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3–8–05 Tuesday
Vol. 70 No. 44 Mar. 8, 2005

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The President

Memorandum of February 18, 2005

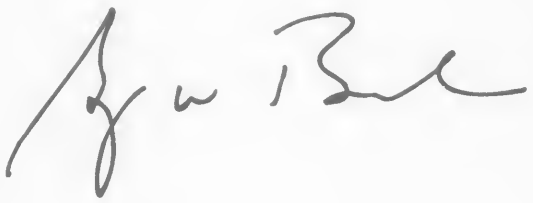
Assignment of Certain Functions Relating to Climate Change Reporting Activities

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under section 576(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D of Public Law 108–447). Heads of departments and agencies shall furnish promptly to the Director of the Office of Management and Budget, to the extent permitted by law, information the Director requests to perform such function.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 18, 2005.

[FR Doc. 05–4624
Filed 3–7–05; 8:45 am]
Billing code 3110–01–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–096–4]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing a portion of Orange County, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Orange County, CA, and that the quarantine and restrictions are no longer necessary. This portion of Orange County, CA, was the last remaining area in California quarantined for the Oriental fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

DATES: This interim rule was effective March 2, 2005. We will consider all comments that we receive on or before May 9, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 02–096–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–096–4.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on September 14, 2004, and published in the **Federal Register** on September 20, 2004 (69 FR 56157–56159, Docket No. 02–096–3), we quarantined a portion of Orange County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the quarantined portion of this county. The last finding of Oriental fruit fly in the Orange County quarantined area was September 29, 2004.

Since then, no evidence of Oriental fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Orange County, CA. Therefore, we are removing the county from the list of quarantined areas in § 301.93–3(c). With the removal of Orange County, CA, from that list, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. A portion of Orange County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from that area to noninfested areas of the United States. Since we have concluded that the Oriental fruit fly no longer exists in that area, immediate action is warranted to remove the quarantine on Orange County, CA, and to relieve the restrictions on the interstate movement of regulated articles from that area. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will

include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This action amends the Oriental fruit fly regulations by removing a portion of Orange County, CA, from the list of quarantined areas.

County records indicated there are 9 growers, 4 nurseries, 24 mobile vendors, 3 farmers markets, 8 fruit sellers, 1 distributor, 2 haulers, 2 processors, 1 swap meet, and 34 yard and tree maintenance firms within the quarantined portion of Orange County that could be affected by the lifting of the quarantine in this interim rule.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in Orange County, CA, had little effect on the small entities in the area, the lifting of the quarantine in the current interim rule will also have little effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under sec. 204, title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under sec. 203, title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Oriental fruit fly.

Done in Washington, DC, this 2nd day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–4350 Filed 3–7–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV05–925–1 FR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Desert Grape Administrative Committee (committee) for the 2005 and subsequent fiscal periods from $0.015 to $0.0175 per 18-pound lug of grapes handled. The committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst or Terry Vawter, Marketing Specialist, Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning on January 1, 2005, and continue until amended, suspended, or

terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the committee for the 2005 and subsequent fiscal periods from $0.015 to $0.0175 per 18-pound lug of grapes handled.

The grape marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California grapes. They are familiar with the committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002 and subsequent fiscal periods, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on November 9, 2004, and unanimously recommended expenditures of $210,691 and an assessment rate of $0.0175 per 18-pound lug of grapes for the 2005 fiscal period. In comparison, last year's budgeted expenditures were $188,091. The assessment rate of $0.0175 is $0.0025 higher than the rate in effect during the 2004 fiscal period. The income from the increased assessment rate, together with interest income and reserve funds is necessary to ensure that sufficient funds are available to offset an increase in salaries and research programs in 2005, and ensure that an adequate carryover of reserve funds is available for the 2006 fiscal period.

The expenditures recommended by the committee for the 2005 fiscal period include $125,000 for research, $5,000 for compliance activities, $45,500 for salaries and payroll expenses, and $32,191 for other expenses. Budgeted expenses for these items in 2004 were $100,000 for research, $10,000 for compliance activities, $43,500 for salaries, and $34,591 for other expenses.

The assessment rate recommended by the committee was derived using the following formula: Total shipments (8.5 million 18-pound lugs) times the recommended assessment rate ($0.0175 per 18-pound lug), plus anticipated interest income ($300) and the 2005 beginning reserve ($78,000), minus the anticipated expenses ($210,691), leaving a 2005 ending reserve of $16,359.

Based on this calculation, assessment income, interest income, and funds from the committee's reserve will provide sufficient income to meet the 2005 anticipated expenses of $210,691, and will also leave an adequate December 2005 ending reserve of $16,359. At this level, the December 2005 ending reserve will be within the maximum permitted by the order of one fiscal period's expenses (§ 925.41).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2005 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 producers of grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, 8 of the 20 handlers subject to regulation had annual grape sales of at least $5,000,000. In addition, 10 of the 50 producers had annual sales of at least $750,000. Therefore, a majority of handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2005 and subsequent fiscal periods from $0.015 to $0.0175 per 18-pound lug of grapes. The committee unanimously recommended expenditures of $210,691 and an assessment rate of $0.0175 per 18-pound lug of grapes for the 2005 fiscal period. The assessment rate of $0.0175 is $0.0025 higher than the 2004 rate. The number of assessable grapes is estimated at 8.5 million 18-pound lugs. Thus, the $0.0175 rate should provide $148,750 in assessment income. Income derived from handler assessments, along with interest income and funds from the committee's authorized carry-in reserves should be adequate to cover budgeted expenses in 2005.

The expenditures recommended by the committee for the 2005 fiscal period include $125,000 for research, $5,000 for compliance activities, $45,500 for salaries and payroll expenses, and $32,191 for other expenses. Budgeted expenses for these items in 2004 were $100,000 for research, $10,000 for compliance activities, $43,500 for salaries, and $34,591 for other expenses.

The committee reviewed and unanimously recommended 2005 expenditures of $210,691 which included increases in salaries and research programs. Prior to arriving at this budget, the committee considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the order.

The assessment rate recommended by the committee was derived by the following formula: Total shipments (8.5 million 18-pound lugs) times the recommended assessment rate ($0.0175 per 18-pound lug), plus the anticipated interest income ($300) and the 2005 beginning reserve ($78,000), minus the anticipated expenses ($210,691), results in a 2005 ending reserve of $16,359.

This increased assessment rate will provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $210,691 and result in a December 2005 ending reserve of $16,359, which is acceptable to the committee. This reserve fund level is within the maximum permitted by the order of approximately one fiscal period's expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the on-vine grower price for the 2005 season could range between $5.00 and $9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2005 fiscal period as a percentage of total grower revenue could range between approximately 0.2 and 0.4 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California grape industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the November 9, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large desert grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on January 11, 2005 (70 FR 1837). Copies of the proposed rule were also mailed or sent via facsimile to all desert grape handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending on February 10, 2005, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2005 fiscal period began on January 1, 2005, and the order requires that the rate of assessment for each fiscal period apply to all assessable desert grapes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 925.215 is revised to read as follows:

§ 925.215 Assessment rate.

On and after January 1, 2005, an assessment rate of $0.0175 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: March 2, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–4449 Filed 3–7–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV05–955–1 IFR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the assessment rate and changes the assessable unit established for the Vidalia Onion Committee (Committee) for the 2005 and subsequent fiscal periods from $0.12 per 50-pound bag or equivalent to $0.10 per 40-pound carton of Vidalia onions. The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound more than the assessment rate previously in effect. The Committee locally administers the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: March 9, 2005. Comments received by May 9, 2005, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail:

moab.docketclerk@usda.gov; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Vidalia onions beginning January 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate and changes the assessable unit established for the Vidalia Onion Committee (Committee) for the 2005 and subsequent fiscal periods from $0.12 per 50-pound bag or equivalent to $0.10 per 40-pound carton of Vidalia onions. The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound more than the assessment rate previously in effect.

The Vidalia onion order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.12 per 50-pound bag or equivalent that would continue in effect from 2001 and subsequent fiscal periods unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met December 15, 2004, and unanimously recommended 2005 expenditures of $450,300 and an assessment rate of $0.10 per 40-pound carton of Vidalia onions. In comparison, last year's budgeted expenditures were $312,215.

The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound more than the rate currently in effect. The increase in the assessment rate is based on the reduction in size of the assessable unit from 50-pounds to 40-pounds. Although the reduction in size of the assessable unit increases the number of assessable cartons, it only slightly increases the actual assessment per pound of Vidalia onion handled from $0.0024 per pound to $0.0025 per pound.

The major expenditures recommended by the Committee for the 2005 year include $92,500 for salaries and benefits, $59,800 for administrative expenses, $290,000 for marketing expenses, $5,000 for research expenses, and $3,000 for compliance. Budgeted expenses for these items in 2004 were $66,280, $237,435, $7,500, $1000, and $0 respectively.

The assessment rate recommended by the Committee was derived by multiplying the assessment rate by the number of 40-pound cartons of Vidalia onions the industry is expected to ship for the 2005 fiscal period, and took into consideration the availability of matching funds for research and promotion from the State of Georgia. Vidalia onion shipments for the 2005 fiscal period are estimated at 3,350,000 40-pound cartons which should provide $335,000 in assessment income. Income derived from handler assessments, interest income ($3,000), contributions from the Georgia Department of Agriculture ($150,000), and income from the sale of Point-of-Sale advertisement material ($6,000) should be adequate to cover budgeted expenses. Funds in the reserve (currently $67,331) will be kept within the maximum permitted by the order, which is three fiscal periods' budgeted expenses (§ 955.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005 budget and those for

subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 producers of Vidalia onions in the production area and approximately 110 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than $5,000,000.

Based on information from the Georgia Agricultural Statistical Service and Committee data, around 90 percent of Vidalia onion handlers ship under $5,000,000 worth of onions on an annual basis. In addition, based on acreage, production, grower prices reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is approximately $489,000. Thus, the majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule increases the assessment rate and changes the assessable unit from $0.12 per 50-pound bag or equivalent to $0.10 per 40-pound carton of Vidalia onions for the 2005 and subsequent fiscal periods. The Committee unanimously recommended 2005 expenditures of $450,300 and an assessment rate of $0.10 per 40-pound carton of Vidalia onions. The assessment rate of $0.10 per 40-pound carton is $0.0001 per pound higher than the $0.12 per 50-pound bag or equivalent assessment rate in effect during 2004. The quantity of assessable Vidalia onions for the 2005 season is estimated at 3,350,000 40-pound cartons. Thus, the $0.10 per 40-pound carton rate should provide $335,000 in assessment income. Income derived from handler assessments, interest income ($3,000), contributions from the Georgia Department of Agriculture ($150,000), and income from the sale of Point-of-Sale advertisement material ($6,000) should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2005 year include $92,500 for salaries, $59,800 for administrative expenses, $290,000 for marketing expenses, $5,000 for research expenses, and $3,000 for compliance. Budgeted expenses for these items in 2004 were $66,280, $237,435, $7,500, $1,000, and $0, respectively.

The Committee at its December 15, 2004, meeting unanimously recommended reducing the assessable carton size from a 50-pound bag or equivalent to the current industry standard 40-pound carton size. The reduction in the assessable unit size increases the number of assessable units. The assessable unit size reduction also causes a slight increase in the actual per pound rate of assessment from $0.0024 to $0.0025, or an increase of $0.0001 per pound.

The Committee reviewed and unanimously recommended 2005 expenditures of $450,300 which includes increases in marketing, compliance, administrative expenses, and research programs. Prior to arriving at this budget, the Committee considered information from various sources. Alternative expenditure levels were discussed by the Committee based upon the relative value of various research and promotion projects to the Vidalia onion industry. The committee also discussed keeping the current $0.12 per 50-pound bag or equivalent assessment rate. The Committee believes, however, that using the current industry standard unit of 40-pounds will increase efficiency by saving handlers the considerable time and expense previously spent in converting 40-pound units to the 50-pound assessment rate unit. The Committee also felt that the slight increase of $0.001 per pound in assessments is insignificant when considering the benefits of using the industry standard unit. Thus the assessment rate of $0.10 per 40-pound carton of assessable Vidalia onions was approved unanimously. The expected income was derived by multiplying the assessment rate by the estimated number of 40-pound cartons the industry expects to ship for the 2005 season. Also available for expenditure are interest income and matching funds from the State of Georgia (for expenditures pursuant to § 955.50; production research, marketing research development, and marketing promotion including paid advertising).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2005 season could range between $13.75 and $17.15 per 40-pound carton of Vidalia onions. Therefore, the estimated assessment revenue for the 2005 fiscal period as a percentage of total grower revenue could range between 0.58 and 0.73 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. As noted earlier, the savings in time and expense previously spent on converting the industry standard 40-pound carton to the 50-pound unit used by the Committee more than offsets the negligible assessment increase of $0.001 per pound of onions handled. In addition, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005 fiscal period began on January 1, 2005, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Vidalia onions handled during such fiscal period; (2) this action changes the assessable carton size from a 50-pound bag or equivalent to the current industry standard 40-pound carton size; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

■ 1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 955.209 is revised to read as follows:

§ 955.209 Assessment rate.

On and after January 1, 2005, an assessment rate of $0.10 per 40-pound carton or equivalent is established for Vidalia onions.

Dated: March 2, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–4447 Filed 3–7–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV04–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, CA; Modification of the Qualification Requirements for Approved Manufacturers of Date Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule modifies the requirements for approved manufacturers of date products under the marketing order regulating the handling of domestic dates produced or packed in Riverside County, California. The marketing order is administered locally by the California Date Administrative Committee (committee). The committee's approved product manufacturer program helps assure that only high quality whole and pitted dates are shipped within the United States and exported to Canada. This rule clarifies the application procedures and qualification requirements for an approved manufacturer of date products. This rule also specifies that a regulated date handler must be in compliance with the marketing order to be an approved manufacturer of date products. These modifications will help safeguard the integrity of the approved date product manufacturer program, as well as the quality of whole and pitted dates marketed both domestically and in Canada.

EFFECTIVE DATE: This final rule becomes effective March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 987, as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Summary of the Rule Change

This final rule modifies the requirements for approved manufacturers of date products in § 987.157 of the order's administrative rules and regulations. This rule clarifies the application procedures and qualification requirements for approved manufacturers of date products. This rule also specifies that, to be an approved manufacturer of date products, a regulated date handler must be in compliance with the order. These modifications will help safeguard the integrity of the approved date product manufacturer program, as well as the quality of whole and pitted dates marketed both domestically and in

Canada. These changes were recommended unanimously by the committee at a meeting on April 23, 2004.

Authority for Approved Manufacturers

Section 987.57 of the order provides the authority for the approved date product manufacturer program. Section 987.57 states in part: "Diversion of dates pursuant to § 987.55 or § 987.56 shall be accomplished only by such persons (which may include handlers) as are approved manufacturers or feeders * * * The application and approval shall be in accordance with such rules, regulations and safeguards as may be prescribed pursuant to § 987.59." Further, § 987.59 states: "The Committee may prescribe, with the approval of the Secretary, such rules, regulations and safeguards as are necessary to prevent dates covered by §§ 987.55 and 987.56 from interfering with the objectives of this part."

Finally, § 987.157 of the order's administrative rules and regulations prescribes the application procedure and qualification requirements to become an approved manufacturer of date products.

Background Information and Committee Action Taken

At its public meeting on April 23, 2004, the committee unanimously recommended modifying the application procedures and qualification requirements for approved manufacturers of date products. The committee's approved date product manufacturer program helps assure that high quality whole and pitted dates are marketed in the United States and Canada. Whole and pitted dates shipped within the United States and to Canada must at least meet the requirements of U.S. Grade B, whereas dates for manufacture into products must meet the lower quality requirements of U.S. Grade C.

Only firms on the committee's list of approved date product manufacturers are allowed to receive dates for conversion into date products. These entities agree to alter the form and appearance of the lower quality dates so they cannot be marketed in competition with higher quality whole and pitted dates in the United States and Canada.

