 3.2 percentage points in 2012. All of these factors, taken together, can make the economics of building out broadband-capable infrastructure in rural areas more challenging.

8. In addition, the circumstances described above are frequently exacerbated on Tribal lands. Tribal Nations face unique problems in acquiring communications services, with substantial barriers to deployment prevalent throughout Tribal lands. The resulting digital divide that persists between Tribal Nations and the rest of the country is well-documented.

9. The Commission understands that some providers have proposed wireless products as the only service offering for some rural areas following the retirement of legacy PSTN services and facilities. The Commission notes that

there are a range of fixed wireless offerings in the marketplace today, offering differing speeds and usage allowances at price points that are typically higher than what are available from wireline offerings. One of the critical questions the Commission seeks to explore is under what conditions will consumers prefer next generation wireless services over wireline alternatives. In addition, the Commission wants to better understand the viable business models that could support the deployment of fiber or other next generation wired technology in rural areas despite the challenges we have described. The Commission is committed to exploring ways to ensure that, as networks transition, the access of rural American customers, including customers living on Tribal lands, is not just preserved, but enhanced, in all areas of the country.

10. The Commission welcomes ideas about how to structure experiments that will inform its policy decisions regarding the deployment of next generation networks in rural, high-cost areas. To this end, we plan to hold a workshop on rural broadband experiments in March 2014. The Commission welcomes innovative ideas that would coordinate actions across its various support programs, consistent with the statutory framework set forth in section 254. The Commission looks forward to an ongoing dialogue with a diverse group of interested stakeholders.

11. The Commission adopted one possible experiment to test how tailored economic incentives can advance the deployment of next generation networks, both wireline and wireless, in rural, high-cost areas of the country, including Tribal lands. In this experiment, Connect America funding will be available to entities to deploy high-speed, scalable, IP-based networks. The Connect America Fund is a key element of the Commission's universal service reforms to ensure that rural consumers, businesses, and anchor institutions have access to next generation networks. Consistent with the Commission's goals of bringing robust, scalable broadband networks to rural, high-cost communities across America, and gaining experience and data on how to ensure universal access as networks transition, this experiment is designed to help inform our policy decisions in various proceedings pending before the Commission. For example, it is important to understand what providers would be willing to offer what type of service in price cap areas in the event that a current incumbent Eligible Telecommunications Carrier (ETC) chooses not to participate in Connect America Phase II.

12. Below, the Commission invites expressions of interest for such experiments in areas served by price cap carriers and areas served by rate-of-return carriers. The Commission's focus is on proposals to build robust last-mile broadband to offer service to a wide range of end users in rural communities, rather than proposals for middle mile projects. The Commission also is focused on conducting these experiments in rural areas lacking Internet access service that delivers 3 Mbps downstream/768 kbps upstream. For both types of territories, funding could be made available in 2014 for discrete technology transition experiments within the existing Connect America budget. In the Further Notice of Proposed Rulemaking (FNPRM) that accompanies this R&O, the Commission seeks comment on making available unallocated Connect America funding to support these structured technology transition experiments across a diverse cross section of rural America. The Commission could make a limited amount of funding available for such experiments without increasing the overall size of the Connect America Fund, and without increasing the contribution burden on consumers.

13. Useful information that could be developed through such experiments will help address four sets of interrelated questions. First, from these experiments, the Commission seeks to test the assumption among certain providers that the geographic and demographic characteristics of certain rural areas, including Tribal lands, economically preclude the deployment of high-capacity fiber-based services that deliver higher speeds to those communities, absent some level of governmental support. The Commission seeks to address the extent of interest among non-incumbent service providers to deploy high-speed, scalable, IP-based networks to serve consumers, businesses, and community-based institutions such as schools, libraries and healthcare providers in rural areas where broadband is lacking, potentially with assistance from the Connect America Fund, and to learn what specific measures to streamline the ETC designation process will encourage such entry by non-incumbent providers. Likewise, the Commission seeks to learn whether providers are willing and able to deliver services with performance characteristics well in excess of the minimum standards that price cap carriers accepting model-based support are required to offer to all locations in funded areas, for the same amount or less support than that calculated by the forward-looking cost model. The Commission hopes these experiments will generate ''best practices'' that will allow others to replicate experimental successes in other rural areas. The Commission will explore how they can maximize the deployment of robust, future-proof networks most efficiently within our finite $4.5 billion Connect America budget.

14. Second, based on the proposals submitted, the Commission seeks to develop a greater understanding of the geographic and demographic characteristics of areas where service providers (both incumbents and non-incumbents) would choose to offer wireless services at pricing reasonably comparable to urban wireline offerings. The Commission seeks to identify the likely features of such wireless services and the characteristics of wireless services that residential consumers would find to be an acceptable substitute for fiber-based broadband service.

