

Therefore, this rule is expected to be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.xxxx to read as follows:

#### § 165.xxxx Safety Zones; Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility.

(a) *Location.* The following areas are safety zones for the purpose of reoccurring hydroplane races:

(1) The northern section of Dyes inlet, west of Port Orchard, WA to include all waters of Dyes Inlet north of a line from point 47–37.36N 122–42.29W to 47–37.74N 122–40.64W (NAD 1983).

(2) Port Angeles, south of Ediz's Hook, Port Angeles, WA to include all waters near Port Angeles within the following points: 48–07.4N 123–25.57W; 48–07.43N 123–24.58W; 48–07.2N 123–25.52W; 48–07.25N 123–24.57W (NAD 1983).

(3) Lake Washington, south of interstate 90 bridge and north of Andrew's Bay, WA, to include all waters of Lake Washington east of the shoreline within the following points: 47°34.15' N, 122°16.40' W; 47°34.31' N, 122°15.96' W; 47°35.18' N, 122°16.31' W; 47°35.00' N, 122°16.71' W (NAD 1983).

(b) *Notice of Enforcement or Suspension of Enforcement.* These safety zones will be activated and thus subject to enforcement, under the following conditions: The Coast Guard must receive and approve a marine event permit for each hydroplane event and then the Captain of the Port will cause notice of the enforcement of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments

of the public as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public of activation and suspension of enforcement of these safety zones. Additionally, an on-scene Patrol Commander will ensure enforcement of this safety zone by limiting the transit of non-participating vessel in the designated areas described above.

(c) *Definitions.* As used in this section, *Coast Guard Patrol Commander* means any designated commissioned, warrant, or petty officer of the Coast Guard. Additionally, any other Federal, state or local law enforcement agencies or private agencies hired by the sponsoring organization may be designated by the Coast Guard to fulfill the role of the *on-scene Patrol Commander*. The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters described in paragraph (a) above when this regulation is in effect.

*Regulations.* (1) When these zones are enforced, non-participant vessels are prohibited from entering the regulated area unless authorized by the designated on-scene Patrol Commander. Spectator craft may remain in designated spectator areas but must follow the directions of the on-scene Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds, which will create a minimum wake. (2) Emergency Signaling. A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the discretion of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: December 17, 2009.

**L.R. Tumbarello,**

*Commander, U.S. Coast Guard, Captain of the Port, Puget Sound, Acting.*

[FR Doc. 2010–764 Filed 1–15–10; 8:45 am]

**BILLING CODE 9110–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 02–6; FCC 09–96]

#### Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, we propose revising the Federal Communications Commission's (Commission) rules regarding the schools and libraries universal service support mechanism, also known as the E-rate program, to comply with the requirements of the Protecting Children in the 21st Century Act. Among other things, the Protecting Children in the 21st Century Act, titled Promoting Online Safety in Schools, revised the Communications Act of 1934, as amended (the Act), by adding a new certification requirement for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program. We also propose to revise related Commission rules to reflect existing statutory language more accurately.

**DATES:** Comments on the proposed rules are due on or before February 18, 2010 and reply comments are due on or before March 5, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements should be submitted on or before March 22, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by CC Docket No. 02–6, by any of the following methods:

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

- *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418–0530 or TTY: (202) 418–0432.

- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements

contained herein should be submitted to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at 202-395-5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Anita Cheng, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400 or TTY: (202) 418-0484. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at 202-418-0214 or via email at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 02-6, FCC 09-96, adopted November 4, 2009, and released November 5, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number

appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. 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.

- Effective December 28, 2009, 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. Any envelopes must be disposed of before entering the building. **Please Note:** Through December 24, 2009, the Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. This filing location will be permanently closed after December 24, 2009. The filing hours at both locations 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, one copy of each comment or reply comment must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554; e-mail: [Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov).