Based on the committee's recommendation, the procedures used to qualify an applicant as an approved manufacturer of date products have been revised in this final rule to help ensure that each applicant is treated similarly, and that an approved date product manufacturer remains qualified to receive dates for conversion into products.

Within the regulated production area (Riverside County, California), all approved manufacturers are also date handlers regulated under the order. Conversely, approved manufacturers outside the regulated area are not regulated date handlers.

This rule also helps safeguard the integrity of the approved manufacturer program by requiring that regulated handlers be in compliance with the order—including the assessment and reporting requirements of the order—for approval as date product manufacturers. Once approved as a date product manufacturer, handlers must stay in compliance with the requirements of the order to remain on the committee's approved date product manufacturers' list.

Prior to revoking a handler's approved manufacturer status for noncompliance with the requirements of the order, the committee staff will consult with USDA. If, after consultation with USDA and notification of the handler, the approved product manufacturer continues to be in noncompliance with order requirements, the committee staff will announce the revocation of such handler's approved manufacturer status by mailing or faxing a revised approved manufacturer list to all date handlers in the regulated area.

Further, the approved manufacturers will be required to maintain accurate records regarding date product information and provide these records to the committee staff. This will enable the committee to verify that each approved date product manufacturer is operating as required. To ensure that approved manufacturers continue to be qualified, each will be required to reapply for approved manufacturer status once a year. The procedures for reapplication are the same as the procedures used for initial approval as a date product manufacturer.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Industry Profile

There are approximately 124 date producers in the production area and 10 handlers subject to regulation under the order. The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those with annual receipts of less than $750,000, and small agricultural service firms as those with annual receipts of less than $5,000,000.

The committee estimates approximately 7 producers (approximately 6 percent) had receipts over $750,000 and that 4 handlers (40 percent) shipped over $5,000,000 worth of California dates. Based on this information, a majority of handlers and producers of California dates may be classified as small entities.

Within the regulated production area all approved manufacturers are also date handlers regulated under the order. Conversely, approved manufacturers outside the regulated area are not regulated date handlers. Currently, there are three approved manufacturers outside the regulated area. We do not have information on their size, but believe most of them are small entities.

Summary of Rule Change

This final rule modifies the requirements for approved date product manufactures under § 987.157 of the order's administrative rules and regulations. This rule clarifies both the application procedures and qualification requirements for approval as a manufacturer of date products. This final rule also requires an applicant who is a date handler regulated under the order to be in compliance with the order to continue to manufacture date products. These changes help safeguard the integrity of the approved manufacturer program and help assure the quality of whole and pitted dates marketed in the United States and Canada. These changes were recommended unanimously by the committee at a meeting on April 23, 2004.

Impact of Regulation

At the meeting, the committee discussed the impact of this change on handlers and approved manufacturers. By clarifying the date product manufacturer application procedure and qualification requirements, the modifications help ensure that applicants are treated similarly. In addition, the committee believes the modifications will help safeguard the

integrity of the approved manufacturer program by requiring that participating handlers are in compliance with the order. As such, the committee believes that the impact of this rule on handlers and date product manufactures will be negligible and greatly outweighed by the improvement in the overall integrity and efficiency of the program.

Furthermore, the benefits of this rule are not expected to be disproportionately greater or less for small entities than for large entities.

Alternatives Considered

The committee discussed alternatives to these changes, including not making any changes to the requirements to become an approved date product manufacturer. The committee, however, decided that lack of action on its part could negatively impact the effectiveness of the safeguards that help ensure the quality of whole and pitted dates marketed in the United States and Canada.

A second alternative debated by the committee would have required an applicant to pay all the costs for repeated inspections to verify that the applicant can, indeed, meet the requirements of an approved manufacturer. There was some discussion about whether the committee should continue to pay for the committee staff's time for verification inspections beyond the initial visit. There is no authority to charge applicants for verification inspections under this program, thus this alternative was deemed unacceptable.

Recordkeeping and Reporting Requirements

These changes clarify the application procedures and qualification requirements to become or maintain an approved manufacturer status of date products under the date marketing order. Accordingly, this final rule does not impose any additional reporting or recordkeeping requirements on small or large California date handlers. This information collection burden has been approved by the Office of Management and Budget (OMB) under OMB No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 23, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on January 24, 2005 (70 FR 3315). Copies of the rule were provided to all committee members and date handlers. The rule was also made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending on February 3, 2005, was provided to allow interested persons to responds to the proposal. No comments were received.

Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Handlers are already shipping dates from the 2004–2005 crop. This action clarifies the application procedures and qualification requirements for approved manufacturers of date products. Further, handlers and approved manufacturers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 987.157 is revised to read as follows:

§ 987.157 Approved date product manufacturers.

Any person, including date handlers, with facilities for converting dates into products may apply to the committee, by filing CDAC Form No. 3, for listing as an approved date product manufacturer.

(a) The applicant shall indicate on such form: The products he/she intends to make; the quantity of dates he/she may use; the location of his/her facilities; and agree that all dates obtained for manufacturing into products shall be used for that purpose, none shall be resold or disposed of as whole or pitted dates.

(b) As a condition to become an approved date product manufacturer: Each applicant is subject to an inspection of his/her manufacturing plant to verify that proper equipment to convert dates into products is in place and that the plant meets appropriate sanitation requirements; the applicant also shall agree to file a report of the disposition of each lot of dates on the Committee's CDAC Form No. 8 within 24 hours of the transaction, and to file an annual usage and inventory report on CDAC Form No. 4 by October 10 of each year; and an applicant who is also a handler under the order shall be in compliance with the order, including the assessment payment and reporting requirements.

(c) The committee shall approve each such application on the basis of information furnished or its own investigation, and may revoke any approval for cause. The name and address of all approved manufacturers shall be placed on a list and made available to each date handler in Riverside County.

(d) If an application is disapproved, the committee shall notify the applicant in writing of the reasons for disapproval, and allow the applicant an opportunity to respond to the disapproval. When the applicant has complied with all the qualification requirements to become an approved manufacturer, the committee shall notify the applicant in writing of such approval. The applicant's name shall be added to the list of approved manufacturers, which shall be made

available to each date handler in Riverside County.

(e) Each approved manufacturer of date products is required to renew their approved manufacturer status with the committee by submitting an updated CDAC Form No. 3 at the end of a crop year, but no later than October 10 of the new crop year. In addition, the approved manufacturer must continue to meet the other approved manufacturer qualification requirements.

(f) In the event an approved date product manufacturer who is also a regulated date handler within the area of production does not remain in compliance with the order, or fails or refuses to submit reports or to pay assessments required by the committee, such date product manufacturer shall become ineligible to continue as an approved date product manufacturer. Prior to making a determination to remove a date product manufacturer from the approved date product manufacturer list, the committee shall notify such manufacturer in writing of its intention and the reasons for removal. The committee shall allow the date product manufacturer an opportunity to respond. In the event that a date product manufacturer's name has been removed from the list of approved date product manufacturers, a new application must be submitted to the committee and the applicant must await approval.

Dated: March 2, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–4448 Filed 3–7–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for Wellmark International.

DATES: This rule is effective March 8, 2005.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov.*

SUPPLEMENTARY INFORMATION: Wellmark International, 1100 East Woodfield Rd., suite 500, Schaumburg, IL 60173 has informed FDA of a change of address to 1501 East Woodfield Rd., suite 200 West, Schaumburg, IL 60173.

Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Wellmark International"; and in the table in paragraph (c)(2) by revising the entry for "011536" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Wellmark International, 1501 East Woodfield Rd., suite 200 West, Schaumburg, IL 60173	011536
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
011536	Wellmark International, 1501 East Woodfield Rd., suite 200 West, Schaumburg, IL 60173
* * * * *	

Dated: February 16, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–4480 Filed 3–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9176]

RIN 1545–BC35

Elimination of Forms of Distribution in Defined Contribution Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to (TD 9176), which were published in the **Federal Register** on Tuesday, January 25, 2005 (70 FR 3475). These final regulations would modify the circumstances under which certain forms of distribution previously available are permitted to be eliminated from qualified defined contribution plans.

DATES: This correction is effective January 25, 2005.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9176) that are the subject of these corrections are under section 411(d)(6) of the Internal Revenue Code.

Need for Correction

As published, TD 9176 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.411(d)–4 [Corrected]

■ Section 1.411(d)–4, A–2, paragraph (e)(3), *Example* (i) and (ii), in each location the year "2004" is removed, and the year "2005" is added in its place.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 05–4502 Filed 3–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9164]

RIN 1545–BC33

Prohibited Allocations of Securities in an S Corporation; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects temporary regulations (TD 9164) that were published in the **Federal Register** on Friday, December 17, 2004 (69 FR 75455) concerning requirements for employee stock ownership plans (ESOPs) holding stock of Subchapter S corporations.

DATES: This document is effective on December 17, 2004.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9164) that is the subject of this correction are under section 409(p).

Need for Correction

As published, the temporary regulations (TD 9164) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Parts 1

Income Taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 and continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.409(p)–1T [Corrected]

■ Section 1.409(p)–1T(d)(2)(iv), is removed.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 05–4506 Filed 3–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This final rule removes a suspension notation from our regulations pertaining to the Kentucky regulatory program (the "Kentucky program"). The suspension prohibited the issuance of new financial guarantees by the Kentucky Bond Pool because of insufficient funds that had resulted from the transfer of funds out of the bond pool. Kentucky has reimbursed its bond pool and the suspension notation concerning that issue is being removed because it is no longer necessary.

EFFECTIVE DATE: March 8, 2005.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Telefax number: (859) 260–8410.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C.

1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission Information

In a **Federal Register** notice dated May 13, 2004, we published a final rule indicating that we were not approving an amendment to the Kentucky program (69 FR 26500). The amendment transferred $3,840,000 from the Kentucky Bond Pool Fund to the General Fund for the 2002–2003 and 2003–2004 fiscal years. In the same notice, we also suspended Kentucky's use of the Bond Pool Fund to provide new financial guarantees. Our decision was codified at 30 CFR 917.17(c). By letter dated July 12, 2004, Kentucky notified us that $3,840,000 would be transferred from the General Fund into the Bond Pool Fund by authority of the Governor (Administrative Record No. KY–1629). By letter dated July 15, 2004, we noted that Executive Order 2004–753 effected the transfer of the $3,840,000 from the General Fund into the Bond Pool Fund and notified Kentucky that the transfer satisfies our concerns and that we were therefore terminating our suspension of the use of the Bond Pool Fund (Administrative Record No. KY–1632).

III. OSM's Findings

As a result of the transfer of $3,840,000 into the Bond Pool Fund as specified in the letter dated July 12, 2004, and our subsequent termination of the suspension on July 15, 2004, the Director has determined that the suspension notation at 30 CFR 917.17(c) is no longer required, and should be removed. Accordingly, we are removing the suspension notation.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. The removal of the suspension notation at 30 CFR 917.17(c) merely acknowledges the transfer of funds into the Kentucky Bond Pool by the State.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

Administrative Procedure Act

This final rule has been issued without prior notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are unnecessary. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures. For the reasons previously stated, the rule removes a suspension status notation from the Code of Federal Regulations at 30 CFR 917.17(c). This action does not constitute our decision to terminate the suspension of Kentucky's use of the Bond Pool Fund. That decision was made on July 15, 2004. Rather, the removal of the suspension notation pertaining to the use of the Bond Pool Fund merely acknowledges the return of the $3,840,000 previously transferred out of the Bond Pool Fund, and our July 15, 2004, decision to terminate our suspension. When we removed the suspension, we reactivated that portion of the State regulatory program previously approved. For these same reasons, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The removal of the suspension notation from 30 CFR 917.17(c) acknowledges the transfer of funds by Kentucky into the Bond Pool Fund. The July 15, 2004, removal of the suspension should increase bonding options for coal operators and facilitate the approval of surface coal mining operations within the State.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously discussed, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

For the reasons previously discussed, this rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 11, 2005.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 917.17 [Amended]

■ 2. In § 917.17, paragraph (c) is amended by removing the second sentence.

[FR Doc. 05–4386 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 311–0471a; FRL–7878–3]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from wood combustion and the recision of a rule exempting wet plumes from opacity standards. We are approving the incorporation of a local rule and recision of a rule that administer regulations and regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on May 9, 2005, without further notice, unless EPA receives adverse comments by April 7, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118 or *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Action	Submitted
KCAPCD	403	General Limitations on the Discharge of Air Contaminants	11/29/93 Rescinded	03/29/94

TABLE 1.—SUBMITTED RULES—Continued

Local agency	Rule #	Rule title	Action	Submitted
KCAPCD	416.1	Wood Burning Heaters and Wood Burning Fireplaces	07/08/04 Adopted	09/23/04

On June 3, 1994, the recision submittal of KCAPCD Rule 403 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On October 18, 2004, the submittal of KCAPCD Rule 416.1 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

Rule 403 was originally submitted on June 30, 1972 and approved on September 22, 1972 (37 FR 19812). There is no version of Rule 416.1 in the SIP.

C. What Are the Purposes of the Submitted Rule Revisions?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions.

The purpose of the recision of Rule 403 is as follows:

• To simplify the SIP by incorporating the exemption for wet plumes into KCAPCD Rule 401, Visible Emissions.

The purpose of Rule 416.1 is as follows:

• To minimize the emissions of PM–10, organic gases, and carbon monoxide from wood burning fireplaces in new housing subdivisions and wood burning heaters throughout East Kern County by (a) prohibiting the sale or transfer of a new or used wood burning heater unless it is EPA Phase II-certified or rendered permanently inoperable or is pellet-fueled and by (b) prohibiting installation of new wood burning fireplaces in a residential subdivision with more than 10 homes.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require reasonably available control measures (RACM), including reasonably available control technology (RACT) in moderate PM–10 nonattaiment areas (*see* section 189(a)), and must not relax existing requirements (*see* sections 110(l) and 193). A portion of KCAPCD was designated the Indian Wells Valley moderate PM–10 nonattainment area. However, this area was redesignated PM–10 attainment on May 7, 2003 (68 FR 24368). The redesignation action did not rely on Rule 416.1 to achieve attainment. Therefore, we conclude that submitted Rule 416.1 need not fulfill the requirements of RACM/RACT.

The following guidance documents were used for reference.

• *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.

• *PM–10 Guideline Document* (EPA–452/R–93–008).

B. Do the Rules Meet the Evaluation Criteria?

Rule 416.1 improves the SIP by regulating a source category not previously regulated. We believe that Rule 416.1 is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations and should be approved. The recision of Rule 403 does not relax the SIP and should be approved.

The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving Rule 416.1 and the recision of Rule 403, because we believe these actions fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same actions. If we receive adverse comments by April 7, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 9, 2005. This will incorporate Rule 416.1 into and rescind Rule 403 from the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 May 9, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 8, 2005

Karen Schwinn,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(6)(vi)(E) and (c)(334) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(6) * * *

(vi) * * *

(E) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement Rule 403 (Southeast Desert).

* * * * *

(334) New and amended regulations for the following APCDs were submitted on September 23, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) Rule 416.1, adopted on July 8, 2004.

[FR Doc. 05–4340 Filed 3–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–SD–0001; FRL–7878–6]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the State of South Dakota that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by South Dakota and approved by EPA.

DATES: *Effective Date:* This action is effective March 8, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. R08–OAR–2005–SD–0001. All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

SIP materials which are incorporated by reference into 40 CFR part 52 are also available for inspection at the following locations: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW, Washington, DC 20460 or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437, *ostrand.laurie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used it means the EPA.

Table of Contents

I. Change in IBR Format

This format revision will affect the "Identification of plan" section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA); the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC; and the EPA Region 8 Office.

A. Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) and achieve certain other Clean Air Act (Act) requirements (*e.g.*, visibility requirements, prevention of significant deterioration). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network descriptions, attainment demonstrations, and enforcement mechanisms.

B. How EPA Enforces the SIP

Each SIP revision submitted by South Dakota must be adopted at the state level after undergoing reasonable notice and public hearing. SIPs submitted to EPA to attain or maintain the NAAQS must include enforceable emission limitations and other control measures, schedules and timetables for compliance.