15. Third, the Commission seeks to develop a greater understanding through these targeted experiments of how these transitions will impact anchor institutions and the people they serve. The Commission is interested in learning more about the types of services that will be offered to schools, libraries, health care providers, and other anchor institutions that are served by next generation networks financed in part with Connect America support, and at what price. The Commission seeks to explore how the transitions will best ensure the provision of high quality broadband connectivity appropriate to the needs of rural health care providers and enable remote health monitoring at home, which is critical to consumers in rural areas who otherwise would have to travel great distances to have access to health care. The Commission seeks to examine whether and how the business case for deployment in rural areas, including Tribal lands, can be improved by securing the participation of anchor institutions to serve as key customers of the next generation networks. Through these experiments, the Commission hopes to identify strategies to ensure that community-based institutions in rural areas, such as schools, libraries and health care providers, have access to next generation services.

16. Finally, the Commission seeks to work cooperatively with other governmental agencies to advance our shared objectives of ensuring that consumers, businesses and anchor institutions have access to next generation services. Under section 254, universal service is a joint federal and

State responsibility. The Commission is particularly interested in how States, localities, Tribal governments, and other non-federal governmental bodies can provide assistance, through matching funding, in-kind contributions or other regulatory approvals and permits, to improve the business case for deployment of next generation networks.

17. The Commission's intention here is not to delay any decisions regarding implementation of any universal service reforms, but rather to leverage whatever knowledge can be developed quickly through such experiments to inform our judgment on an ongoing basis as the Commission addresses critically important policy issues in several of our pending universal service rulemaking dockets. Implementation of Phase II of the Connect America Fund will not be delayed by these experiments. Work on the forward-looking cost model that will be used to determine Phase II support amounts to be offered to price cap carriers is nearing completion, and the Commission expects the Wireline Competition Bureau will be in a position to implement the Phase II challenge process and finalize the list of eligible census blocks in the months ahead. The Commission expects to implement the offer of model-based support to price cap carriers before the end of 2014. The Commission also is committed to resolving by the end of 2014 how the Connect America Fund will address the challenges of providing service to the most remote, difficult to serve areas of the country.

1. Connect America Phase II Experiments

18. One critical step to advancing technology transitions in rural America, including on Tribal lands, is to implement Phase II of the Connect America Fund. In the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission concluded it would use a competitive bidding mechanism for Phase II of the Connect America Fund to award support in price cap territories in those areas where price cap carriers decline to make a state-level commitment in exchange for model-based support, and it sought comment on how to design this mechanism. At various points in the Connect America proceeding, a number of parties have suggested that we implement a market-based mechanism in the form of a competitive application process as opposed to a reverse auction. Others have focused on the mechanics and design of a reverse auction. To date, the Commission has implemented one reverse auction and shortly will conduct another.

19. The Commission reaffirms its commitment to using competitive bidding to award support to the extent the price cap carriers decline to accept the offer of model-based support. That bi-partisan decision was the culmination of efforts over a decade to reform universal service, and the Commission remains firmly committed to completing implementation of the universal service reform framework previously adopted by the Commission.

20. One of the key questions remaining in the Connect America proceeding, however, is the specific form of the competitive bidding mechanism that will occur to the extent price cap carriers decline to elect model-based support: A reverse auction or some other form of competitive bidding. The Commission does not resolve that question in the *R&O.*

21. The Commission concluded that it would be desirable to test, on a limited scale, the use of an application-based competitive bidding process with objective selection criteria on a limited scale before finalizing decisions regarding the competitive bidding mechanism for full-scale implementation in WC Docket No. 10–90 to award support in price cap territories where the incumbent declines the offer of model-based support. The Commission fully recognizes that conducting nationwide competitive bidding—whatever form it ultimately takes—to award recurring support to preserve voice service and expand broadband service is a significant undertaking that has never been implemented in this country. The Commission takes seriously its fundamental obligation to preserve and advance universal service. Even though the Commission has solicited multiple rounds of comment on issues relating to competitive bidding mechanisms, there is no substitute for real world experience to inform our policy decisions. Service to potentially millions of consumers, businesses and anchor institutions may be impacted by the particular design of the competitive bidding process. For that reason, the Commission wishes to gain experience and data by experimenting with an application-based competitive bidding process with defined selection criteria that could inform our judgment regarding how to structure the Phase II competitive bidding mechanism. The Commission therefore adopted a Phase II experiment and describes below the application process for this experiment.