**People with Disabilities:** 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**Initial Paperwork Reduction Act of 1995 Analysis:**

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13. Public and agency comments are due March 22, 2010.

Comments on the proposed information collection requirements 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; and (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

**OMB Control Number:** 3060-0853.

**Title:** FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act; FCC Form 486, Receipt of Service Confirmation Form, FCC Form 500, Funding Commitment (FRN) Change Request Form.

**Form Number(s):** FCC Forms 479, 486, 500.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Business or other for-profit and not-for-profit institutions.

**Number of Respondents and Responses:** 75,000 respondents and 75,000 responses.

**Estimated Time per Response:** 1.07 hours (average time per response).

**Obligation to Respond:** Required to obtain or retain benefits.

**Frequency of Response:** Annual, on occasion, and third party disclosure requirement.

**Total Annual Burden:** 70,000 hours.

**Total Annual Cost:** N/A.

**Privacy Act Impact Assessment:** No impact.

**Nature of Extent of Confidentiality:**

The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

**Needs and Uses:** The existing information collection requires schools and libraries to certify that they have in place certain Internet safety policies, pursuant to the Children's Internet Protection Act (CIPA), 47 U.S.C. 254(h) and (l), in order to receive E-rate

discounts for Internet access. This information collection is being revised to add a new certification that the E-rate applicant has updated its Internet safety policy to include plans for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response, as required by the Protecting Children in the 21st Century Act. This revision will not require any changes to the FCC Forms 479 or 486, which enable E-rate participants to certify that they are compliant with CIPA. This revision has no effect on the FCC Form 500, which is also part of this information collection. In addition, this information collection is being revised to add a rule provision requiring each Internet safety policy that is adopted pursuant to section 254(l) of the Act, as amended, to be made available to the Commission upon request by the Commission. Although this requirement is mandated by the statute, it is not currently in the Commission's rules.

## Synopsis of the Notice of Proposed Rulemaking

### I. Introduction

1. In this notice of proposed rulemaking (NPRM), we propose revising the Federal Communications Commission's (Commission) rules regarding the schools and libraries universal service support mechanism, also known as the E-rate program, to comply with the requirements of the Protecting Children in the 21st Century Act. Among other things, section 215 of the Protecting Children in the 21st Century Act, titled Promoting Online Safety in Schools, revised section 254(h)(5)(B) of the Communications Act of 1934, as amended (the Act), by adding a new certification requirement for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program. We also propose to revise related Commission rules to reflect existing statutory language more accurately.

### II. Background

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounted eligible telecommunications, Internet access, and internal connections services. In accordance with the Children's Internet Protection Act (CIPA), to be eligible for E-rate discounts for Internet access and internal connection services, schools and libraries that have computers with

Internet access must certify that they have in place certain Internet safety policies and technology protection measures. As required by CIPA, § 54.520(c)(i) of the Commission's rules requires that the Internet safety policy must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are (1) obscene, or (2) child pornography, or, with respect to use of the computers by minors, (3) harmful to minors. In addition, § 54.520(c)(i) requires the entity to certify that its policy of Internet safety includes monitoring the online activities of minors. Applicants make their CIPA certifications annually on the Confirmation of Receipt of Services Form (FCC Form 486).

3. Among other things, the Protecting Children in the 21st Century Act revised section 254(h)(5)(B) of the Act by adding a new certification for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program. In addition to the existing CIPA certifications required of schools in section 254(h)(5) of the Act, the Protecting Children in the 21st Century Act requires the school, school board, local educational agency, or other authority with responsibility for administration of the school to certify that it "as part of its Internet safety policy is educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response."

### III. Discussion

#### A. Protecting Children in the 21st Century Act Rule Revisions

4. We seek comment on revising § 54.520(c)(i) of the Commission's rules to include the new certification requirement added by the Protecting Children in the 21st Century Act. We propose to revise § 54.520(c)(i) to add a certification provision that a school's Internet safety policy must include educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response. We seek comment on this proposal.