EPA evaluates submitted SIPs to determine if they meet the Act's requirements. If a SIP meets the Act's requirements, EPA will approve the SIP. EPA's notice of approval is published in the **Federal Register** and the approval is then codified in the Code of Federal Regulations (CFR) at 40 CFR part 52. Once EPA approves a SIP, it is enforceable by EPA and citizens in federal district court.

We do not reproduce in 40 CFR part 52 the full text of the South Dakota regulations that we have approved; instead, we incorporate them by reference ("IBR"). We approve a given state regulation with a specific effective date and then refer the public to the location(s) of the full text version of the state regulation(s) should they want to know which measures are contained in a given SIP (see "I.F. Where You Can Find a Copy of the SIP Compilation").

C. How the State and EPA Update the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations.

On May 22, 1997 (62 FR 27968), we announced revised procedures for incorporating by reference federally approved SIPs. The procedures announced included: (1) A new process for incorporating by reference material submitted by states into compilations and a process for updating those compilations on roughly an annual basis; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the compilations and the CFR; and (3) a revised format for the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures.

D. How EPA Compiles the SIP

We have organized into a compilation the federally-approved regulations, source-specific requirements and nonregulatory provisions we have approved into the SIP. We maintain hard copies of the compilation in binders and we primarily update these binders on an annual basis.

E. How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the state regulations, part two contains the source-specific requirements that have been approved as part of the SIP (if any), and part three contains nonregulatory provisions that we have approved. Each compilation contains a table of identifying information for each regulation, each source-specific requirement. and each nonregulatory provision. The state effective dates in the tables indicate the date of the most recent revision to a particular regulation. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR part 52 for the state. The EPA Regional Offices have the primary responsibility for ensuring accuracy and updating the compilations.

F. Where You Can Find a Copy of the SIP Compilation

EPA Region 8 developed and will maintain the compilation for South Dakota. An electronic copy of the compilation is contained in Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.* Look for Docket ID No. R08–OAR–2005–SD–0001. A hard copy of the regulatory and source-specific portions of the compilation will also be maintained at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460; and National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of the South Dakota regulations we have approved are also available on the following Web page: *http://www.epa.gov/region8/air/sip.html.*

G. The Format of the New Identification of Plan Section

In order to better serve the public, EPA has revised the organization of the "Identification of plan" section in 40 CFR part 52 and included additional information to clarify the elements of the SIP.

The revised Identification of plan section for South Dakota contains five subsections:

1. Purpose and scope (*see* 40 CFR 52.2170(a));

2. Incorporation by reference (*see* 40 CFR 52.2170(b));

3. EPA-approved regulations (*see* 40 CFR 52.2170(c));

4. EPA-approved source-specific requirements (*see* 40 CFR 52.2170(d)); and

5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc. (*see* 40 CFR 52.2170(e)).

H. When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP are federally enforceable as of the effective date of EPA's approval of the respective revisions. In general, SIP revisions become effective 30 to 60 days after publication of EPA's SIP approval action in the **Federal Register**. In specific cases, a SIP revision action may become effective less than 30 days or greater than 60 days after the **Federal Register** publication date. In order to determine the effective date of EPA's approval for a specific South Dakota SIP provision that is listed in paragraph 40 CFR 52.2170 (c), (d), or (e), consult the volume and page of the **Federal Register** cited in the "EPA approval date" column of 40 CFR 52.2170 for that particular provision.

I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and to provide a smooth transition to the new SIP processing system, we are retaining the original Identification of plan section (*see* 40 CFR 52.2186). This section previously appeared at 40 CFR 52.2170. After an initial two-year period, we will review our experience with the new table format and will decide whether or not to retain the original Identification of plan section (40 CFR 52.2186) for some further period.

II. What EPA Is Doing in This Action

Today's action constitutes a "housekeeping" exercise to reformat the codification of the EPA-approved South Dakota SIP.

III. Good Cause Exemption

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon a finding of "good cause," authorizes agencies to dispense with public participation, and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's action simply reformats the codification of provisions which are already in effect as a matter of law.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action.

IV. Statutory and Executive Order Review

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply reformats the codification of provisions which are already in effect as a matter of law. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of March 8, 2005. EPA will submit a report containing this rule 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**. These corrections to the Identification of plan for South Dakota is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the South Dakota SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need to reopen the 60-day period for filing such petitions for judicial review for this reorganization of the "Identification of plan" section of 40 CFR 52.2170 for South Dakota.

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, Volatile organic compounds.

Dated: February 16, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart QQ—South Dakota

■ 2. Section 52.2170 is redesignated as § 52.2186 and the section heading and paragraph (a) are revised to read as follows:

§ 52.2186 Original identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the State of South Dakota" and all revisions submitted by South Dakota that were federally approved prior to November 15, 2004.

* * * * *

■ 3. A new § 52.2170 is added to read as follows:

§ 52.2170 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan for South Dakota under section 110 of the Clean Air Act, 42 U.S.C. 7410 and 40 CFR part 51 to meet national ambient air quality standards or other requirements under the Clean Air Act.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to November 15, 2004 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as submitted by the state to EPA, and notice of any change in the material will be published in the **Federal Register**. Entries for paragraphs (c) and (d) of this section with EPA approval dates after November 15, 2004, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 8 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of November 15, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA approved regulations.*

(1) State of South Dakota Regulations

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
	74:36:01 Definitions			
74:36:01:01	Definitions 74:36:01:01(1)–(76), (78) and (79)	4/4/99	4/7/03, 68 FR 16726.	
	74:36:01:01 (77), (80) and (81)	9/1/03	5/10/04, 69 FR 25839.	
74:36:01:02	Actual emissions defined	1/5/95	10/19/98, 63 FR 55804.	
74:36:01:03	Administrative permit amendment defined	4/4/99	4/7/03, 68 FR 16726.	
74:36:01:04	Affected states define	4/22/93	10/19/98, 63 FR 55804.	
74:36:01:05	Applicable requirements of Clean Air Act defined	4/4/99	4/7/03, 68 FR 16726.	
74:36:01:06	Complete application defined	4/22/93	10/19/98, 63 FR 55804.	
74:36:01:07	Major modification defined	4/4/99	4/7/03, 68 FR 16726.	
74:36:01:08	Major source defined	4/4/99	4/7/03, 68 FR 16726.	
74:36:01:09	Categories of sources defined	4/22/93	10/19/98, 63 FR 55804.	
74:36:01:10	Modification defined	4/4/99	4/7/03, 68 FR 16726.	
74:36:01:11	National ambient air quality standard (NAAQS)	4/22/93	10/19/98, 63 FR 55804.	
74:36:01:12	Potential to emit defined	4/22/93	10/19/98, 63 FR 55804.	
74:36:01:13	Process weight rate defined	4/22/93	10/19/98, 63 FR 55804.	
74:36:01:14	Reconstruction of sources defined	4/22/93	10/19/98, 63 FR 55804.	
74:36:01:15	Regulated air pollutant defined	1/5/95	10/19/98, 63 FR 55804.	
74:36:01:16	Responsible official defined	4/22/93	10/19/98, 63 FR 55804.	
73:36:01:17	Significant defined	4/4/99	4/7/03, 68 FR 16726.	
74:36:01:18	Municipal solid waste landfill defined	12/29/96	10/19/98, 63 FR 55804.	
74:36:01:19	Existing municipal solid waste landfill defined	12/29/96	10/19/98, 63 FR 55804.	
74:36:01:20	Physical change or change in the method of operation.	4/4/99	4/7/03, 68 FR 16726.	
	74:36:02 Ambient Air Quality			
74:36:02:01	Air quality goals	4/22/93	10/19/98, 63 FR 55804.	
74:36:02:02	Ambient air quality standards	6/27/00	4/7/03, 68 FR 16726.	
74:36:02:03	Methods of sampling and analysis	6/27/00	4/7/03, 68 FR 16726.	
74:36:02:04	Air quality monitoring network	6/27/00	4/7/03, 68 FR 16726.	
74:36:02:05	Ambient air monitoring requirements	6/27/00	4/7/03, 68 FR 16726.	
	74:36:03 Air Quality Episodes			
74:36:03:01	Air pollution emergency episode	1/5/95	10/19/98, 63 FR 55804.	
74:36:03:02	Episode emergency contingency plan	1/5/95	10/19/98, 63 FR 55804.	

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
74:36:04 Operating Permits for Minor Sources				
74:36:04:01	Applicability	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:02	Permit required	1/5/95	10/19/98, 63 FR 55804.	
74:36:04:03	Operating permit exemptions	4/4/99	4/7/03, 68 FR 16726	Except 74:36:04:03.01, Minor permit variance, not in SIP.
74:36:04:04	Standard for issuance of operating permit	1/5/95	10/19/98, 63 FR 55804.	
74:36:04:05	Time period for operating permits and renewals	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:06	Timely and complete application for operating permit required.	9/1/03	5/10/04 69 FR 25839.	
74:36:04:07	Required contents of complete application for operating permit.	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:08	Applicant required to supplement or correct application.	1/5/95	10/19/98, 63 FR 55804.	
74:36:04:09	Permit application—Completeness review	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:10	Time period for department's recommendation	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:11	Department's recommendation on operating permit.	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:12	Public participation in permitting process	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:12.01	Public review of department's draft permit	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:13	Final permit decision—Notice to interested persons.	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:14	Right to petition for contested case hearing	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:15	Contents of operating permit	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:16	Operating permit expiration	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:17	Renewal of operating permit	1/5/95	10/19/98, 63 FR 55804.	
74:36:04:18	Operating permit revision	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:19	Administrative permit amendment	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:20	Procedures for administrative permit amendments	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:20.01	Minor permit amendment required	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:20.02	Requirements for minor permit amendment	1/5/95	10/19/98, 63 FR 55804.	
74:36:04:20.03	Application for minor permit amendment	1/5/95	10/19/98, 63 FR 55804.	
74:36:04:20.04	Department deadline to approve minor permit amendment.	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:21	Permit modifications	1/5/95	10/19/98, 63 FR 55804.	
74:36:04:22	Source status change—new permit required	4/4/99	4/7/03, 68 FR 16726.	
74:36:04:23	Reopening operating permit for cause	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:24	Procedures to reopen operating permit	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:25	General permit (repealed)	12/29/96	10/19/98, 63 FR 55804.	
74:36:04:26	General permit—Notice of intent (repealed)	12/29/96	10/19/98, 63 FR 55804.	
74:36:04:27	Operating permit termination, modification, and revocation.	4/22/93	10/19/98, 63 FR 55804.	
74:36:04.28	Notice of operating noncompliance—Contents	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:29	Petition for contested case on alleged violation	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:30	Stack performance tests required (repealed)	12/29/96	10/19/98, 63 FR 55804.	
74:36:04:31	Circumvention of emissions not allowed	4/22/93	10/19/98, 63 FR 55804.	
74:36:04:32	General permits	9/1/03	5/10/04 69 FR 25839.	
74:36:04:33	Secretary may require an individual permit	9/1/03	5/10/04 69 FR 25839.	
74:36:06 Regulated Air Pollutant Emissions				
74:36:06:01	Applicability	1/5/95	10/19/98, 63 FR 55804.	
74:36:06:02	Allowable emissions for fuel-burning units	4/4/99	4/7/03, 68 FR 16726.	
74:36:06:03	Allowable emissions for process industry units	4/4/99	4/7/03, 68 FR 16726.	
74:36:06:04	Particulate emission restrictions for incinerators and waste wood burners.	4/22/93	10/19/98, 63 FR 55804.	
74:36:06:05	Most stringent interpretation applicable	4/22/93	10/19/98, 63 FR 55804.	
74:36:06:06	Stack performance test	4/22/93	10/19/98, 63 FR 55804.	
74:36:06:07	Open burning practices prohibited	4/4/99	4/7/03, 68 FR 16726.	
74:36:07 New Source Performance Standards [2]				
74:36:07:08	Ash Disposal requirements	12/29/96	5/22/00, 65 FR 32033.	
74:36:07:11	Additional permit requirements for asphalt plants (repealed).	4/4/99	5/22/00, 65 FR 32033.	
74:36:07:29	Operating requirements for wire reclamation furnaces.	4/22/93	9/6/95, 60 FR 46222.	
74:36:07:30	Monitoring requirements for wire reclamation furnaces.	4/22/93	9/6/95, 60 FR 46222.	

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
	74:36:10 New Source Review			
74:36:10:01	Applicability	4/22/93	10/19/98, 63 FR 55804.	
74:36:10:02	Definitions	9/1/03	5/10/04 69 FR 25839.	
74:36:10:03	Net emissions increase defined (repealed)	9/1/03	5/10/04 69 FR 25839.	
74:36:10:03:01	New source review preconstruction permit required.	9/1/03	5/10/04 69 FR 25839.	
74:36:10:04	Criteria for creditability of increase or decrease in actual emissions (repealed).	9/1/03	5/10/04 69 FR 25839.	
74:36:10:05	New source review preconstruction permit	9/1/03	5/10/04 69 FR 25839.	
74:36:10:06	Causing or contributing to violation of any national ambient air quality standard.	9/1/03	5/10/04 69 FR 25839.	
74:36:10:07	Determining credit for emission offsets	9/1/03	5/10/04 69 FR 25839.	
74:36:10:08	Projected actual emissions	9/1/03	5/10/04 69 FR 25839.	
74:36:10:09	Clean unit test for emission units subject to lowest achievable emission rate.	9/1/03	5/10/04 69 FR 25839.	
74:36:10:10	Clean unit test for emission units comparable to lowest achievable emission rate.	9/1/03	5/10/04 69 FR 25839.	
	74:36:11 Performance Testing			
74:36:11:01	Stack performance testing or other testing methods.	9/1/03	5/10/04 69 FR 25839.	
74:36:11:02	Secretary may require performance tests	12/29/96	10/19/98 63 FR 55804.	
74:36:11:03	Notice to department of performance test	12/29/96	10/19/98 63 FR 55804.	
74:36:11:04	Testing new fuels or raw materials	4/4/99	2/3/00 65 FR 5264.	
	74:36:12 Control of Visible Emissions			
74:36:12:01	Restrictions on visible emissions	6/27/00	4/7/03, 68 FR 16726.	
74:36:12:02	Exceptions to restrictions	4/22/93	10/19/98, 63 FR 55804.	
74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators.	1/5/95	10/19/98, 63 FR 55804.	
	74:36:13 Continuous Emissions Monitoring Systems			
74:36:13:01	Secretary may require continuous emission monitoring systems (CEMS).	4/22/93	10/19/98, 63 FR 55804.	
74:36:13:02	Minimum performance specifications for all continuous emission monitoring systems.	6/27/00	4/7/03, 68 FR 16726.	
74:36:13:03	Reporting requirements	6/27/00	4/7/03, 68 FR 16726.	
74:36:13:04	Notice to department of exceedance	6/27/00	4/7/03, 68 FR 16726.	
74:36:13:05	Compliance determined by data from continuous emission monitor.	4/22/93	10/19/98. 63 FR 55804.	
74:36:13:06	Compliance certification	1/5/95	10/19/98, 63 FR 55804.	
74:36:13:07	Credible evidence	6/27/00	4/7/03, 68 FR 16726.	
	74:36:17 Rapid City Street Sanding and Deicing			
74:36:17:01	Applicability	2/11/96	6/10/02, 67 FR 39619.	
74:36:17:02	Reasonable available control technology	2/11/96	6/10/02, 67 FR 39619.	
74:36:17:03	Street sanding specifications	2/11/96	6/10/02, 67 FR 39619.	
74:36:17:04	Street deicing and maintenance plan	2/11/96	6/10/02, 67 FR 39619.	
74:36:17:05	Street sanding and sweeping recordkeeping	2/11/96	6/10/02, 67 FR 39619.	
74:36:17:06	Inspection authority	2/11/96	6/10/02, 67 FR 39619.	
	74:36:18 Regulations for State Facilities in the Rapid City Area			
74:36:18:01	Definitions	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:02	Applicability	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:03	Permit required	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:04	Time period for permits and renewals	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:05	Required contents of a complete application for a permit.	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:06	Contents of permit	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:07	Permit expiration	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:08	Renewal of permit	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:09	Reasonably available control technology required	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:10	Visible emission limit for construction and continuous operation activities.	7/1/02	1/20/04, 69 FR 2671.	
74:36:18:11	Exception to visible emission limit	7/1/02	1/20/04, 69 FR 2671.	