22. The Commission concluded that soliciting and reviewing applications in the near term as a part of this Phase II experiment will assist it in making critical decisions in a future order regarding the objective evaluative criteria that should be applied more broadly in the competitive bidding process for Connect America Phase II, such as whether funding should be awarded solely based on cost per location, or whether the Commission should give additional weight or bidding credits in defined circumstances. The Commission agreed with commenters that a competitive bidding process will be most successful if it is focused on clear goals, is transparent, and is based on objective, relatively straightforward, well-defined, and measurable criteria. In short, the Commission expects this experiment will help it design a more effective nationwide competitive bidding mechanism, whether that ultimately takes the form of a reverse auction or some other form of competitive bidding with a limited number of objective, defined selection criteria. This experiment also will provide an opportunity to consider how better to ensure that all of universal service programs are working together effectively to ensure that residential consumers, small businesses, and anchor institutions have access to evolving services delivered over scalable networks.

a. Application Process

23. To assist entities willing to conduct experiments to deploy high-speed, scalable, IP-based networks, using either wireline or wireless technologies, or a combination of technologies, in rural, high-cost areas (including on Tribal lands) with Connect America funding, the Commission describes in further detail elements of proposals that would assist the Commission in learning from these experiments. The technology transitions proposals that invited in the R&O are not limited to proposals from incumbent providers. The Commission encourages proposals from a wide range of entities and consortia of entities, including State and regional authorities, research and education networks, municipalities, Tribal governments, cable operators, competitive local exchange carriers, incumbent local exchange carriers, fixed and mobile wireless providers, wireless Internet service providers, utilities, and others.

24. The Commission's invitation for Phase II experiment proposals will be conducted in two stages: A non-binding expression of interest stage and a formal proposal stage. The Commission requests expressions of interest to be

filed by letter in WC Docket No. 10–90 by March 7, 2014, although the Commission also will consider additional expressions of interest on a rolling basis after that date. All expressions of interest must be filed electronically. Information to be included in an expression of interest might include, but not be limited to:

- The nature of the submitting entity or entities (e.g., incumbent LEC, municipality, utility, cable operator, wireless provider)
- Identification of the proposed service area for the experiment, including census block number, with any relevant information regarding the number of locations that could be served, including schools, libraries, and other anchor institutions
- The broadband technology or technologies to be deployed
- Contemplated service offerings (e.g., description of voice service, broadband speed tiers, nature of video service, if any) and pricing of such offerings
- If known, expected State and/or local or Tribal governmental participation in and/or support for the project (e.g., expedited permitting, access to rights of way, matching funds, etc.)
- Whether the proposal is expected to require one-time or continuing funding and a high-level estimate of the amount of funding requested

25. The formal proposal stage will follow the expression of interest stage. Submitting an expression of interest is not a precondition for submitting a formal proposal in the second stage.

26. The *USF/ICC Transformation Order* adopted a goal of ''ensur[ing] universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions'' and adopted a framework for the Connect America Fund to achieve these goals by extending broadband to millions of unserved locations over a five-year period, including connecting community anchor institutions. The Commission directed the Wireline Competition Bureau to invite input on the unique needs of community anchor institutions as it developed the forward-looking model, and it included reporting obligations on incumbent LECs to track the number of community anchor institutions that were connected. In seeking comment in the *FNPRM* on the competitive bidding process to be implemented, to the extent price cap carriers declined to make a state-level commitment for model-based support, the Commission sought comment on how to leverage the budget to achieve these goals and ''extend[] services to as many consumers, businesses, and community anchor institutions as possible.''

27. The Commission is particularly interested in projects that achieve the goals of the *USF/ICC Transformation Order* and demonstrate whether, and how, the competitive bidding process under Phase II of the Connect America Fund might be structured. The Commission also is interested in learning how to best leverage the support available from all of the Commission's universal service programs to comprehensively serve the needs of rural communities, including their educational and health care needs. Experiments to fund modern networks in rural, high-cost areas from the Connect America Fund may serve to provide important information on the potential benefits and burdens of the technology transitions on health care providers and their patients, and on educational institutions and their patrons, in rural areas, while informing the Commission's policy decisions in implementing the Phase II competitive bidding process and more broadly, as well.

28. The Commission plans to adopt a budget for these rural broadband experiments and will announce the selection criteria prior to the solicitation of formal proposals. In the *FNPRM,* the Commission seeks comment on what amount of Connect America funding should be made available for this experiment and the objective selection criteria for the experiments. The Commission anticipates that once the Commission takes action in response to the FNPRM, applications will be due within a relatively short time frame, such as 60 days. The Commission therefore encourages potential applicants to consider how they might begin to structure their proposals early in the process. The Commission expects a relatively small number of projects, reflecting a diversity of technologies (both wireline and wireless) in different geographic areas, will be selected for funding.

b. Geographic Areas Eligible for Support

29. In the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, the Commission proposed to use the same areas that are identified by the Connect America cost model as eligible for support in the competitive bidding process. It proposed to use census blocks as the minimum size geographic unit as eligible for competitive bidding and sought comment on whether to adopt a rule that would aggregate eligible census blocks into census tracts for bidding, or to allow bidder-defined aggregation of census blocks.