5. In addition, we tentatively conclude that a recipient of E-rate funding for Internet access and internal connections should be required to certify, on its FCC Form 486 for funding year 2010, that it has updated its Internet safety policy to include plans

for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response, as required by the Protecting Children in the 21st Century Act. We note that the next opportunity for applicants to certify to the CIPA requirements, including this new certification, would be on the FCC Form 486 for funding year 2009, which would typically be filed after the start of the 2009 funding year (i.e., after July 1, 2009). Schools may, however, require additional time to amend their Internet safety policies and implement procedures to comply with the new requirements after the completion of this rulemaking proceeding. In addition, we note that Congress did not set a timeframe for implementation of the new certification. We seek comment on this tentative conclusion.

#### B. Other Proposed Rule Revisions

6. We also seek comment on revising certain rules to reflect more accurately existing statutory language regarding the CIPA certifications.

7. First, we propose to revise the rules so that the definitions of elementary and secondary schools are consistent throughout. At this time, rule §§ 54.500, 54.501, and 54.504 all contain differently worded definitions of elementary and secondary schools. We propose to define elementary and secondary schools in § 54.500 of the rules, and to revise §§ 54.501 and 54.504 to refer to § 54.500 definitions. We seek comment on this proposal.

8. Second, we propose to revise § 54.520(a)(1) to add "school board" to the definition of entities that are subject to CIPA certifications. Although section 254(h) of the Act includes the term "school board" as an entity to which the CIPA certifications apply, our rules do not include this term. We seek comment on this proposal.

9. Third, we propose to revise § 54.520(a)(4) to add the existing statutory definitions of the terms "minor," "obscene," "child pornography," "harmful to minors," "sexual act," "sexual contact," and "technology protection measure," consistent with the statute. § 54.520 of our rules does not currently include the definitions of these terms, but instead refers back to the statute. Including the statutory definitions of these terms in the definitions section of our rules could help clarify the CIPA requirements. We seek comment on this proposal.

10. Fourth, we propose to revise §§ 54.520(c)(1)(i) and 54.520(c)(2)(i)

consistent with sections 254(h)(5)(D), (h)(6)(D), (h)(5)(B)(ii), (C)(ii), and (h)(6)(B)(ii), (C)(ii) of the Act to require that the technology protection measures be in operation during any use of computers with Internet access, and that the technology protection measures may be disabled by an authorized person, during adult use, to enable access for bona fide research or other lawful purpose. The statute requires that schools and libraries certify that they are enforcing the operation of the technology protection measures during the use of computers by minors and adults. This enforcement requirement is not currently included in the Commission's rules. We seek comment on this proposal.

11. In addition, sections 254(h)(5)(D) and (h)(6)(D) of the Act permit a school or library administrator, supervisor, or other person authorized by the certifying authority to disable an entity's technology protection measure to allow bona fide research or other lawful use by an adult. We note that in the *CIPA Order*, although the Commission acknowledged this statutory provision, it declined to adopt any implementing rule provision, stating that

[w]e decline to promulgate rules mandating how entities should implement these provisions. Federally-imposed rules directing school and library staff when to disable technology protection measures would likely be overbroad and imprecise, potentially chilling speech, or otherwise confusing schools and libraries about the requirements of the statute. We leave such determinations to local communities, whom we believe to be most knowledgeable about the varying circumstances of schools or libraries within those communities.

The Commission stated that its decision was supported by commenter concerns about the difficulty of school or library staff in determining whether an adult user was engaging only in bona fide research or other lawful purposes.