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
74:36:18:12	Notice of operating noncompliance—Contents	7/1/02	1/20/04, 69 FR 2671.	

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.
[2] The listed provisions are the only provisions of 74:36:07 included in the SIP.

(2) Pennington County Ordinance.

Ordinance citation	Title/subject	Adoption date	EPA approval date and citation [3]	Explanations
Ordinance #12—Fugitive Dust Regulation—1.0 Control of Fugitive Dust				
1.1	Applicability	12/12/78	7/30/79, 44 FR 44494.	
1.2	Definitions	12/12/78	7/30/79, 44 FR 44494.	
1.3	Standard of Compliance	12/12/78	7/30/79, 44 FR 44494.	
1.4	Reasonably available control technology required	12/12/78	7/30/79, 44 FR 44494.	
1.5	Fugitive dust control permits required for construction activities, *i.e.*, temporary operations.	12/12/78	7/30/79, 44 FR 44494.	
1.6	Compliance plans and schedules required, *i.e.*, continuous operations.	12/12/78	7/30/79, 44 FR 44494.	
1.7	Enforcement procedures	12/12/78	7/30/79, 44 FR 44494.	
1.8	Establishment of administrative mechanisms	12/12/78	7/30/79, 44 FR 44494.	
1.9	Separability	12/12/78	7/30/79, 44 FR 44494.	

[3] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

(d) EPA-approved source-specific requirements.

Name of source	Nature of requirement	State effective date	EPA approval date and citation [4]	Explanations
South Dakota State University steam generating Plant.	Variance No. AQ 79–02	3/18/82	7/7/83, 48 FR 31199	Variance expired on 3/18/85.

[4] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

(e) EPA-approved nonregulatory provisions.

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [5]	Explanations
I. South Dakota's Air Pollution Control Implementation Plan. Contains the following sections: A. Introduction B. Legal Authority C. Control Strategy D. Compliance Schedule E. Prevention of Air Pollution Emergency Episodes F. Air Quality Surveillance G. Review of New Sources and Modifications H. Source Surveillance I. Resources J. Intergovernmental Cooperation	Statewide	Submitted: 1/27/72 and 5/2/72 Adopted: 1/17/72.	5/31/72, 37 FR 10842 with correction and clarification on 7/27/72, 37 FR 15080.	
II. Part D Plan for Total Suspended Particulate.	Rapid City	Submitted: 12/27/78 Adopted: 12/78.	7/30/79 44 FR 44494.	
III. SIP to meet Air Quality Monitoring 40 CFR part 58, subpart c, paragraph 58.20 and public notification required under section 127 of the Clean Air Act.	Statewide	Submitted: 1/21/80	9/4/80, 45 FR 58528.	
IV. Lead SIP	Statewide	Submitted: 5/4/84	9/26/84, 49 FR 37752.	

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [5]	Explanations
V. Stack Height Demonstration Analysis	Statewide	Submitted: 8/20/96 and 12/3/86.	6/7/89, 54 FR 24334.	
VI. Commitment to revise stack height rules in response to NRDC v. Thomas, 838 F.2d 1224 (DC Cir. 1988).	Statewide	Submitted: 5/11/88	9/2/88, 53 FR 34077.	
VII. PM10 Committal SIP	Statewide	Submitted: 7/12/88	10/5/90, 55 FR 4083.1	
VIII. Small Business Assistance Program	Statewide	Submitted: 11/10/92 and 4/1/94.	10/25/94, 59 FR 53589.	
IX. Commitment regarding permit exceedences of the PM10 standard in Rapid City.	Rapid City	Submitted: 7/19/95	6/10/02, 67 FR 39619.	

[5] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

[FR Doc. 05–4338 Filed 3–7–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7877–4]

Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Resource Conservation and Recovery Act, as amended (RCRA), allows EPA to authorize State hazardous waste management programs if EPA finds that such programs are equivalent and consistent with the Federal program and provide adequate enforcement of compliance. Title 40 of the Code of Federal Regulations (CFR) part 272 is used by EPA to codify its decision to authorize individual State programs and incorporates by reference those provisions of the State statutes and regulations that are subject to EPA's inspection and enforcement authorities as authorized provisions of the State's program. This final rule revises the codification of the Idaho authorized program.

DATES: This final rule is effective on March 8, 2005. The incorporation by reference of authorized provisions in the Idaho statutes and regulations contained in this rule is approved by the Director of the Federal Register as of March 8, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM–122, Seattle, WA 98101, e-mail: *hunt.jeff@epa.gov*, phone number (206) 553–0256.

SUPPLEMENTARY INFORMATION:

I. Incorporation by Reference

A. What Is Codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is federally enforceable. EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

Today's action codifies EPA's authorization of revisions to Idaho's hazardous waste management program. This codification reflects the State program in effect at the time EPA authorized revisions to the Idaho hazardous waste management program in a final rule dated March 10, 2004 (69 FR 11322). Notice and an opportunity for comment regarding the revisions to the authorized State program were provided to the public at the time those revisions were proposed.

B. What Is the History of the Authorization and Codification of Idaho's Hazardous Waste Management Program?

Idaho initially received final authorization for its hazardous waste management program, effective April 9, 1990 (55 FR 11015). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), June 11, 1995 (60 FR 18549), January 19, 1999 (63 FR 56086), July 1, 2002 (67 FR 44069), and March 10, 2004 (69 FR 11322). EPA first codified Idaho's authorized hazardous waste program effective February 4, 1991 (55 FR 50327), and updated the codification of Idaho's program on June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), and August 24, 1999 (64 FR 34133). In this action, EPA revises Subpart N of 40 CFR part 272, to include the recent authorization revision actions effective July 1, 2002 (67 FR 44069) and March 10, 2004 (69 FR 11322).

C. What Decisions Have We Made in This Action?

Today's action codifies EPA's authorization of revisions to Idaho's hazardous waste management program. This codification incorporates by reference the most recent version of the State's authorized hazardous waste management regulations. This action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program.

EPA is incorporating by reference the authorized revisions to the Idaho hazardous waste program by revising subpart N of 40 CFR part 272. 40 CFR part 272, subpart N, § 272.651 previously incorporated by reference Idaho's authorized hazardous waste program, as amended, through 1999. Section 272.651 also references the demonstration of adequate enforcement authority, including procedural and

enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.651 references the Memorandum of Agreement, the Attorney General's Statement and the Program Description which were evaluated as part of the approval process of the hazardous waste management program in accordance with subtitle C of RCRA.

D. What Is the Effect of Idaho's Codification on Enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and any other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogues to these provisions. Therefore, the EPA is not incorporating by reference Idaho's inspection and enforcement authorities nor are those authorities part of Idaho's approved State program which operates in lieu of the Federal program. 40 CFR 272.651(b)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of Idaho's enforcement authorities. This action revises this listing for informational purposes where these authorities have changed under Idaho's revisions to State law and were considered by EPA in determining the adequacy of Idaho's enforcement authorities. Idaho's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

E. What State Provisions Are Not Part of the Codification?

The public is reminded that some provisions of Idaho's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (*see* 40 CFR 271.1(i));

(2) Federal rules for which Idaho is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) State procedural and enforcement authorities which are necessary to establish the ability of the program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader in scope" than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.651(b)(3) lists the Idaho regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. This action updates that list for "broader in scope" provisions. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

Idaho has adopted but is not authorized for certain sections of the Post Closure rule (Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process; Final Rule) promulgated by EPA on October 22, 1998 (63 FR 56710). These unauthorized sections of the Post Closure rule include the State analogs to Federal citations 40 CFR 270.1(c)(7), 40 CFR 265.121, 40 CFR 265.110(c), and 40 CFR 265.118(c)(4). Additionally, Idaho is authorized for State analogs to Federal 40 CFR 264.90(e), 264.90(f), 264.110(c), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(d), 265.112(b)(8), 265.118(c)(5), 265.140(d), 270.1(c) introductory text, and 270.28 except where those sections reference the use of enforceable documents in the context of the Post Closure rule. Idaho did not seek, nor receive, authorization for language in those sections which state as follows: "* * * or in an enforceable document (as defined in 270.1(c)(7)." Therefore, these Federal amendments, included in Idaho's adoption by reference at IDAPA 58.01.05.000, *et seq.*, are not part of the State's authorized program included in this codification.

F. What Will Be the Effect of Codification on Federal HSWA Requirements?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The Codification does not affect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

II. Statutory and Executive Order Reviews

This action codifies EPA-authorized hazardous waste management requirements pursuant to RCRA Section 3006 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**). Therefore, this action complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993).

2. *Paperwork Reduction Act*—This action does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act*—This action codifies Idaho's authorized hazardous waste management regulations in the CFR and does not impose new burdens on small entities. After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this action codifies pre-existing requirements under State law which EPA already approved under 40 CFR part 271 and does not impose any additional enforceable duty beyond that required by State law or existing Federal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this action because it will not have federalism implications (*i.e.* substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). This action codifies existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA.

6. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*—Executive Order 13175 does not apply to this action because this action does not have tribal implications (*i.e.* substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes).

7. *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*—This action is not subject to Executive Order 13045 because it is not economically significant and it does not make decisions based on environmental health or safety risks.

8. *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*—This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

9. *National Technology Transfer and Advancement Act (NTTAA)*—EPA previously addressed the non-applicability of the NTTAA in its final approvals to revisions of the State's authorized hazardous waste management program. Section 12(d) of the NTTAA does not apply to this action.

10. *Executive Order 12988*—EPA has taken the necessary steps in this action to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. *Congressional Review Act*—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. The EPA will submit a report containing this document 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 in the **Federal Register**.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 15, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, EPA Region 10.

■ For the reasons set forth in the preamble, EPA amends 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Subpart N is amended by revising § 272.651 to read as follows:

§ 272.651 Idaho State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Idaho has final authorization for the following elements as submitted to EPA in Idaho's base program application for final authorization which was approved by EPA effective on April 9, 1990. Subsequent program revision applications were approved effective on June 5, 1992, August 10, 1992, June 11, 1995, January 19, 1999. July 1, 2002, and March 10, 2004.

(b) The State of Idaho has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.*

(1) The Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA-Approved Idaho Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 2004.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39–4404; 39–4405 (except 39–4405(8)); 39–4406; 39–4407; 39–4408(4); 39–4409(2) (except first sentence); 39–4409(3); 39–4409(4) (first sentence); 39–4410; 39–4411(1); 39–4411(3); 39–4411(6); 39–4412 through 39–4416; 39–4418; 39–4419; 39–4421; 39–4422; and 39–4423(3)(a)&(b).

(ii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39–5804; 39–5809; 39–5810; 39–5813(2); 39–5814; 39–5816; 39–5817; and 39–5818(1).

(iii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 2, Title 9, Chapter 3, "Public Writings", published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9–337(10); 9–337(11); 9–338; 9–339; and 9–344(2).

(iv) 2002 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 2, Title 9, Chapter 3, "Public Writing", published in 2002 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9–340A, 9–340B, and 9–343.

(v) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2002: sections 58.01.05.000; 58.01.05.356.02 through 58.01.05.356.05; 58.01.05.800; 58.01.05.850; 58.01.05.996; 58.01.05.997; and 58.01.05.999.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not

part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39–4403(6)&(14); 39–4427; 39–4428 and 39–4429.

(ii) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 2002 by the Michie Company, Law Publishers: section 39–5813(3).

(iii) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2002: sections 58.01.05.355; and 58.01.05.500.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10 and the State of Idaho (IDEQ), signed by the EPA Regional Administrator on August 1, 2001, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority.* The "Attorney General's Statement for Final Authorization," signed by the Attorney General of Idaho on July 5, 1988 and revisions, supplements and addenda to that Statement, dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, October 3, 1997, April 6, 2001, and September 11, 2002, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description.* The Program Description, and any other materials submitted as part of the original application or as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Idaho" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Idaho

(a) The statutory provisions include:

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", 2002: sections 39–4402; 39–4403 (except 39–4403(6)&(14)); 39–4408(1)–(3); 39–4409(1) (except fourth and fifth sentences); 39–4409(2) (first sentence); 39–4409(4) (except first sentence); 39–4409(5); 39–4409(6); 39–4409(7); 39–4409(8); 39–4411(2); 39–4411(4); 39–4411(5); 39–4423 (except 39–4423(3)(a)&(b)); and 39–4424.

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39–5802; 39–5803; 39–5808; 39–5811; 39–5813(1); and 39–5818(2).

Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906–7587.

(b) The regulatory provisions include:

Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 2002: sections 58.01.05.001; 58.01.05.002; 58.01.05.003; 58.01.05.004; 58.01.05.005; 58.01.05.006; 58.01.05.007; 58.01.05.008; 58.01.05.009; 58.01.05.010; 58.01.05.011; 58.01.05.012; 58.01.05.013; 58.01.05.014; 58.01.05.015; 58.01.05.016; 58.01.05.356.01; and 58.01.05.998, except where any of those sections reference the use of enforceable documents in the context of the Post Closure rule. Idaho did not seek, nor receive, authorization for language in those sections which states as follows: "* * * or in an enforceable document (as defined in 270.1(c)(7)." Therefore, these Federal amendments included in Idaho's adoption by reference at IDAPA 58.01.05.000, *et seq.*, are not part of the State's authorized program. Nor does Idaho's authorized program include the Federal regulations at 40 CFR 270.1(c)(7), 40 CFR 265.121, 40 CFR 265.110(c) or 40 CFR 265.119(c)(4) because Idaho did not seek authorization for those sections.

* * * * *

[FR Doc. 05–4342 Filed 3–7–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 191, 192, 193, 194, 195, 198, and 199

RIN 2137–AD77

Agency Reorganization: Nomenclature Change and Technical Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In accordance with the Norman Y. Mineta Research and Special Programs Improvement Act, which reorganized the Department's pipeline and hazardous materials safety programs into the new Pipeline and Hazardous Materials Safety Administration (PHMSA), this document revises all references to the former Research and Special Programs Administration (RSPA) in 49 CFR parts 190 through 199 to reflect the creation of PHMSA. This document also updates the Office of Pipeline Safety's internet and mailing addresses, docket procedures, titles, section numbers, penalty considerations and cap adjustments, terminology, and other changes conforming part 190 with the Pipeline Safety Improvement Act of 2002. The amendments made by this rule reflect the changed organizational posture of the agency and update the part 190 enforcement procedures to reflect current public law. This rule does not impose any new operating requirements on pipeline owners and operators.

DATES: This final rule is effective March 8, 2005.

FOR FURTHER INFORMATION CONTACT: Lawrence White, Attorney-Advisor, Pipeline and Hazardous Materials Safety Administration, Office of the Chief Counsel, 400 7th Street, SW., Washington, DC 20590. Tel: (202) 366–4400. Fax: (202) 366–7041. E-mail: *lawrence.white@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Summary

In accordance with the Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108–426, 118 Stat. 2423; Nov. 30, 2004) (the "Mineta Act"), which reorganized the Department's pipeline and hazardous materials safety programs into the new PHMSA, this document revises all references to the former RSPA in 49 CFR parts 190–199 to reflect the creation of PHMSA. This document also makes conforming changes reflecting the enactment of the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355, 116 Stat. 2985; Dec. 17, 2002) (the "PSI Act") including changes to the Office of Pipeline Safety's (OPS') Internet and mailing addresses, docket procedures, titles, section numbers, penalty considerations and cap adjustments, terminology, and other editorial changes to enhance the clarity and consistency of the part 190 enforcement procedures used by the agency. The amendments made by this rule reflect the changed organizational posture of the agency and update the part 190 enforcement procedures to reflect current public law. This rule does not impose any new operating

requirements on pipeline owners and operators.

The following is a summary of the nomenclature changes, updates to the enforcement procedures in part 190, and other technical amendments made to the affected sections of 49 CFR under this final rule. It does not include all editorial and typographical corrections and other minor amendments that were made to enhance the clarity and consistency of the enforcement procedures used by the agency.