30. The Commission concluded that proposals in this rural broadband experiment in price cap territories will be entertained at the census tract level. Making a county the minimum geographic area for an experimental proposal potentially could deter participation in this experiment from smaller providers. The Commission therefore concludes that the minimum geographic area to be made available in the Phase II experiment is the census tract, with funding provided only for locations in eligible census blocks within that census tract. The Commission concludes any census blocks lacking broadband where the average cost per location is equal to or exceeds the likely funding threshold in the forward-looking cost model should be eligible for the rural broadband experiment. The Commission thus does not exclude from eligibility those census blocks where the average cost, as calculated by the model, exceeds the likely extremely high cost threshold. In other words, potential applicants should be free to seek funding to serve census tracts that contain census blocks where the average cost per location, as determined by the forward-looking cost model, exceeds the extremely high-cost threshold. The Commission makes this decision recognizing that the actual cost for a particular provider to serve the area may vary from the cost estimated by the cost model. To the extent parties can economically serve areas that fall above the extremely high-cost threshold with terrestrial voice and broadband with the assistance of support, the Commission does not want to preclude those areas from being eligible in the Phase II experiment. The Commission hopes that this experiment will provide the Commission with useful data that could inform future decisions regarding the treatment of hard-to-serve remote areas of the country.

31. As noted above, one of the Commission's objectives in conducting this experiment is to determine how the Commission can use targeted funding most efficiently to expand the availability of voice and broadband-capable infrastructure within the defined $4.5 billion budget for the Connect America Fund. For purposes of the experiment, the Commission expects that the amount of funding to be made available for any applicant will not exceed the amount of model-calculated support associated with the relevant geographic area, either a census tract or aggregation of census tracts. This will enable us to test in the experiment the use of the cost model for purposes of

setting reserve prices for future implementation of the Phase II competitive bidding process.

32. The Commission is focused on using this experiment to deploy robust, scalable networks in rural areas lacking Internet access that delivers 3 Mbps downstream/768 kbps upstream. In the *USF/ICC Transformation Order,* the Commission adopted a policy that support not be provided to areas served by an unsubsidized competitor. The Commission remains committed to ensuring that Connect America funding is not used in areas where other providers are offering voice and broadband meeting the Commission's requirements. The Commission does not think it would be efficient to conduct a challenge process to the eligibility of census blocks within a census tract when formal proposals are initially submitted; depending on the volume of proposals received, that could place a burden both on outside parties and Commission staff. Rather, the Commission concludes that challenges to the eligibility of areas proposed for experiments are more appropriately entertained after the project has otherwise been tentatively selected for funding. To the extent a challenge is granted in whole or in part, funding for those locations would be adjusted appropriately. The Commission expects that the Wireline Competition Bureau and the Wireless Telecommunications Bureau to conduct the challenge process in a fashion similar to the process that the Wireline Competition Bureau has adopted, but not yet implemented, for determining eligible areas for model-based support.

33. The Commission recognizes that there may be situations where the extent of competitive overlap for broadband services in a proposed project is de minimis. If a particular applicant proposes to serve an area where a current recipient of high cost support already provides broadband, the Commission would need to understand specifically why a deviation from its general policy of not supporting two or more providers in an area is justified and in the public interest. Likewise, to the extent an applicant proposes to include in its project locations that are served by an unsubsidized competitor, the Commission would be interested in why deviation from its policy is justified and in the public interest. The Commission seeks comment in the FNPRM on how to define a de minimis overlap and what measures the Commission should implement in the experiment to ensure that funds in the experiment are focused on unserved areas.

c. Provider Eligibility Requirements

34. In the *USF/ICC Transformation FNPRM,* the Commission proposed to require applicants for support to be designated an ETC at the time they applied to participate in the competitive bidding process, with a limited exception for Tribally-owned or controlled entities. The Commission proposed that all applicants be required to certify that they are financially and technically capable of providing the required service within the relevant geographic area. The Commission indicated that it anticipated that price cap ETCs that decline model-determined support would be eligible to participate in the competitive bidding process, and it sought comment on the advantages and disadvantages of such an approach.

35. The Commission seeks to encourage the participation in this experiment from as many different entities as possible. The Commission emphasizes that they welcome applications from a wide range of entities, including cable operators, incumbent price cap carriers, competitive local exchange carriers, affiliates of neighboring incumbent providers, utilities, fixed and mobile wireless providers, wireless Internet service providers, State and regional authorities, research and education networks, municipalities, Tribal governments, and others.