12. We propose to revise the rules to codify this permission that a school or library administrator, supervisor, or other person authorized by the certifying authority may disable an entity's technology protection measure, during use by an adult, to allow bona fide research or other lawful use. We do not propose to adopt rules that mandate specific implementation methods, but merely mirror the statutory language. This will make clear that the statutory provision exists without imposing undue burdens on the entities to which it applies. We seek comment on whether it is sufficient to adopt this rule without specifying federal guidelines for determination of what constitutes bona fide research or other lawful use. We

seek comment on whether this statutory provision imposes an undue burden on E-rate beneficiaries, particularly on small entities, and if so, we seek comment on the least burdensome method of implementing this provision. For example, we note that the *CIPA Order* discussed leaving these determinations to local communities because they would be most knowledgeable about the varying circumstances of schools or libraries within those communities. We believe that our proposed rules are consistent with that position. We also seek comment on any other methods of implementing this statutory provision.

13. Fifth, we propose to revise §§ 54.520(c)(1)(iii)(B), (2)(iii)(B), and (3)(i)(B) to clarify that it is only in the first year of participation in the E-rate program that an entity may certify that it will complete all CIPA requirements by the next funding year and still receive funding for that year, as adopted in the *CIPA Order*. The text of the existing rules contains an option for an entity to certify that it will come into compliance with the CIPA requirements by the next funding year, but does not specify that this certification option is only applicable to entities that are applying for E-rate discounts for the first time. We seek comment on this proposal.

14. Sixth, we propose to add a rule provision to require local determination of what matter is inappropriate for minors. Among other things, the statute states that a determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library or other authority responsible for making the determination. Although this is mandated by the statute, it is not currently in the Commission's rules. We seek comment on this proposal. We also seek comment on whether this requirement will be burdensome, particularly for small entities. If so, we seek comment on how to reduce this statutorily mandated burden.

15. Seventh, we propose to add a rule provision requiring each Internet safety policy that is adopted pursuant to section 254(l) of the Act to be made available to the Commission upon request by the Commission. Although this requirement is mandated by the statute, it is not currently in the Commission's rules. We seek comment on this proposal. We also seek comment on the manner in which the Internet safety policy should be made available to the Commission and on the timing of such response. We also seek comment on the burdens that this requirement may impose on respondents,

particularly on small entities, and on how the burdens may be reduced.

16. Finally, we propose to add a rule provision requiring public notice and hearing to address any proposed Internet safety policy adopted pursuant to CIPA. Although this is mandated by the statute and was discussed in the *CIPA Order*, there is no provision addressing this issue in the existing rules. As discussed in the *CIPA Order*, this public notice and hearing requirement only applies to entities that have not already provided such notice and hearing relating to an Internet safety policy and technology protection measure. We seek comment on this proposal.

### Procedural Matters

#### *Initial Regulatory Flexibility Act Certification*

17. The Regulatory Flexibility Act (RFA), see 5 U.S.C. 603, requires that an agency prepare a regulatory flexibility analysis 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." See 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). 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 Small Business Administration (SBA). 15 U.S.C. 632.

18. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the notice of proposed rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM (or summary thereof) will be published in the **Federal Register**.

## 1. Need for, and Objectives of, the Proposed Rules

19. In the NPRM, we seek comment on revising the Commission's rules to add a new certification for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program, pursuant to the mandate of the Protecting Children in the 21st Century Act. Such action is necessary to comply with the Protecting Children in the 21st Century Act.

## 2. Legal Basis

20. The legal basis for the NPRM is contained in sections 1, 4(i), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214, 254, and 403, and § 1.411 of the Commission's rules, 47 CFR 1.411.

## 3. Description and Estimate of the Number of Small Entities to Which Rules May Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 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 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.

22. The Commission has determined that the group of small entities directly affected by the rules herein includes eligible schools and libraries. Further descriptions of these entities are provided below.

23. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.

24. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

25. *Small Governmental Jurisdictions.* 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. We estimate that, of this total, 84,377 entities were "small

governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

26. As noted, "small entity" includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is generally defined as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities. In funding year 2007 approximately 105,500 schools and 10,950 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

## 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. Schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible for E-rate discounts for Internet access and internal connection services. Pursuant to the mandate in the Protecting Children in the 21st Century Act, the NPRM proposes to revise § 54.520(c)(i) of the Commission's rules to add a provision that a school's Internet safety policy must include educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

28. In addition, this NPRM revises certain rules to more accurately reflect the provisions of the Act with regard to certifications made pursuant to the

Children's Internet Protection Act (CIPA). Specifically, the rule revisions that may affect small entities require: (1) Schools and libraries to enforce the operation of technology protection measures during use of computers by minors and adults; (2) schools and libraries to disable technology protection measures to enable access for bona fide research or other lawful purpose; (3) local determination of what matter is inappropriate for minors; (4) schools and libraries to make available to the Commission, upon request by the Commission, any Internet safety policy that is adopted pursuant to section 254(l) of the Act; and (5) schools and libraries to provide public notice and hearing to address any proposed Internet safety policy that is adopted pursuant to CIPA.

## 5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

30. With regard to the new certification requirements pursuant to the Protecting Children in the 21st Century Act, we do not believe that there will be significant economic impact on small entities. Currently, schools and libraries file the FCC Form 486 to certify their compliance with the requirements regarding Internet safety policies and technology protection measures. Because schools and libraries will continue to use the same FCC Form 486 to certify their compliance with these requirements, there will be no additional reporting requirements.

31. With regard to the remaining rule provisions, we believe that several of the rule revisions will have no economic impact on small entities because they merely clarify existing definitions and existing requirements. For example, the revisions regarding the definitions of elementary and secondary schools did not change the definitions, but merely clarified that the same definitions were utilized throughout the

rules, or codified existing statutory definitions.

32. Several other rule revisions will have little economic impact on small entities because schools and libraries have already implemented these measures. We acknowledge that the existing rules do not contain provisions requiring schools and libraries to enforce the operation of technology protection measures during use of computers by minors and adults or to provide public notice and hearing to address any proposed Internet safety policy that is adopted pursuant to CIPA. However, as a practical matter, current E-rate beneficiaries have already implemented these requirements, even though these statutory requirements are not specifically stated in the text of the Commission's rules. Schools and libraries would have been unable to make the proper CIPA certifications unless the technology protection measures have been enforced during computer use by minors and adults. In addition, the requirement to provide public notice and hearing was discussed extensively in the *CIPA Order* even though an implementing rule was not adopted.

33. The requirement that schools and libraries may disable technology protection measures to enable access for bona fide research or other lawful purpose may impose a burden on small entities. As stated in the NPRM, there are concerns about the difficulty of school or library staff determining whether an adult user was engaging only in bona fide research or other lawful purposes. Accordingly, the NPRM seeks comment on ways to implement this statutory mandate while keeping the burdens on entities at a minimum. The NPRM also seeks comment on ways to implement the rule revision requiring local determination of what matter is inappropriate for minors while minimizing burdens. Finally the NPRM proposes to require, pursuant to the statute, that schools and libraries make available to the Commission, upon request by the Commission, any Internet safety policy that is adopted pursuant to section 254(l) of the Act. Because this may have an impact on small economic entities, the NPRM proposes several methods of making the Internet safety policy available to the Commission, as well as seeking comment on ways to reduce this burden on respondents.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

34. None.

### Ex Parte Presentations

35. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance 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. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

### C. Comment Filing Procedures

36. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

37. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

38. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

39. 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.

40. Effective December 28, 2009, 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. Any envelopes must be disposed of before entering the building. **Please Note:** Through December 24, 2009, the Commission's contractor will receive

hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. This filing location will be permanently closed after December 24, 2009. The filing hours at both locations are 8 a.m. to 7 p.m.

41. 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.

42. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

43. In addition, one copy of each comment or reply comment must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554; e-mail: [Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov).