- In 49 CFR parts 190, 191, 192, 193, 194, 195, 198, and 199, the term "Research and Special Programs Administration" is changed to "Pipeline and Hazardous Materials Safety Administration" everywhere it appears, and the abbreviation "RSPA" is changed to "PHMSA" everywhere it appears (*see* Mineta Act, Sec. 2; 49 U.S.C. 108).
- In § 190.203, the procedure used by OPS to request that pipeline operators afford their assistance with pipeline incident investigations is specified in paragraph (e) (*see* PSI Act Sec. 10(a); 49 U.S.C. 60118(e)).
- In §§ 190.213 and 190.215, the time period within which the Administrator issues final orders and takes action on petitions for reconsideration is updated to reflect the Administrator's policy of issuing such orders and decisions expeditiously and providing notice if substantial delays are expected.
- In § 190.223, paragraph (a) is amended to reflect the statutory increase in the maximum civil penalty amount of $25,000 per violation per day, with a $500,000 cap for any related series of violations, to $100,000 per violation per day with a $1,000,000 cap (*see* PSI Act Sec. 8(b); 49 U.S.C. 60122(a)(1)).
- In § 190.223, the civil penalty of up to $1,000 for violation of the whistleblower protection provisions is specified in paragraph (d) (*see* PSI Act Sec. 6(b); 49 U.S.C. 60122(a)).
- In § 190.225, the penalty assessment considerations are amended by specifying environmental impact as a factor that must be considered, and any economic benefit from the violation as a factor that may be considered (*see* PSI Act Sec. 8(b); 49 U.S.C. 60122(b)).
- In § 190.229, paragraph (c) is amended by specifying intentional damage to intrastate pipeline facilities as an act subject to criminal penalties (*see* PSI Act Sec. 8(c); 49 U.S.C. 60123(b)).
- In § 190.229, knowingly and willfully engaging in excavation activity that results in property damage, serious injury, or death, without first using an available One-Call notification system is specified as an act subject to criminal penalties in paragraph (e) (*see* PSI Act Sec. 3(c); 49 U.S.C. 60123(d)).
- In § 190.233, the term "hazardous facility order" is changed to "corrective action order" everywhere it appears and the title of the section is amended (*see* PSI Act Sec. 8(a); 49 U.S.C. 60112(d)).
- In § 190.233, wherever the phrase "* * * hazardous to life or property" appears, the phrase "or the environment" is added after the word property (*see* PSI Act Sec. 8(a); 49 U.S.C. 60112(a)).
- In § 190.235, civil penalties are specified as an available U.S. District Court remedy, and the title of the section is amended. Operators should note that OPS believes that the caps that apply to civil penalties that are assessed in administrative proceedings would not apply to civil penalties assessed in U.S. District Court actions (*see* PSI Act Sec. 8(b); 49 U.S.C. 60120(a)).

Public Notice and Effective Date

This final rule reflects the changed organizational posture of the Department due to the establishment of PHMSA, changes nomenclature, and updates the part 190 enforcement procedures to reflect current public law. As such, this final rule is ministerial in nature and relates only to agency organization, procedure and practice. This final rule does not impose substantive requirements on the public and the agency does not expect to receive substantive comments on the rule. Accordingly, notice and comment on this rule is unnecessary under 5 U.S.C. 553(b).

With respect to the effective date, because this rule relates only to agency organization, procedure and practice, does not impose substantive requirements on the public, and its expeditious issuance facilitates the Department's ability to meet the statutory implementation requirements of the Mineta Act, we find that there is good cause under 5 U.S.C. 553(d) to make this rule effective on March 8, 2005.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Because this rule only changes nomenclature to reflect the organizational posture of the agency and updates the part 190 enforcement procedures to reflect current public law, it has no economic impact on regulated entities and preparation of a regulatory impact analysis was not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rule does not introduce any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on state and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Further, this rule does not have sufficient impacts on federalism to warrant the preparation of a federalism assessment.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Executive Order 13211

This final rule is not a significant energy action under Executive Order 13211. It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

E. Regulatory Flexibility Act

Because this final rule only changes nomenclature to reflect the organizational posture of the agency, amends agency internal practice and procedure, and will have no direct or indirect economic impacts for government units, businesses, or other organizations, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

This final rule contains no new information collection requirements or

additional paperwork burdens. Therefore, submitting an analysis of the burdens to OMB pursuant to the Paperwork Reduction Act was unnecessary.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, as adjusted for inflation, to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

Because this final rule involves agency practices and procedures and does not impose any new requirements on pipeline operators, there are no significant environmental impacts associated with this rule.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties.

49 CFR Part 191

Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 193

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 194

Oil Pollution, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 198

Grant programs-transportation, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Pipeline and Hazardous Materials Safety Administration amends 49 CFR parts 190, 191, 192, 193, 194, 195, 198, and 199 as follows:

PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

■ 1. The authority citation for part 190 is amended to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 60101 *et seq.*; 49 CFR 1.53.

■ 2. In 49 CFR part 190, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:
■ a. Section 190.1(a);
■ b. Section 190.3 in three places;
■ c. Section 190.9(b)((1)(ii) and (b)(2);
■ d. Section 190.211(c); e. Section 190.231 in two places;
■ f. Section 190.233(c)(3);
■ g. Section 190.301;
■ h. Section 190.303;
■ i. Section 190.305(a);
■ j. Section 190.307; and
■ k. Section 190.309.

■ 3. In 49 CFR part 190, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:
■ a. Section 190.3;
■ b. Section 190.7(a) in three places, (h), (i) in two places, and (j) in two places;
■ c. Section 190.11(a)(1) in two places, (a)(2), (b), and (b)(2);
■ d. Section 190.203(a), (b)(6), and (d) in two places; and
■ e. Section 190.235.

■ 4. Amend § 190.203 by revising the section heading, redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

§ 190.203 Inspections and investigations.

* * * * *

(e) If a representative of the DOT investigates an incident involving a pipeline facility, OPS may request that the operator make available to the representative all records and information that pertain to the incident in any way, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.

(f) When the information obtained from an inspection or from other appropriate sources indicates that further OPS action is warranted, the OPS may issue a warning letter under § 190.205 or initiate one or more of the enforcement proceedings prescribed in §§ 190.207 through 190.235.

■ 5. Amend § 190.213 by revising paragraph (e) to read as follows:

§ 190.213 Final order.

* * * * *

(e) It is the policy of the Associate Administrator, OPS to issue a final order under this section expeditiously. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

■ 6. Amend § 190.215 by revising paragraph (f) to read as follows:

§ 190.215 Petitions for reconsideration.

* * * * *

(f) It is the policy of the Associate Administrator, OPS to issue notice of the action taken on a petition for reconsideration expeditiously. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

■ 7. Amend § 190.223 by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising paragraph (a) to read as follows:

§ 190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 *et seq.*, or any regulation or order issued thereunder, is subject to a civil penalty not to exceed $100,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed $1,000,000 for any related series of violations.

* * * * *

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 shall be subject to a civil penalty not to exceed $1,000, which shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

(e) No person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under § 190.217, § 190.219, or § 190.233 if both violations are based on the same act.

■ 8. Revise § 190.225 to read as follows:

§ 190.225 Assessment considerations.

In determining the amount of a civil penalty under this part,

(a) The Associate Administrator, OPS shall consider:

(1) The nature, circumstances and gravity of the violation, including adverse impact on the environment;

(2) The degree of the respondent's culpability;

(3) The respondent's history of prior offenses;

(4) The respondent's ability to pay;

(5) Any good faith by the respondent in attempting to achieve compliance;

(6) The effect on the respondent's ability to continue in business; and

(b) The Associate Administrator, OPS may consider:

(1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and

(2) Such other matters as justice may require.

■ 9. Amend § 190.227 by revising paragraph (a) to read as follows:

§ 190.227 Payment of penalty.

(a) Except for payments exceeding $10,000, payment of a civil penalty proposed or assessed under this subpart may be made by certified check or money order (containing the CPF Number for the case), payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ–120), P.O. Box 25770, Oklahoma City, OK 73125, or by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Payments exceeding $10,000 must be made by wire transfer.

* * * * *

■ 10. Amend § 190.229 by redesignating paragraph (e) as paragraph (f), adding a new paragraph (e), and revising paragraph (c) to read as follows:

§ 190.229 Criminal penalties generally.

* * * * *

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility, any interstate pipeline facility, or any intrastate pipeline facility used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce (as those terms are defined in 49 U.S.C. 60101 *et seq.*) shall, upon conviction, be subject for each offense to a fine of not more than $25,000, imprisonment for a term not to exceed 15 years, or both.

* * * * *

(e) Any person who willfully and knowingly engages in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or without considering location information or markings established by a pipeline facility operator; and

(1) Subsequently damages a pipeline facility resulting in death, serious bodily harm, or property damage exceeding $50,000;

(2) Subsequently damages a pipeline facility and knows or has reason to know of the damage but fails to promptly report the damage to the operator and to the appropriate authorities; or

(3) Subsequently damages a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product; shall, upon conviction, be subject for each offense to a fine of not more than $5,000, imprisonment for a term not to exceed 5 years, or both.

(f) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under § 190.217, § 190.219 or § 190.229 if both violations are based on the same act.

■ 11. Revise § 190.233 to read as follows:

§ 190.233 Corrective action orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section and § 190.211(a), a particular pipeline facility to be hazardous to life, property, or the environment, the Associate Administrator, OPS shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(b) The Associate Administrator, OPS may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. However, the Associate Administrator, OPS shall provide an opportunity for a hearing as soon as is practicable after the issuance of a compliance order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise its opportunity for a hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether a compliance order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) Notice and hearing:

(1) Written notice that OPS intends to issue an order under this section shall be served upon the owner or operator of an alleged hazardous facility in accordance with § 190.5. The notice shall allege the existence of a hazardous facility and state the facts and circumstances supporting the issuance of a corrective action order. The notice shall also provide the owner or operator with the opportunity for a hearing and shall identify a time and location where a hearing may be held.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section, or under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to issue a corrective action order in accordance with paragraphs (d) through (h) of this section.

(3) A hearing under this section shall be presided over by an attorney from the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, acting as Presiding Official, and conducted without strict adherence to formal rules of evidence. The Presiding Official presents the allegations contained in the notice issued under this section. The owner or operator of the alleged hazardous facility may submit any relevant information or materials, call witnesses, and present arguments on the issue of whether or not a corrective action order should be issued.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a corrective action order is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator, OPS shall issue a corrective action order in accordance with this section. If the Associate Administrator, OPS does not find the facility is or would be hazardous to life, property, or the environment, the Associate Administrator shall withdraw the allegation of the existence of a hazardous facility contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in § 190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate

Administrator, OPS determines the particular facility is hazardous to life, property, or the environment; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life, property, or the environment, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

(1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(3) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

(f) A corrective action order shall contain the following information:

(1) A finding that the pipeline facility is hazardous to life, property, or the environment.

(2) The relevant facts which form the basis of that finding.

(3) The legal basis for the order.

(4) The nature and description of any particular corrective action required of the respondent.

(5) The date by which the required corrective action must be taken or completed and, where appropriate, the duration of the order.

(6) If the opportunity for a hearing was waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing will be available at a particular time and location after issuance of the order.

(g) The Associate Administrator, OPS shall rescind or suspend a corrective action order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life, property, or the environment. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under § 190.207.

(h) At any time after a corrective action order issued under this section has become effective, the Associate Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.

(i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction to enforce orders issued under this section by appropriate means.

■ 12. Revise § 190.235 to read as follows:

§ 190.235 Civil actions generally.

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.*, or any regulations issued thereunder, the Administrator, PHMSA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

■ 13. Amend § 190.305 by revising paragraph (b) to read as follows:

§ 190.305 Regulatory dockets.

* * * * *

(b) Any person may examine public docket material, once a docket is established, at the offices of the Dockets Management System, U.S. Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590, and may obtain a copy of it upon payment of a fee, at any time between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays, with the exception of material which the Administrator, PHMSA determines should be withheld from public disclosure under applicable provisions of any statute administered by the Administrator and section 552(b) of title 5, United States Code. Public comments may also be submitted and reviewed by accessing the Dockets Management System's Web site at *http://dms.dot.gov*. Inquiries and comment submissions must identify the Docket Number. The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address.

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

■ 1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

■ 2. In 49 CFR part 191, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:

■ a. Section 191.3;

■ b. Section 191.7; and

■ c. Section 191.27(b).

■ 3. In 49 CFR part 191, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:

■ a. Section 191.1(b)(2) in two places; and

■ b. Section 191.3.

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. In 49 CFR part 192, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:

■ a. Section 192.3;

■ b. Section 192.7(b);

■ c. Section 192.727(g)(1) and (2);

■ d. Section 192.949; and

■ e. Section 192.951.

■ 3. In 49 CFR part 192, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:

■ a. Section 192.1(b)(2) in two places; and

■ b. Section 192.10.

■ 4. In § 192.727(g)(1) and (2), remove the e-mail address "*roger.little@rspa.dot.gov*" and add, in its place, the e-mail address "*roger.little@dot.gov*".

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

■ 2. In 49 CFR part 193, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:
■ a. Section 193.2007; and
■ b. Section 193.2013.

PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

■ 1. The authority citation for part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

■ 2. In 49 CFR part 194, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in § 194.119(a).

■ 3. In 49 CFR part 194, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:
■ a. Section 194.101(a) in two places;
■ b. Section 194.119(b) in two places, (c) in five places, (d) in two places, (e) in two places, and (f) in four places; and
■ c. Section 194.121(b), (c) in two places, and (d) in four places.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. In 49 CFR part 195, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:
■ a. Section 195.2;
■ b. Section 195.3(b);
■ c. Section 195.57(b);
■ d. Section 195.58;
■ e. Section 195.59(a) and (b); and
■ f. Section 195.452(m).

■ 3. In 49 CFR part 195, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:
■ a. Section 195.1; and
■ b. Section 195.9.

■ 4. In § 195.59(a) and (b), remove the e-mail address "*roger.little@rspa.dot.gov*" and add, in its place, the e-mail address "*roger.little@dot.gov*".

PART 198—REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

■ 1. The authority citation for part 198 continues to read as follows:

Authority: 49 U.S.C. 60105, 60106, 60114; and 49 CFR 1.53.

■ 2. In 49 CFR part 198, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in § 198.3.

■ 3. In 49 CFR part 198, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in § 198.13(e).

PART 199—DRUG AND ALCOHOL TESTING

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

■ 2. In 49 CFR part 199, remove the words "Research and Special Programs Administration" and add, in their place, the words "Pipeline and Hazardous Materials Safety Administration" in the following places:
■ a. Section 199.3;
■ b. Section 199.7;
■ c. Section 199.119(b); and
■ d. Section 199.229(c).

■ 3. In 49 CFR part 199, remove the abbreviation "RSPA" and add, in its place, the abbreviation "PHMSA" in the following places:
■ a. Section 199.119(a) in two places;
■ b. Section 199.225(b)(4); and
■ c. Section 199.229(a) in two places.

Issued in Washington, DC on February 25, 2005.

Elaine E. Joost,

Acting Deputy Administrator.

[FR Doc. 05–4123 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI26

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon; Re-evaluation of Non-Economic Exclusions From August 2003 Final Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; confirmation.

SUMMARY: We, the Fish and Wildlife Service (Service), confirm the non-economic exclusions made to our previous final rule (August 6, 2003, 68 FR 46683, effective September 5, 2003), which designated critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 4 vernal pool crustaceans and 11 vernal pool plants. A total of approximately 1,184,513 ac (479,356 ha) of land falls within the boundaries of designated critical habitat. This estimate reflects exclusion of: Lands within the boundaries of Habitat Conservation Plans, National Wildlife Refuge lands and National fish hatchery lands (33,097 ac (13,394 ha)), State lands within ecological reserves and wildlife management areas (20,933 ac (8,471 ha)), Department of Defense lands within Beale and Travis Air Force Bases as well as Fort Hunter Liggett and Camp Roberts Army installations (64,259 ac (26,005 ha)), Tribal lands managed by the Mechoopda Tribe (644 ac (261 ha)), and the Santa Rosa Plateau Ecological Reserve (10,200 ac (4,128 ha)) from the final designation. The area estimate does not reflect the exclusion of lands within the California counties of Butte, Madera, Merced, Sacramento, and Solano, which are excluded from the final designation pursuant to section 4(b)(2) of the Act and pending further analysis as directed by the October 29, 2004, order by the court.