36. *Timing of ETC Designation.* The Commission concludes that entities selected to receive funding in an experiment must obtain ETC designation from either a State commission pursuant to section 214(e)(2) or the Commission pursuant to section 214(e)(6) of the Act. Therefore, entities must offer voice telephony service at reasonably comparable rates as part of the experiment. The Commission declines at this time to adopt the suggestion of certain parties that it either forbears from ETC designation requirements, or that it preempts States from issuing ETC designations. Rather, the Commission adopts a more liberal process for the timing of ETC designation. The Commission's experience in implementing this rule in the Phase II experiment will help it determine whether other measures are necessary regarding the ETC designation process when implementing the Connect America Phase II competitive bidding process more broadly.

37. The Commission concludes that potential applicants in this rural broadband experiment need not be ETCs at the time they initially *apply* for funding at the Commission. Rather, the Commission is persuaded that they should permit entities to obtain ETC designation *after* being selected for the award of Connect America funding, which the Commission believes will encourage greater participation in the experiment by a wider range of entities. ETC status must be confirmed before funding awarded through the experiment is disbursed. The Commission expects this confirmation would occur within 90 days of funding award.

38. The Commission recognizes that the Commission declined to take that approach for the Mobility Fund Phase I and Tribal Mobility Fund Phase I, instead requiring entities to have obtained an ETC designation prior to filing the short form application, with an exception for Tribally-owned or controlled entities if they had an ETC application pending. Those requirements were adopted in part to ensure that applicants filing to participate in the auction were serious bidders. Based on our experience with the Mobility Fund Phase I and our review of the record, the Commission now concludes that it would be appropriate to allow Connect America Phase II experiment applicants to obtain ETC designation after a preliminary determination has been made to award funding, rather than before filing an application with the Commission. The Commission assumes that applicants that submit formal proposals would seek to demonstrate their financial and technical capabilities throughout their application and will submit well-developed proposals that could be implemented quickly if selected. Based on the Commission's experience with the experiment, it can revisit this decision if necessary before implementing a competitive bidding process for Connect America Phase II more generally.

39. In the Mobility Fund Phase I, the Commission expressly permitted potential bidders to obtain conditional ETC designation prior to filing the short-form application. Given the Commission's decision to permit entities to seek ETC designation after notification of tentative selection for funding award, the Commission does not anticipate many parties would seek conditional ETC designation prior to applying for funding through this experiment. To the extent a party chooses to do so, however, and a State or this Commission issues a conditional ETC designation prior to selection for funding, the Commission expects that the ETC designation in such situations will be finalized quickly as a pro forma

matter after notification of selection for funding. The Commission's experience with the experiments will inform its ultimate decisions of whether additional federal rules are necessary to ensure that the ETC designation process does not erect unnecessary barriers to competitive entry.

40. The Commission also addresses the role of ETC designation in situations where there is a multi-stakeholder group working together to bring broadband-capable infrastructure to unserved communities. The Commission welcomes participation in the Connect America Phase II experiment from a wide variety of entities, including partnerships or consortia of entities that may include service providers, vendors, governmental agencies, and others. Indeed, in other contexts, the Commission has recognized the value of consortia bulk purchasing in driving down service rates, increasing bandwidth, and reducing administrative overhead.

41. For the Connect America Phase II experiment, the Commission concludes that the requirement to be an ETC is met if one entity that is part of the group, partnership or consortia obtains ETC designation from the relevant State or this Commission. Thus, for instance, the entity that is designated as the ETC could be a competitive local exchange carrier that offers the telecommunications services eligible for support pursuant to section 254(c)(1) of the Act in partnership with another entity that constructs and operates the broadband-capable network. Comparable to the requirements adopted by the Commission for consortia leaders in the Healthcare Connect Fund, the Commission requires that the ETC be legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, USAC, the relevant State, and Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, USAC, the relevant State, and Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group.

d. Term of Support

42. In the *USF/ICC Transformation FNPRM,* the Commission proposed that the term of support for the Phase II competitive bidding process would be the same as that adopted for providers that accept the state-level model-determined support, but it also sought comment on whether a longer time period, such as ten years, would be appropriate for recipients of support awarded through a competitive bidding process.

43. The Commission solicits proposals in this Phase II experiment from entities seeking either one-time support or recurring support. The Commission previously offered two rounds of Phase I incremental support to price cap carriers to extend broadband-capable infrastructure in unserved areas. The Commission now wishes to explore the possibility of providing one-time support on a competitive basis to extend broadband-capable networks in areas where providers expect to cover their ongoing operating costs with end user and other sources of revenue. The experiment will help the Commission determine the extent to which parties may be willing to build out broadband in certain areas with one-time rather than recurring support.