44. *People with Disabilities:* 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### Ordering Clauses

45. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201-205, 214, 254, and 403, and § 1.411 of the Commission's rules, 47 CFR 1.411, this notice of proposed rulemaking *is adopted*.

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this notice of proposed rulemaking, 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, Health facilities, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, 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 54 to read as follows:

**PART 54—UNIVERSAL SERVICE**

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

**Authority:** 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.500 by revising paragraphs (c) and (k) to read as follows:

**§ 54.500 Terms and definitions.**

\* \* \* \* \*

(c) *Elementary school.* An “elementary school” means an elementary school as defined in 20 U.S.C. 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

\* \* \* \* \*

(k) *Secondary school.* A “secondary school” means a secondary school as defined in 20 U.S.C. 7801(38), a non-profit institutional day or residential school that provides secondary education, as determined under state law. A secondary school does not offer education beyond grade 12.

\* \* \* \* \*

3. Amend § 54.501 by revising paragraph (b)(1) to read as follows:

**§ 54.501 Eligibility for services provided by telecommunications carriers.**

\* \* \* \* \*

(b) *Schools.* (1) Only schools meeting the statutory definition of “elementary school” or “secondary school” as defined in § 54.500 paragraphs (c) or (k), and not excluded under paragraphs (b)(2) or (b)(3) shall be eligible for discounts in telecommunications and other supported services under this part.

\* \* \* \* \*

4. Amend § 54.504 by revising paragraph (b)(2)(i) and paragraph (c)(1)(i) to read as follows:

**§ 54.504 Requests for services.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) The schools meet the statutory definition of elementary or secondary schools in § 54.500 paragraphs (c) or (k) of this section, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) The schools meet the statutory definition of elementary or secondary schools in § 54.500 paragraphs (c) or (k) of this section, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

\* \* \* \* \*

5. Amend § 54.520 by revising paragraphs (a)(1), (a)(4), (c)(1)(i), (c)(1)(iii)(B), (c)(2)(i), (c)(2)(iii)(B), (c)(3)(i)(B), and by adding paragraphs (c)(4), (c)(5), and (h) to read as follows:

**§ 54.520 Children’s Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.**

\* \* \* \* \*

(a) \* \* \*

(1) *School.* For the purposes of the certification requirements of this rule, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

\* \* \* \* \*

(4) *Statutory definitions.*

(i) The term “minor” means any individual who has not attained the age of 17 years.

(ii) The term “obscene” has the meaning given such term in 18 U.S.C. 1460.

(iii) The term “child pornography” has the meaning given such term in 18 U.S.C. 2256.

(iv) The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that—

(A) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(B) Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(v) The terms “sexual act” and “sexual contact” have the meanings given such terms in 18 U.S.C. 2246.

(vi) The term “technology protection measure” means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (c)(1)(i) of this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C.

254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The technology protection measure must be enforced during use of computers with

Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (c)(1) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose. This Internet safety policy must also include monitoring the online activities of minors and must educate minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

\* \* \* \* \*

(iii) \* \* \*

(B) Pursuant to the Children’s Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first year of participation in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

\* \* \* \* \*

(2) \* \* \*

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The technology protection measure must be enforced during use of computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (c)(1) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

\* \* \* \* \*

(iii) \* \* \*

(B) Pursuant to the Children’s Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first year of participation in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the

requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) Pursuant to the Children’s Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments, and for whom this is the first year of participation in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA

for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

\* \* \* \* \*

(4) *Local determination of content.* A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination made by the certifying school, school board, local educational agency, library, or other authority; or consider the criteria employed by the certifying school, school board, local educational agency, library, or other authority in the administration of the

schools and libraries universal service support mechanism.

(5) *Availability for review.* Each Internet safety policy adopted pursuant to 47 U.S.C. 254(l) shall be made available to the Commission, upon request for the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

\* \* \* \* \*

(h) *Public notice; hearing.* A school or library shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

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**BILLING CODE 6712-01-P**