This critical habitat designation requires us to consult under section 7 of the Act with regard to actions authorized, funded, or carried out by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This document confirms the non-economic exclusions made to our previous final rule (August 6, 2003, 68 FR 46683, effective September 5, 2003), and this document is effective on March 8, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage, Room W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, at the Sacramento Fish and Wildlife Office address above (telephone (916) 414–6600; facsimile (916) 414–6710).

SUPPLEMENTARY INFORMATION:

Preamble

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat are paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 473 species or 37 percent of the 1,264 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,264 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

In crafting the Act, Congress provided guidance for the exercise of discretion by the Secretary in making critical habitat decisions. We have applied the guidance in this rulemaking. Section 3(5)(a) of the Act, defines critical habitat as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Section 3(5)(C) of the Act further provides that "except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." "These provisions of section 3 authorize the exercise of discretion in determining (1) whether special management considerations or protections may be required; (2) whether unoccupied areas are essential for the conservation of the species; and (3) the extent to which the entire area which can be occupied by the species should be included in critical habitat."

Finally, section 4(b)(2) of the Act allows the Secretary to exclude any area from critical habitat, after considering the economic impact and any other relevant impact of a designation, upon a determination that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned.

The Congressional record is clear that Congress contemplated occasions where the Secretary could exclude the entire designation. In addition, the discretion that Congress anticipated would be exercised in Section 4(b)(2) of the Act is extremely broad. "The consideration and weight given to any particular impact is completely within the Secretary's discretion. * * *" (Congressional Research Service 1982).

Given that section 4(a)(3)(A) of the Act requires that critical habitat be designated concurrently with making a determination that a species is an endangered species or a threatened species, we are mindful of the Congressional intent with respect to listing as we designate critical habitat. For example, section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1), states that we must consider in listing determinations, among factors, "the inadequacy of existing regulatory mechanisms" (so-called "Factor D"); and "other natural or manmade factors affecting its continued existence" (referred to as "Factor E").

Section 4(b)(1)(A) requires us also to "tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas." Read together, sections 4(a)(1) and 4(b)(1)(A), as reflected in our regulations at 50 CFR 424.11(f), require us to take into account any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (*i.e.*, measures that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example, "the inadequacy of existing regulatory mechanisms" indicates that overall we might find existing regulatory mechanisms adequate to justify a determination not to list a species. Factor (E) in section 4(a)(1) (any "manmade factors affecting [the species'] continued existence") requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in

section 4 of the Act requires us to consider the conservation efforts of not only State and foreign governments but also of Federal agencies, Tribal governments, businesses, organizations, or individuals that positively affect the species' status. The section 4 analysis for listing determinations is relevant to our exercise of discretion in critical habitat designations, although it must be stressed that analysis in no way limits the Secretary's discretion.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed. The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects, the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA); all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

On September 24, 2002, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act), for 4 vernal pool crustaceans and 11 vernal pool plants (67 FR 59884). The four vernal pool crustaceans involved in this critical habitat designation are the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*). The 11 vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), fleshy (or succulent) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*). We proposed a total of 128 units of critical habitat for these 15 vernal pool species, totaling approximately 672,920 hectares (ha) (1,662,762 acres (ac)) in 36 counties in California and one county in Oregon. In accordance with our regulations at 50 CFR 424.16(c)(2), we opened a 60-day comment period on this proposal which closed on November 25, 2002.

All the species live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The species have all adapted to the generally mild climate and seasonal periods of inundation and drying that help make the vernal pool ecosystems of California and southern Oregon unique.

Section 4(b)(2) of the Act requires that the Secretary of the Interior designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefit of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned. Thus, to fulfill our requirement to consider the potential economic impacts of the proposed designation of critical habitat for the 15 vernal pool species, we conducted an analysis of the potential economic impacts on the proposed designation and published a notice on November 21, 2002 (67 FR 70201), announcing the availability of our draft economic analysis (DEA). The notice opened a 30-day public comment period on the draft economic analysis and extended the comment period on the proposed critical habitat designation.

During the development of the final designation, we reviewed the lands proposed as critical habitat based on public comments and any new information that may have become available and refined the boundaries of the proposal to remove lands determined not to be essential to the conservation of the 15 vernal pool species. We then took into consideration the potential economic impacts of the designation, impacts on national security, and other relevant factors such as partnerships, existing management of the lands being considered, and the effect of designation on the conservation of the species whose critical habitat was covered by the designation. Next, we determined whether the benefits of excluding certain lands from the final designation of critical habitat for the 15 vernal pool species outweighed the benefit of including them in the designation, and whether the specific exclusions would result in the extinction of any of the species involved. The final rule made two types of exclusions, lands excluded from the final designation based on economic effects of the designation and lands excluded due to other considerations. Lands excluded due to other considerations included lands within specific National Wildlife Refuges and Fish Hatcheries; Department of Defense lands; Tribal lands; State Wildlife Areas and Ecological Reserves; and lands covered by habitat conservation plans or other management plans that provide a benefit for the species. Lands proposed

as critical habitat in Butte, Madera, Merced, Sacramento, and Solano Counties were excluded based on potential economic impacts. Thus, on July 15, 2003, we made a final determination of critical habitat for the 15 vernal pool species; the final rule was published in the **Federal Register** on August 6, 2003 (68 FR 46684). A total of approximately 744,067 ac (301,114 ha) of land were identified as within the boundaries of the designated critical habitat for the 15 vernal pool species.

In January 2004, Butte Environmental Council and several other organizations filed a complaint alleging that we: (1) Violated both the Act, and the Administrative Procedure Act (APA) by excluding over 1 million acres from the final designation of critical habitat for the 15 vernal pool species; (2) violated mandatory notice-and-comment requirements under the Act and APA; and (3) engaged in an unlawful pattern, practice, and policy by failing to properly consider the economic impacts of designating critical habitat. On October 28, 2004, the court signed a Memorandum and Order in that case. The Memorandum and Order remanded the final designation to the Service in part. In particular, the court ordered us to: (1) Reconsider the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and publish a new final determination as to those lands within 120 days; and (2) reconsider the exclusion of the 5 California counties based on potential economic impacts and publish a new final determination no later than July 31, 2005. The court did not alter the August 6, 2003, final designation.

In order to more completely comply with the court order, on December 28, 2004, we reopened the comment period for 30 days (69 FR 77700) on the designation, to solicit any new information concerning the benefits of excluding and including the lands the final rule excluded on the basis of noneconomic considerations. Comments received during this 30-day comment period are addressed herein.

This notice addresses the first requirement of the remand—the reconsideration of the lands excluded for noneconomic considerations from the final designation of critical habitat for the 15 vernal pool species. Those lands within the 5 California counties that were excluded based on potential economic impacts will be addressed through a future **Federal Register** document, upon completion of the economic analysis currently underway.

Table 1 lists each specific area that was excluded from the proposed designation of critical habitat for the 15 vernal pool species, based on policy by category and size. The total area shown is the cumulative critical habitat area for all 15 species. Many of the critical habitat boundaries for each species overlap and as a result the actual total critical habitat area would be less.

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT EXCLUSIONS FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON

Exclusion area	Acres	Hectares
National Wildlife Refuges (NWR) and Fish Hatchery Exclusions		
Sacramento NWR Complex	19,363	7,836
San Francisco Bay NWR	617	250
San Luis NWR Complex	18,014	7,290
Kern NWR Complex	4,894	1,980
Coleman Nat. Fish Hatchery	13	5
Total	42,914	17,367
Department of Defense Exclusions		
Beale Air Force Base*	10,033	4,060
Travis Air Force Base*	9,651	3,906
Fort Hunter Liggett	16,583	6,711
Camp Roberts	33,937	13,734
Total	70,204	28,410
Tribal Land Exclusions		
Mechoopda Tribe	644	261
Total	644	261
State Wildlife Areas (WA) and Ecological Reserve (ER) Exclusions		
Allensworth ER	1,141	462
Battle Creek WA	637	258
Big Sandy WA	478	194
Boggs Lake ER	50	20
Butte Creek Canyon ER	0.4	0.16
Calhoun Cut ER	3,021	1,223
Carrizo Plains ER	455	184
Dales Lake ER	754	305
Fagen Marsh ER	420	170
Grizzly Island WA	10	4
Hill Slough WA	1,559	631
North Grasslands WA	5	2
Oroville WA	39	16
Phoenix Field ER	7	3

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT EXCLUSIONS FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON—Continued

Exclusion area	Acres	Hectares
San Joaquin River ER	278	113
Stone Corral ER	3,074	1,244
Thomes Creek ER	447	181
Total	12,373	5,007
Habitat Conservation Plans (HCP) and Cooperatively Managed Land Exclusions		
Skunk Hollow HCP	239	97
Western Riverside Multiple Species HCP	5,730	2,319
Santa Rosa Plateau Ecological Reserve	4,246	1,718
San Joaquin County Multiple Species HCP	10	4
Total	10,224	4,138
Grand Total	136,358	55,182

*Beale and Travis AFB have approved INRMPs and are not designated critical habitat based on 4(a)(3)(B) of the Act.

Summary of Comments and Recommendations

In the September 24, 2002, proposed critical habitat designation (67 FR 59884) and subsequent **Federal Register** notices concerning the 15 vernal pool species (67 FR 70201 and 68 FR 12336), we requested all interested parties to submit comments on the specifics of the proposal, including information related to the critical habitat designation, unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the proposed designation, benefits associated with critical habitat designation, potential exclusions and the associated rationale for the exclusions, and methods used to designate critical habitat.

In the December 28, 2004, reopening of public comment period for noneconomic exclusions related to critical habitat designation (69 FR 77700), we requested all interested parties to submit comments on the specifics of the proposal, including information related to amount and distribution of habitat, essential habitat, rationale for including or excluding habitat, benefits associated with including or excluding critical habitat designation, current or planned activities on proposed critical habitat, and public participation in designating critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. This was accomplished through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, interest groups and other interested individuals. In addition, we invited public comment through the publication of legal notices in numerous newspaper and news media throughout California and Oregon. In 2002, we provided notification of the DEA and proposed rule to all interested parties. At the request of Congressman Cardoza's Office, the Merced County Board of Supervisors, and the Stanislaus County Board of Supervisors, we held two public meetings to explain the December 28, 2004, **Federal Register** notice regarding the noneconomic exclusions to the public and requested that they provide comments. We provided contacts where they could direct questions regarding the proposed designation. We also posted the associated material on our Sacramento Fish and Wildlife Office internet site following the publication on December 28, 2004. Additionally, we made available to the public upon request individual maps of the noneconomic exclusions.

We received a total of 955 comment letters during the first 3 comment periods, and 17 on the most recent comment period, which ended on January 27, 2005. Comments were received from Federal, Tribal, State and local agencies, and private organizations and individuals. We reviewed all comments received, for this and previous rules, for substantive issues and new information on the proposed exclusions and other information regarding the vernal pool plants and vernal pool crustaceans. Similar comments were grouped into several general issue categories relating specifically to the proposed critical habitat determination, the proposed exclusions, and the Draft Economic Analysis, and are identified below.

Peer Review

For a discussion of the peer review of vernal pool critical habitat designation, please refer to our August 6, 2003, final designation (68 FR 46684).

State Agencies

For a discussion of the State Agency comments on the vernal pool critical habitat designation, please refer to our August 6, 2003, final designation (68 FR 46684).

Other Public Comments and Responses

We address other substantive comments and accompanying information in the following summary. Relatively minor editing changes and reference updates suggested by commenters have been incorporated into this final rule or the final economic analysis, as appropriate.

Issue 1—Habitat and Species-Specific Information

Comment 1: One commenter suggested that created vernal pool habitat should not be used as a method of mitigation for impacts to existing vernal pool habitat.

Our Response: Preservation of naturally occurring vernal pool complexes remains a key component to conservation for vernal pool species. In designating critical habitat areas we evaluated the importance of including created vernal pool habitat within the designated areas. We have determined that created vernal pool areas do provide essential habitat for many of the vernal pool species and are a key component toward their conservation.

Comment 2: The military, notably the California Army National Guard,

specifically Camp Roberts and Fort Hunter Liggett, and the U.S. Air Force, specifically Beale Air Force Base and Travis Air Force Base, requested that critical habitat not be designated on the four bases. In addition, the Solano County Board of Supervisors requested that Travis Air Force Base, in particular, not be included in critical habitat designation. Another commenter had concerns that vernal pool habitat for federally listed vernal pool species within Travis Air Force Base was not adequately protected from military activities that occur on the base. This commenter requested that vernal pool habitat within Travis Air Force Base be designated as critical habitat.

Our Response: The two Air Force Bases have approved INRMPs and were excluded through section 4(a)(3)(B) of the Act. The two Army National Guard Reserves Bases were excluded through section 4(b)(2) of the Act, since the benefits of excluding outweigh the benefits of including those vernal pool areas within the designation. For a summary of our comments regarding the exclusion of lands occupied by these bases, please refer to our August 6, 2003, final designation (68 FR 46684) and the Exclusions section below. No significant changes to vernal pool habitat and the management of this habitat have occurred since these military bases were evaluated for exclusion from critical habitat designation in the August 6, 2003, final rule. All of these bases have draft or final Integrated Natural Resource Management Plans (INRMPs) and the Service has completed or is currently working on consultations on these through the section 7 consultation process. We recognize that the military is implementing measures to conserve existing locations of federally listed vernal pool species and the habitat they occupy. In addition, section 4(b)(2) of the Act requires that the Secretary of the Interior designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefit of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Comment 3: Travis Air Force Base stated that in the August 6, 2003, final designation (68 FR 46684) we indicated that the exclusion acreage at Travis AFB is 9,651 acres. Travis AFB stated that the correct acreage is 5,128 acres of fee owned land and 1,255 acres in lesser interests, such as easements and rights of way.

Response: The acreage figures identified in the proposed rule issued on December 27, 2004 (69 FR 77700), reflected the accumulated critical habitat total for each of the species within the Travis Air Force boundary. As a result the total acreage identified was higher.

Comment 4: One commenter stated that critical habitat has to be occupied by the species at the time the species is listed, needs to contain the features essential to the conservation of the species, and may require special management considerations or protections. This commenter stated that that the 10 acres under discussion in the San Joaquin County Multiple Species Habitat Conservation Plan should continue to be excluded because this area is already afforded special management considerations or protections.

Our Response: We agree that this area is already under special management consideration and afforded protection by virtue of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan and have excluded the area covered under this HCP from this designation. For further discussion on the legal definition of critical habitat, refer to our August 6, 2003, final rule (68 FR 46684).

Comment 5: During the comment period for the proposed rule (67 FR 59884) and the December 28, 2004, proposed rule (69 FR 77700), the Mechoopda Tribe requested the exclusion of their land in Butte County from critical habitat designation. The Mechoopda Tribe's Environmental Department stated that they have implemented measures through a comprehensive management plan to further the protection and conservation of vernal pool ecosystems on their land.

Our Response: As a result of meeting with the Tribe and discussing the details of their management plan, we have determined that it is appropriate to exclude the Mechoopda lands from the current designation. We recognize that the Tribe is implementing measures to conserve existing locations of federally listed vernal pool species and the habitat they occupy. In addition, we note that under the tribe's existing management, vernal pool complexes have remained intact and able to support the species that rely on them. For a more detailed discussion summary of our comments regarding the exclusion of lands occupied by the Tribe and a more detailed description of the Tribe's voluntary measures to benefit the conservation of listed species, please refer to the discussion later in this rule.

Comment 6: The Bureau of Land Management (BLM) requested that critical habitat not be designated on the Carrizo Plains National Monument due to current management and protection of vernal pool resources within BLM's jurisdiction.