44. The Commission concludes that support provided through the Phase II experiment may be provided for up to ten years, subject to existing requirements and the availability of funds. The Commission is persuaded that it is appropriate to provide support for up to ten years to those providers that commit to deploy high-speed, scalable, IP-based networks that will provide residential consumers, small businesses and anchor institutions with an evolving level of service. The Commission acknowledges the possibility that over time marketplaces may change, and it is possible that some funded areas may see new competitors at some point in the future. At the same time, the Commission also recognizes that some entities may be unwilling to make the necessary long-term investments to build robust future-proof networks in areas that are uneconomic to serve absent continued support beyond a five-year term.

45. The Commission is not persuaded by those who argue that the term of support should be the same for all recipients of Connect America support, regardless of whether they receive support based on the forward-looking cost model or through competitive bidding. There is no inherent reason that the terms of the competitive offer need to be identical to the offer of model-based support. Indeed, having different terms of support in different areas may provide us with valuable information regarding the impact of different rules that will help inform future policy decisions regarding universal service reforms. In particular, in those areas where price cap carriers elect model-based support for a term of five years, the Commission will need to decide whether and if so how recurring support should be provided after the end of the five-year period. By allowing parties submitting proposals for the rural broadband experiment to indicate the length of time (up to ten years) for which they seek, the Commission hopes to gain real world experience that will enable the Commission to evaluate whether providers are more willing to deploy future-proof infrastructure when assured of a funding stream over a ten-year period as opposed to a five-year period. As is true for all high-cost recipients, ETCs that receive Phase II support for ten years will be subject to annual reporting, including updates on their progress towards meeting their planned targets, as well as audits, allowing the Commission to monitor the projects during the term. Balancing these considerations, the Commission concludes that providing a longer term of support in the experiment could provide the Commission with valuable information regarding how to elicit greater participation in the Connect America Phase II competitive bidding process in price cap territories, which will help ensure that funding is targeted efficiently to expand broadband-capable infrastructure throughout the country.

e. Other Considerations

46. The Commission remains committed to the principle of not providing duplicative funding in a given geographic area. In the *FNPRM,* the Commission seeks comment on how the selection of projects through the competitive bidding experiment should affect the inclusion of those areas in the offer of model-based support to price cap carriers or in the Connect America Phase II competitive bidding process and can ensure that public funds do not substitute for private capital.

47. The availability of Connect America funding for technology transition experiments is subject to the applicable requirements of sections 214 and 254 of the Act and will be conditioned on complying with all relevant universal service rules that the Commission has adopted or may adopt in the future in the relevant rulemaking proceedings, including but not limited to ETC requirements to the extent that they apply to recipients of high-cost and Lifeline support, reporting requirements, audits, and enforcement mechanisms for non-compliance with rules. In the *FNPRM,* the Commission seeks comment on any additional rules or requirements the Commission should adopt in the context of such experiments.

48. To the extent applicants believe compliance with a specific requirement is not necessary in the context of an experiment, they should identify with specificity those rules that should be waived or modified. Funding also may be conditioned on compliance with any additional commitments made by the applicant in conjunction with its application to participate in the Phase II experiment.

2. Next Generation Rural Broadband Experiments in Areas Where the Incumbent Is a Rate-of-Return Carrier

49. The Commission welcomes experiments regarding technology transitions in areas served by incumbent rate-of-return carriers as well as price cap carriers, as such experiments would provide us with valuable information from a variety of geographic areas. As a complement to experiments in price cap territories, the Commission therefore invites proposals on a competitive basis in geographic areas where the incumbent provider is a rate-of-return carrier. The Commission intends to implement rural broadband experiments in areas served by rate-of-return carriers before the end of 2014, which will provide a potential pathway to longer term reforms regarding support for broadband-capable infrastructure in such areas.

50. The Commission recognizes that historically the Commission has implemented different universal service mechanisms for the larger price cap carriers than for the smaller companies, which are typically rate-of-return regulated carriers. In the *USF/ICC Transformation Order,* the Commission recognized that smaller rate-of-return carriers ''operate in many of the country's most difficult and expensive areas.'' The Commission largely preserved the existing support mechanisms, with some modifications, rather than implementing the same reforms for both price cap carriers and rate-of-return carriers. Instead of the approach adopted for price cap carriers—which are required to serve 100 percent of locations in specific census blocks deemed eligible for support—it implemented a more flexible approach under which rate-of-return carriers are required to offer broadband service meeting the initial requirement of at least 4 Mbps downstream and 1 Mbps upstream upon reasonable request, in recognition of ''the economic challenges of extending service in the high-cost areas of the country served by rate-of-return carriers.''

51. At the same time, the Commission also concluded that ''all universal service high-cost support should ultimately be distributed through [Connect America Fund] for all recipients.'' A number of parties have specifically urged the Commission to adopt a Connect America Fund to support the expansion of broadband in areas served by rate-of-return carriers. The Commission wishes to explore the possibility of making funding available in such areas in a way that would assist the Commission in deciding how to provide targeted and efficient support over the longer term. Such a mechanism could functionally replace a high-cost mechanism that the Commission decided to eliminate and phase out in the *USF/ICC Transformation Order,* safety net additive, which was originally adopted to encourage new investment in modern networks. These experiments would not prejudge any future actions regarding modifications to the current universal service mechanisms available to incumbent rate-of-return carriers.

52. In implementing any experiments in areas served by rate-of-return carriers, the Commission recognizes the statute expressly contemplates a different process for ETC designation in areas served by rate-of-return carriers than it does in areas served by incumbent price cap carriers. Section 214(e)(2) specifies that before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. The relevant State and the Commission must agree on any service area redefinition that would create a service territory for a new ETC that is different than the incumbent's service area. In implementing Phase I of the Mobility Fund, the Commission adopted a limited forbearance from requiring that the service area of an ETC conform to the service area of any rural telephone company serving the same area, but only with respect to conditional ETC designations for participating in the Mobility Fund Phase I auction. The Commission concluded that forbearance in that situation advanced ''the Act's and the Commission's goals of promoting access to mobile service over current and next generation wireless networks in areas currently without such service by reducing barriers to participation in Phase I of the Mobility Fund.''

53. The Commission is interested in assessing the level of interest among rate-of-return carriers in participating in a rural broadband experiment, but also are interested in expressions of interest from others as well. As with the Phase II experiment, interested parties may file a letter in WC Docket No. 10–90 no later than March 7, 2014, expressing their interest in conducting a rural broadband experiment in rate-of-return territories with Connect America funding. The Commission also will consider additional expressions of interest on a rolling basis after that date. All expressions of interest must be filed electronically. Consistent with the approach adopted for experiments in price cap territories, experimental funding would only be provided to entities in rate-of-return areas that are ETCs, and therefore to the extent a non-ETC is tentatively selected for the award of funding, it would then need to obtain ETC designation. As an ETC, it would be required to provide the supported service—voice telephony—at rates reasonably comparable to rates for similar services in urban areas.

54. The Commission emphasizes that participation in this experiment will not alter existing universal service obligations and receipt of support by current rate-of-return ETCs, regardless of whether a competitive ETC receives experimental support in the same service area. Any Connect America funding awarded in such a rural broadband experiment would be additive to current support for ETCs.

55. The Commission seeks comment in the *FNPRM* on a number of issues, including whether to implement a staggered implementation schedule for formal proposals in rate-of-return areas and whether to modify the process for experiments in rate-of-return study areas compared with how the Commission implements experiments in price cap territories.

3. Non-Substantive Rule Amendments

56. The Commission now amends the Code of Federal Regulations to eliminate current section 54.309 (which described the non-rural support mechanism that the Commission eliminated in the *USF/ICC Transformation Order*) and replace that section with a new section 54.309 and 54.310 to address Phase II. The new rule sections codify decisions previously made by the Commission in the *USF/ICC Transformation Order* regarding the offer of model-based support to price cap carriers, the deployment schedule for Phase II, and the Phase II service obligations.

III. Procedural Matters

1. Paperwork Reduction Analysis

57. The Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget

(OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

58. In this present document, the Commission has assessed the effects of modifying reporting rules, and find that doing so does not change the burden on small businesses with fewer than 25 employees.

2. Congressional Review Act

59. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

3. Final Regulatory Flexibility Certification

60. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

61. This *Report and Order* codifies rules adopted by the Commission in *USF/ICC Transformation Order.* This action does not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order.* Therefore, we certify that the action taken in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this final certification, in a report to Congress pursuant to SBREFA. In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

IV. Ordering Clauses

62. Accordingly, *it is ordered,* that pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302, and sections 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1, 1.421, this Report and Order in WC Docket No. 10–90 *is adopted,* effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval, and except for the solicitation of non-binding expressions of interest in rural broadband experiments specified in paras. 24 and 53, which are effective upon release. It is our intention in adopting these rules that, if any of the rules that we retain, modify or adopt today, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

63. *It is further ordered,* that part 54 of the Commission's rules, 47 CFR part 54, is *amended* as set forth in Appendix A of the order, and such rule amendments shall be effective March 31, 2014, except § 54.313(e)(1) through (3) which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

64. *It is further ordered,* that the Commission *shall send* a copy of this Report and Order in WC Docket No. 10–90 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

65. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order in WC Docket No. 10–90, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Comunications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Revise § 54.309 to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

(a) A price cap carrier electing Phase II model-based support is required to provide broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonable comparable to rates for comparable offerings in urban areas.