Our Response: The BLM's management plan implements measures to conserve existing locations of federally listed vernal pool species and their habitat. The Service is currently consulting on this plan through the section 7 consultation process. If we determine that the lands of the Carrizo Plains National Monument merits exclusion, we will solicit additional comments on such an exclusion when we reopen the comment period for the draft economic analysis in the spring of 2005. Those comments and any comments already received will be fully considered before sending a final rule to the **Federal Register**.

Comment 7: The Placer County Board of Supervisors stated that Critical Habitat Unit 12 for the vernal pool fairy shrimp should be excluded from designation because the Placer Legacy Habitat Conservation Plan, which is currently under development, will provide adequate protection of federally listed vernal pool species in this region. The Board of Supervisors stated that because the Placer Legacy HCP is similar to other HCPs, such as the Western Riverside Multiple Species HCP, and would provide for the conservation of vernal pools and listed vernal pool crustaceans, the Placer Legacy HCP should therefore similarly be excluded from critical habitat designation.

Our Response: The scope of this notice was to seek comments on those areas previously excluded for noneconomic reasons. However, we will consider all comments we receive and if additional proposed exclusions result from those comments, we will solicit additional comments on exclusions when we re-open the comment period for the draft economic analysis in the spring of 2005. Those comments and any comments already received will be fully considered before sending a final rule to the **Federal Register**.

Comment 8: One commenter stated that the existing designation of critical habitat for vernal pool species should be expanded. Specifically, areas adjacent to the Santa Rosa Plateau Ecological Reserve should be considered for critical habitat designation because

these areas, as well as areas within the ER, are threatened by runoff from development on adjacent unprotected lands.

Our Response: The area proposed as critical habitat within the Santa Rosa Plateau Ecological Reserve has been excluded, as part of the Western Riverside MSHCP, under 4(b)(2) of the Act. In our original proposal we proposed to designate only those areas essential to the conservation of the vernal pool fairy shrimp and the vernal pool complexes in which it occurs. In our mapping of the area we believe we captured those areas, which were essential to maintain water quality and hydrology of the vernal pools and vernal pool complexes within the proposed unit. We determined that areas outside the proposed designated areas were not essential for the conservation of the species or its habitat. In addition, the scope of this notice was to seek comments on those areas previously excluded for noneconomic reasons. We will solicit additional comments on exclusions when we reopen the comment period for the draft economic analysis in the spring of 2005. Those comments and any comments already received will be fully considered before sending a final rule to the **Federal Register**.

Comment 9: One commenter requested that lands covered in the Skunk Hollow vernal pool basin should continue to be excluded, and if critical habitat designation is necessary, it should only include the 136-acre Barry Jones Wetland Mitigation Bank.

Our Response: This area is already under special management considerations and afforded protection as part of the Western Riverside County MSHCP. Therefore, we have determined that it would be appropriate to exclude the area covered under this HCP from this designation. For more detail on our reasons for exclusions please refer to the specific discussion in this rule.

Comment 10: Two commenters stated that the Western Riverside Multiple Species HCP is not designed to adequately review environmental effects on unprotected vernal pool habitats in this area.

Our Response: Critical habitat is only one of many conservation tools for federally listed species. HCPs are one of the most important tools for conserving habitat and reconciling economic land use with the conservation of listed species on non-Federal lands. Designation of critical habitat does not afford protection to species or habitat unless there is a federal nexus, lands protected under HCPs are protected regardless of the designation of critical habitat. Section 4(b)(2) allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation. provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will far outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of inclusion for the Western Riverside MSHCP issued for the covered federally listed species. In particular, Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Comment 11: Congressman Dennis Cardoza and one other commenter concurred with our previous noneconomic exclusions of lands from designation of critical habitat. In addition, they further stated that all lands with conservation easements that are managed for the protection of listed vernal pool species should also be excluded from vernal pool critical habitat designation.

Our Response: The scope of this notice was to seek comments on those areas previously excluded for non-economic reasons. We will consider comments requesting additional exclusions and will propose any additional exclusions with opportunity for comments when we reopen the comment period for the draft economic analysis in the spring of 2005. Those comments, and any comments already received, will be fully considered before sending a final rule to the **Federal Register**.

Comment 12: Commenters associated with California Native Plant Society (CNPS) and Butte Environmental Council stated that lands excluded for policy and noneconomic reasons are essential to the survival and recovery of endangered vernal pool species, and therefore should be designated as vernal pool critical habitat. CNPS emphasized that vernal pool habitat on Department of Defense lands should be included in the designation of vernal pool critical habitat.

Our Response: There is minimal benefit from designating critical habitat for the vernal pool species within areas that are currently excluded because these lands, such as State-owned Wildlife Areas, Ecological Reserves, National Fish and Wildlife Refuges and Hatcheries, are already managed for the conservation of wildlife. HCPs that have been excluded from the rule for the same reason, they are already managed for conservation under Section 10(a)(1)(B) of the Act, which states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Furthermore, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated in the proposed plan area, it will determine if the HCP permit would jeopardize the species in the plan area. In addition, protections afforded by HCPs, management plans, and other landscape management programs go beyond any protections provided by a critical habitat designation. A critical habitat designation only protects areas that are subject to a federal action. HCPs and other management plans are not dependent on federal action to provide species protection.

In response to the CNPS concerns regarding exclusions of Department of Defense lands, section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefit of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned. The two AFBs were not eligible for designation through operation of section 4(a)(3)(B) of the Act as they had approved INRMPs, which provided for the conservation of the species. The two ANGR bases were excluded through section 4(b)(2) of the Act, since the benefits of excluding outweigh the benefits of including those vernal pool areas within the designation. For a detailed discussion of our noneconomic exclusion analysis used in our final designation of critical habitat for the 15 vernal pool species, please refer to our August 6, 2003, final designation (68 FR 46684) and in the Exclusions section below.

Comment 13: One commenter stated that prior designations and economic analyses do not properly account for the

recovery standard and the mitigation requirements expressed by the court in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059, 1070 (9th Cir. 2004). This commenter stated that certain areas within Critical Habitat Unit 12 in western Placer County should be excluded, specifically the Placer Vineyards site and the Rioso property, because the Primary Constituent Elements (PCEs) are absent. They also stated, along with an additional commenter, that other areas outside this critical habitat unit should actually be included because PCEs are present.

Our Response: With regard to including additional areas for critical habitat designation, the scope of this notice was to reexamine our previous noneconomic exclusions and to more fully explain our rationale for any noneconomic exclusions we make subsequent to the re-examination. We will consider all comments received, and if we propose additional exclusions for non-economic reasons or any other reason, we will propose those exclusions and solicit additional comments when we reopen the comment period for the draft economic analysis in the spring of 2005. Those comments and any comments already received will be fully considered before sending a final rule to the **Federal Register**. We will be considering the impact of the recent 9th Circuit decision (*Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059, 1070 (9th Cir. 2004)) in the economic analysis conducted for this final rule.

Comment 14: One commenter requested that the Service incorporate results from Dr. Bob Holland's recent work regarding biogeographic distribution of vernal pool species in relation to their edaphic (soil related) requirements. The commenter also requested that the Service link critical habitat designation to recovery plans as long as critical habitat deadlines are enforced.

Our Response: It is the goal of the Service to utilize the most recent scientific information available. In the development of this designation, we contacted numerous species experts and other members of the scientific community, including Dr. Holland. In developing critical habitat designations, we analyze all pertinent scientific and commercial information available to make our final determinations. This information would include any scientific information that was used in the development of recovery plans for the specific species. In the case of the 15 vernal pool species, we used, among other sources of information, scientific information gathered during the recovery planning process. On November 18, 2004, the draft Vernal Pool Recovery Plan for Vernal Pool Ecosystems in California and Southern Oregon was published in the **Federal Register** (69 FR 67601). We used the scientific information compiled in the draft recovery plan in this final determination; however, we will re-examine the designation in light of any significant information should we become aware of such information and make a final determination by July 31, 2005.

Issue 2—Costs and Regulatory Burden

Comment 15: The military, notably the California Army National Guard, specifically Camp Roberts and Fort Hunter Liggett, and the U.S. Air Force, specifically Beale Air Force Base, requested that critical habitat be excluded on the four bases. Designation of critical habitat would increase the costs and regulatory requirements and hamper the military from carrying out its mission objectives for the bases. Designation of critical habitat would adversely affect national security by diminishing the military's ability to support realistic and effective military operations.

Our Response: We have not designated critical habitat on two AFBs based on section 4(a)(3)(B) of the Act and excluded the two Army Bases from final designation of critical habitat pursuant to section 4(b)(2) of the Act. Please refer to the Relationship of Critical Habitat to Military Lands section of this final rule for a detailed discussion of our rationale for not including or excluding these military bases pursuant to section 4(a)(3)(B) or 4(b)(2) of the Act.

Comment 16: The Placer County Board of Supervisors and one other commenter stated that critical habitat designation within the County places a disproportionate amount of the regulatory burden on western Placer County. Western Placer County contains the infrastructure to support the majority of the projected growth within the entire County and, therefore, growth in this portion of the County would be hindered by the regulatory burden of the designation of critical habitat.

Our Response: The scope of this notice and resulting analysis was to seek comment on the noneconomic exclusions previously excluded in our final determination of critical habitat (68 FR 46684). We will be conducting a new economic analysis and will finalize economic exclusions in the final rule in July 2005. This comment will also be addressed at that time.

Comment 17: One commenter suggested that the National Wildlife Refuges, State Wildlife Areas, and Ecological Reserves all provide economic benefits from wildlife viewing, photography, hunting, and fishing. The Commenter requested that the Service quantify these benefits using visitation records as part of the Service's re-evaluation of special lands exclusions.

Our Response: We agree that National Wildlife Refuges, State Wildlife Areas and Ecological Reserves provide benefits in the form of recreational opportunities. However, these benefits will remain regardless of whether these areas are designated as critical habitat. These benefits are not due to a critical habitat designation, rather, they result from the legal authorities establishing these areas, such as the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, and other authorities, all of which are independent of critical habitat designations.

Issue 3—Procedural Concerns

Comment 18: One commenter stated that the 30-day comment period for the proposed rule violated 50 CFR 424.16(c)(2) and requested that we extend the comment period on the re-evaluation of noneconomic exclusions for a total or 60 days to allow for additional outreach to interested parties.

Our Response: An additional public comment period of at least 30 days will open once the draft economic analysis has been completed prior to the finalization of the rule in July.

Comment 19: One commenter stated that the maps of the lands being considered for removal from the exempt status were not readily available and accessible to the public in a timely manner.

Our Response: Maps and Geographic Information System (GIS) maps of the final designation published in August of 2003 (68 FR 46684) were available through our Sacramento and Regional Web sites as identified in the proposed rule (69 FR 77700). Specific maps identifying the exclusion areas and any other information requested by the public were made available upon request on an individual basis. Because this rulemaking is subject to a court-imposed deadline, the accelerated schedules of this designation as well as budget and staffing constraints had left us with a limited amount of time and resources to post maps for the December 28, 2004, **Federal Register** document specifically identifying each exclusion area.

Comment 20: One commenter stated that the Interior Secretary should not use broad discretion to override critical habitat designation decisions that are made by Service biologists, as exemplified by the proposed special lands exemptions, because it opens the door for political manipulation. The commenter noted that economic factors are important and relevant, but should not be allowed to impede recovery, particularly when interim analysis fails to quantify benefits. In addition, this commenter stated that biology, rather than politics, should be the driving force behind critical habitat designation.

Our Response: Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of exclusions outweigh the benefits of specifying such areas as critical habitat. The Congressional record is clear that Congress contemplated occasions where the Secretary could exclude the entire designation. In addition, the discretion that Congress anticipated would be exercised in Section 4(b)(2) of the Act is extremely broad. "The consideration and weight given to any particular impact is completely within the secretary's discretion" (Congressional Research Service 1982). We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species concerned. We will be analyzing the economic costs associated with the proposed designation and re-evaluate the economic exclusions based on the new analysis when it becomes available. The public will have an opportunity to comment on the analysis at that time.

Summary of Changes From the Previous Final Rule

In development of the original final designation of critical habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon, significant revisions to the proposed critical habitat designation were made based on review of public comments received on the proposed designation, the Draft Economic Analysis (DEA), and further evaluation of existing protection on lands proposed as critical habitat. These revisions relied on legal authorities and requirements provided in the Act. This re-evaluation of those exclusions relies on the same legal authorities.

In analyzing the proposed exclusions, we contacted representatives from State Wildlife Areas and Ecological Reserves, the four military bases, and the Mechoopda Tribe to verify that no significant changes to vernal pool habitat or their management have occurred since the August 6, 2003, final rule. After reviewing the public comments received and the previously proposed and final designations of critical habitat for the 4 vernal pool crustaceans and 11 vernal pool plants in California and southern Oregon, we find that the noneconomic exclusions were based on the best available science and that the benefits of excluding these areas outweighs the benefits of inclusion. As a result we have determined that no significant boundary changes to the noneconomic exclusions should occur to the August 6, 2003, final rule (68 FR 46684). Where we have received new information was included in our reanalysis. In addition, we have expanded our discussion of the analysis conducted on each of the exclusions.

Critical Habitat

This rule focuses on the reanalysis and evaluation of the non-economic exclusions from critical habitat. For that reason, much of the August 6, 2003, final rule describing the basis for designation is unchanged. Accordingly, for all discussions other than those related to non-economic exclusions we refer you to the August 6, 2003, final designation (68 FR 46684).

On the basis of the final economic analysis and other relevant impacts, as outlined under section 4(b)(2) of the Act, and the economic effects associated with this rule, certain exclusions were made to our final designation. The Service will be reanalyzing the economic effects of the critical habitat designation over the entire designation. Our original rule excluded five Counties: Butte, Madera, Merced, Sacramento, and Solano Counties. That exclusion was based on a comparison of the economic effects of the designation among the counties, and excluded those with relatively higher effects. At the time, the economic effects were aggregated on a countywide basis, which limited our ability to make exclusions on anything less than a county-level. Pursuant to the October 28, 2004, court order, the Service is reanalyzing the economic effects of the entire designation and will make its final critical habitat designation and any economic exclusions based on this more detailed analysis. A **Federal Register** notice announcing the availability of the draft economic analysis will be published and the public will have the opportunity to comment on the document.

Section 4(a)(3)(B) of the Act

Section 318 of fiscal year 2004 the National Defense Authorization Act (Public Law No. 108–136) amended the Endangered Species Act to address the relationship of Integrated Natural Resources Management Plans (INRMPs) to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

This provision was added subsequent to our final designation of critical habitat in 2003. However, its provisions apply to this designation. Accordingly the Service does not have the authority to designate Beale Air Force Base or Travis Air Force Base as those facilities have existing INRMPs that provide a benefit to the species.

Noneconomic Exclusions Under Section 4(b)(2) of the Act

As noted earlier, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. The following paragraphs will provide detail as to the basis for the non-economic exclusions that we have analyzed and found appropriate.

A total of approximately 1,184,513 ac (479,356 ha) of land falls within the boundaries of designated critical habitat of those lands we propose to exclude:

- Lands within the boundaries of Habitat Conservation Plans,
- National Wildlife Refuge lands and National fish hatchery lands (33,097 ac (13,394 ha)),
- State lands within ecological reserves and wildlife management areas (20,933 ac (8,471 ha)),
- Department of Defense lands within Fort Hunter Liggett Army installation (16,583 ac (6,711 ha)),
- Tribal lands managed by the Mechoopda Tribe (644 ac (261 ha)),

• The Santa Rosa Plateau Ecological Reserve (10,200 ac (4,128 ha)) from the final designation.

Habitat Conservation Plans

(1) Benefits of Inclusion

The benefits of including HCPs or NCCP/HCPs in critical habitat are small to nonexistent. The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. An HCP application must be itself consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the HCP jeopardizes the species in the plan area. Therefore, any federal activity that is consistent with the terms of the HCP and IA would be very unlikely to have an effect on the primary constituent elements of habitat that would otherwise be designated as critical habitat would not serve the intended conservation role for the species.