(b) In addition, a price cap carrier electing Phase II model-based support is required to provide broadband service with actual speeds of at least 6 Mbps downstream to a specified number of locations, and upstream speeds of at least 1.5 Mbps to a specified number of locations, as determined by the Wireline Competition Bureau.

■ 3. Add § 54.310 to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories—Phase II

(a) *Geographic areas eligible for support.* Connect America Phase II support may be made available for census blocks or other areas identified as eligible by public notice. The number of supported locations will be identified for each area eligible for support will be identified by public notice.

(b) *Term of support.* Connect America Phase II model-based support shall be provided to price cap carriers that elect

to make a state-level commitment for five years.

(c) *Deployment schedule.* Recipients of Phase II funding must complete deployment to 85% of supported locations within three years of notification of Phase II support authorization and to 100% of supported locations within five years of notification of Phase II support authorization. For purposes of meeting the obligation to deploy to the requisite number of supported locations, incumbent price cap carriers accepting a state-level commitment may serve locations in census blocks with costs above the extremely high-cost threshold instead of locations in eligible census blocks, provided that they meet the public interest obligations set forth in § 54.309 for those locations, and provided that the total number of locations covered is greater than or equal to the number of locations in the eligible census blocks for which the state-level commitment is made.

(d) *Disbursement of Phase II funding.* An eligible telecommunications carrier will be advised by public notice when it is authorized to receive support. The public notice will detail how disbursements will be made.

■ 4. In § 54.313, revise paragraphs (e)(1), (e)(2) and (e)(3) introductory text to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients

* * * * *

(e) * * *

(1) *In the calendar year no later than three years after notification of authorization of CAF Phase II funding,* a certification that the recipient is providing broadband meeting the requisite public interest obligations specified in § 54.309 to 85% of its supported locations.

(2) *In the calendar year no later than five years after notification of authorization of CAF Phase II funding,* a certification that the recipient is providing broadband meeting the requisite public interest obligations specified in § 54.309 to 100% of its supported locations.

(3) *In the calendar year after the filing of its initial five-year service quality improvement plan, and every year thereafter,* a progress report on the company's five-year service quality improvement plan, including the following information:

* * * * *

[FR Doc. 2014–04313 Filed 2–27–14; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203 and 252

RIN 0750–AH97

Defense Federal Acquisition Regulation Supplement: Enhancement of Contractor Employee Whistleblower Protections (DFARS Case 2013–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement statutory amendments to whistleblower protections for contractor and subcontractor employees.

DATES: Effective February 28, 2014.

FOR FURTHER INFORMATION CONTACT: Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule finalizes an interim rule that revised the DFARS to implement section 827 (except paragraph (g)) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, enacted January 2, 2013). Section 827, entitled ''Enhancement of Whistleblower Protections for Contractor Employees,'' made extensive changes to 10 U.S.C. 2409, entitled ''Contractor employees: Protection from reprisal or disclosure.'' Paragraph (g) of section 827, which amended paragraph (k) of 10 U.S.C. 2324, entitled ''Allowable costs under defense contracts,'' is addressed under a separate DFARS case, 2013–D022, Allowability of Legal Costs for Whistleblower Proceedings.

Section 827 of the NDAA for FY 2013 created a standalone statute for DoD that is independent of the FAR coverage.

DoD published an interim rule in the **Federal Register** at 78 FR 59851 on September 30, 2013, to implement statutory amendments to the whistleblower protections for contractor and subcontractor employees. One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis

A. Public Comments

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided below.

Comment: The respondent recommended reinstating the clarifying statements at DFARS 203.903 and 203.905 that ''The following policy applies to DoD instead of the policy at FAR 3.903/3.905.''

Response: In the final rule, DoD has inserted a statement in section 203.900, Scope, to indicate that DFARS subpart 203.9 is to be used in lieu of FAR subpart 3.9. DFARS contractor whistleblower policies are based on 10 U.S.C. 2409, which is no longer implemented in the FAR (see FAR 3.900).

B. Other Changes

DoD has incorporated other non-substantive editorial changes in the final rule. In addition to redesignation of some paragraphs to conform to DFARS numbering conventions and minor wording changes for clarity, DoD has relocated DFARS 203.907, Classified information, to DFARS 203.903(2), because section 3.907 in the FAR is titled ''Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).'' DoD cannot assign a new title to the corresponding section in the DFARS.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

The Department of Defense (DoD) is amending the Defense Federal Acquisition Regulations Supplement (DFARS) to implement changes to existing protections for contractor whistleblower employees in accordance with section 827 of the National Defense