HCPs/NCCPs are already designed to ensure the long-term survival of covered species within the entire plan area rather than just those areas with a federal nexus. Where we have approved HCPs or NCCP/HCPs, lands will normally be protected in reserves and other conservation lands by the terms of the HCPs or NCCP/HCPs and their Implementing Agreements (IAs). These HCPs or NCCP/HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species and provide the same benefits for any species that relies on the same ecosystems.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However in the case of HCCP/NCCPs the public notice and comment and final publication in the **Federal Register** of the final provisions provide virtually the same notice as a critical habitat designation.

Because of the above, we conclude that any benefits that accrue to habitat in an HCP from a critical habitat designation are small to non-existant.

(2) Benefits of Exclusion

The benefits of excluding HCPs from critical habitat are significant. In an approved HCP, lands that might ordinarily be identified as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCP and its associated implementing agreement (IA). Since these large regional HCPs address land use within the plan boundaries, habitat issues within the plan boundaries have been addressed in the HCP and the consultation on its associated permit. In the consultation we are required to if the action jeopardizes the listed species. In the case of critical habitat we analyze whether the function of the habitat for recovery of the species will be reduced or eliminated by the proposed action.

Designating these areas will likely have an adverse impact on the partnerships that we have developed with the local jurisdiction(s) and project proponents in the development of the HCP and NCCP/HCP, and in the management of the other excluded areas to benefit the species. Excluding these areas will promote future partnerships, and avoid duplicative regulatory burden on cooperating parties. We have received substantial comments from various parties in comment periods on this and many other critical habitat rules that those regulatory burdens can be significant to private and public parties. In part, it is to avoid the regulatory costs associated with project-by-project consultations that provides an incentive for private landowners to enter into HCPs. The Service achieves far more conservation when entire regions can be subject to the HCP permit issuance standards instead of just projects with a federal nexus. Failure to exclude HCPs from critical habitat removes any incentive for landowners to voluntarily participate in HCPs and thus removes any protection for lands with no federal nexus.

San Joaquin County Multiple Species Habitat Conservation Plan (MSHCP)

The San Joaquin County Multi-Species Conservation Plan (SJMSCP) covers the entirety of San Joaquin County and identifies the vernal pool fairy shrimp and the vernal pool tadpole shrimp as covered species. The SJMSCP has identified areas where growth and development are expected to occur (build-out areas). A portion of one of these build-out areas overlaps with the San Joaquin Unit 18 for vernal pool fairy shrimp. The SJMSCP has been finalized and includes participants from seven cities; the County of San Joaquin, the San Joaquin Council of Governments; various water districts within the County; the California Department of Transportation; East Bay Municipal Utility District; and the San Joaquin Area Flood Control District. The SJMSCP is a subregional plan under the State's Natural Community Conservation Planning (NCCP) program and was developed in cooperation with California Department of Fish and Game (CDFG). Within the county wide planning area of the SJMSCP, approximately 71, 837 ac (29,071 ha) of diverse habitats are proposed for conservation. The proposed conservation of 71, 837 ac (29,071 ha) will compliment other, existing natural and open space areas that are already conserved through other means (*e.g.*, State Parks, USFWS, and County Park lands). For a complete discussion of this HCP, please refer to our August 6, 2003, final designation (68 FR 46684).

Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

The Western Riverside MSHCP has been finalized since the issuance of the August 6, 2003, rule. The Western Riverside MSHCP includes participants from 14 cities; the County of Riverside, including the County Flood Control and Water Conservation District; the County Waste Department; the California Department of Transportation; and the California Department of Parks and Recreation. The Western Riverside MSHCP is a subregional plan under the State's Natural Community Conservation Planning (NCCP) program and was developed in cooperation with California Department of Fish and Game (CDFG). Within the 1.26-million-acre (510,000-ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for conservation. The proposed conservation of 153,000 ac (62,000 ha) will compliment other, existing natural and open space areas that are already conserved through other means (*e.g.*, State Parks, USFS, and County Park lands). For a complete discussion of this HCP, please refer to our August 6, 2003, final designation (68 FR 46684).

The Skunk Hollow mitigation bank (the correct title is the Barry Jones Wetland Mitigation Bank) and the Santa Rosa Plateau Preserve are within the planning area of the Western Riverside County MSHCP. Both of these areas are conserved as part of the Western Riverside County MSHCP. The management actions undertaken as part of the Western Riverside County

MSHCP benefit the endangered Riverside fairy shrimp, threatened Navarretia fossalis, and the endangered Oructtia californica-vernal pool species, which are included as covered species under this regional HCP, will provide equal conservation benefits for the vernal pool fairy shrimp.

The Skunk Hollow vernal pool basin (Unit 35) consists of a single, large vernal pool and its essential associated watershed in western Riverside County and is part of the Western Riverside County MSHCP. Several federally listed species have been documented as occurring in the Skunk Hollow vernal pool basin. These include the vernal pool fairy shrimp (Simovich, in litt. 2001), the Riverside fairy shrimp (Service 2001), *Navarretia fossalis*, and *Orcuttia californica* (Service 1998). The vernal pool complex and watershed are also currently protected as part of a reserve established within an approved wetland mitigation bank in the Rancho Bella Vista HCP area, and as part of the conservation measures contained in the Assessment District 161 Subregional HCP (AD161 HCP), all of which are now incorporated into the Western Riverside County MSHCP. Although the Skunk Hollow does not identify the vernal pool fairy shrimp as a covered species it does list the endangered Riverside fairy shrimp as a covered species and protects the vernal pool habitat within the area. Since a critical habitat designation is designed to conserve the habitat type or ecosystem (in this case vernal pools) and not the species specifically, the HCP and associated reserve and mitigation bank don't need to name the species specifically in order to provide benefits, as long as the ecosystem upon which the species relies is preserved. In this case, since species which rely on the same ecosystem are the target of the HCP and mitigation bank, we are able to conclude that the plan will provide the necessary management to protect the critical habitat. In addition, since the entire habitat area is addressed under the HCP, preserve, and mitigation bank and not just habitat with a federal nexus, the existing management already provides more protection than can be provided by a critical habitat designation.

The Western Riverside County MSHCP also encompasses lands within the Santa Rosa Plateau Ecological Reserve (SRPER) (Unit 34 for vernal pool fairy shrimp), an area that covers approximately 8,300 ac (3360 ha) near the town of Murrieta, California. The SRPER is situated on a large mesa composed of basaltic and granitic substrates and contains one of the largest vernal pool complexes remaining in southern Riverside County. Several endemic vernal species are known to occur within the complex, including the vernal pool fairy shrimp, Riverside fairy shrimp, Santa Rosa fairy shrimp (*Linderiella santarosae*), *Orcuttia californica*, *Brodiaea filifolia* (Thread-leaved brodiaea), and *Eryngium aristulatum* var. *parishii* (San Diego button-celery.) Established in 1984, the SRPER is owned by The Nature Conservancy (TNC), and is cooperatively managed by TNC, the Riverside County Regional Park and Open Space District, CDFG, and the Service.

TNC has transferred ownership of SRPER to CDFG. As a signatory to the agreement, CDFG has will oversee the SRPER in a manner consistent with the present conservation management scheme agreed to by the cooperating agencies. The CDFG has a broad authority to protect lands and conserve species (Fish and Game Code §§ 2700 *et seq.*). Designation of critical habitat would not have any beneficial effect of the present management of the vernal pool complex on the SRPER.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or nonexistent. The issuance of a permit (under section 10(a) of the Act) in association with an HCP application is subject to consultation under section 7(a)(2) of the Act. During consultation on permit issuance, we must address the issue of destruction or adverse modification of critical habitat for vernal pool species and any other species protected by the plan. In an approved HCP, lands we ordinarily would define as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCP and its its associated implementing agreement (IA). Since these large regional HCPs address land use within the plan boundaries, habitat issues within the plan boundaries have been addressed in the HCP and the consultation on the permit associated with the HCP. This requires us to make a determination as to the appreciable reduction in the survival and recovery of a listed species, in the case of critical habitat by reducing the function of the habitat so designated. Therefore, any federal activity that is consistent with the terms of the HCP and IA would be very unlikely to have an effect on the primary constituent elements of habitat that would otherwise be designated as critical habitat would not serve the intended conservation role for the species.

We have determined that the management and protections afforded the vernal pool fairy shrimp in the build-out areas through the SJMSHCP and the Western Riverside County MSHCP are adequate for the long-term conservation of these species. In addition, protections afforded by HCPs, management plans, and other landscape management programs go beyond any protections provided by a critical habitat designation. A critical habitat designation only protects areas that are subject to a federal action. HCPs and other management plans are not dependent on federal action to provide species protection. The Western Riverside County MSHCP provides protection for the affected vernal pool complex and its associated watershed in perpetuity. Therefore it addresses the primary conservation needs of the species by protecting the ecosystem upon which it relies. The management and protections afforded the vernal pool and Riverside fairy shrimp provide for the long-term conservation of this pool and vernal pool fairy shrimp.

The education benefits of critical habitat, including informing the public of areas that are important for long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish a HCP or NCCP/HCP, as well as the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. Therefore, the benefits of designating these areas as critical habitat are low.

(2) Benefits of Exclusion

In contrast, the benefits of excluding these areas from critical habitat, are more significant. Designating these areas will likely have an adverse impact on the partnerships that we have developed with the local jurisdiction and project proponents in the development of the HCP and NCCP/HCP, and in the management of the other excluded areas to benefit the species. Excluding these areas will promote future partnerships, and avoid duplicative regulatory burden on cooperating parties. We have received substantial comments from various parties in comment periods on this and many other critical habitat rules that those regulatory burdens can be significant to private and public

parties. Excluding these areas from critical habitat removes those concerns and provides an incentive to place lands that would not ordinarily be protected under regulatory management to protect the ecosystem.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such an HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species.

Approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, the areas we ordinarily would designate as critical habitat for the covered species will be protected through the terms of the HCPs and their IAs. These HCPs and IAs include management measures and protections that are crafted to protect, restore, and enhance their value as habitat for covered species. We have reviewed and evaluated HCPs, NCCP/HCPs, and other cooperatively managed lands at the SRPER currently with approved and implemented management plans within the areas being designated as critical habitat for the vernal pool crustaceans and plants. Based on this evaluation, we find that the benefits of exclusion outweigh the benefits of designating the Western Riverside County MSHCP, and a portion of the San Joaquin County NCCP/MSHCP as critical habitat.

For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by these HCPs, as the referenced HCP and its associated IA are legally operative and adequately protects the habitat or ecosystem upon which the listed species rely and for which critical habitat is being designated. We also believe that the measures being taken by the managers of the Santa Rosa Plateau Ecological Reserve will conserve and benefit the vernal pool fairy shrimp. The exclusion of the HCP areas and Ecological Reserve from the designation will not result in the extinction of the vernal pool fairy shrimp.

Relationship of Critical Habitat to National Wildlife Refuge and National Fish Hatchery Lands

We have determined that proposed critical habitat units on the Sacramento, San Francisco Bay, San Luis, and Kern National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery Complex, warrant exclusion pursuant to section 4(b)(2) of the Act because the benefits of excluding these lands from final critical habitat outweigh the benefits of their inclusion. For a complete discussion of these NWRs and NFHLs, please refer to our August 6, 2003 final designation (68 FR 46684).

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the vernal pool species within National Wildlife Refuge and National Fish Hatchery lands because these lands are already managed for the conservation of wildlife. The benefits of including these lands are low, since their purpose is to preserve natural resource values, a purpose that is not incompatible with critical habitat designation.

Critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. All of these refuges are developing comprehensive resource management plans that will provide for protection and management of all trust resources, including federally listed species and sensitive natural habitats. These plans, and many of the management actions undertaken to implement them must also complete consultation under section 7 of the Act. The comprehensive resource management plan for the Kern National Wildlife Refuge Complex has been completed and the associated biological opinion concluded that its implementation would not jeopardize the continued existence of these species (Service 2004). Therefore, any federal activity that is consistent with the terms of the comprehensive resource management plan would be very unlikely to have an effect on the primary constituent elements of habitat that would otherwise be designated as critical habitat would not serve the intended conservation role for the species.

(2) Benefits of Exclusion

The consultation requirement associated with critical habitat on the National Wildlife Refuge and Fish Hatchery lands would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the-ground management of the targeted listed or sensitive species. Therefore, the benefits of exclusion include relieving additional regulatory burden that might be imposed by the critical habitat, which could divert resources from substantive resource protection to procedural regulatory efforts.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the benefit of including these lands in critical habitat is low because they already are publicly owned and managed to protect and enhance unique and important natural resource values. In addition, by designating these lands the Service would be required to conduct internal consultations on activities to determine whether they adversely modify critical habitat. This extra and unnecessary regulatory process will require funding that must be diverted from the management of the resource. The Service would prefer to allocate taxpayer funds to actions that more directly benefit species on the ground. Exclusion of these lands will not increase the likelihood that management activities would be proposed which would appreciably diminish the value of the habitat for conservation of the species. Further, such exclusion will not result in the extinction of the vernal pool species. We, therefore, conclude that the benefits of excluding refuge and Fish Hatchery lands from the final critical habitat designation outweigh the benefits of including them.

In accordance with section 4(b)(2) of the Act, we have excluded lands within the Sacramento, San Francisco Bay, San Luis, and Kern National Wildlife Refuge Complexes, and the Coleman National Fish Hatchery Complex from final critical habitat.

Relationship of Critical Habitat to State-Managed Ecological Reserves and Wildlife Areas

We contacted local California Department of Fish and Game (CDFG) resource managers and staff at the various locations to verify that no significant changes to vernal pool habitat and the management of this habitat have occurred since the August

6, 2003, final rule. These areas continue to be managed for the benefit of common and special-status species and their habitats.

We proposed as critical habitat, but have now considered for exclusion from the final designation, the CDFG owned lands within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas and State-owned lands within Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves. These State Managed Ecological Reserves and Wildlife Areas were excluded from critical habitat designation in our August 6, 2003, final designation (68 FR 46684).

(1) Benefits of Inclusion

The designation of critical habitat would require consultation with us for any action undertaken, authorized, or funded by a Federal agency that may affect the species or its designated critical habitat. However, the management objects for State ecological reserves already include specifically managing for targeted listed and sensitive species: therefore, the benefit from additional consultation is likely also to be mininal.

The State of California establishes ecological reserves to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous natural gene pools (Fish and Game Code § 1580). They are to be preserved in a natural condition, or are to be provided some level of protection as determined by the commission, for the benefit of the general public to observe native flora and fauna and for scientific study or research (Fish and Game Code § 1584). Wildlife areas are for the purposes of propagating, feeding, and protecting birds, mammals, and fish (Fish and Game Code § 1525); however, they too provide habitat and are managed for the benefit of listed and sensitive species (CDFG in litt. 2003).

Take of species except as authorized by State Fish and Game Code is prohibited on both State ecological reserves and wildlife areas (Fish and Game Code § 1530 and § 1583). While public uses are permitted on most wildlife areas and ecological reserves, such uses are only allowed at times and in areas where listed and sensitive species are not adversely affected (CDFG in litt. 2003). The management objectives for these State lands include: "to specifically manage for targeted listed and sensitive species to provide protection that is equivalent to that provided by designation of critical habitat; to provide a net benefit to the species through protection and management of the land; to ensure adequate information, resources, and funds are available to properly manage the habitat; and to establish conservation objectives, adaptive management, monitoring and reporting processes to assure an effective management program, and monitoring and reporting processes to assure an effective management program (CDFG, in litt. 2003)." In summary, we believe that the benefits of inclusion for these lands are minimal as these lands already are publicly owned and managed to protect and enhance unique and important natural resource values. Therefore, any federal activity that is consistent with the State code for activity on both State ecological reserves and wildlife areas would be very unlikely to have an effect on the primary constituent elements of habitat that would otherwise be designated as critical habitat would not serve the intended conservation role for the species.

(2) Benefits of Exclusion

While the consultation requirement associated with critical habitat on the CDFG ecological reserves and wildlife areas add little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the-ground management of the targeted listed or sensitive species, in addition, there is no guarantee that any federal action that would require consultation would take place on such as the state preserves. In the past, the State has expressed a concern that the designation of these lands and associated regulatory requirements may cause delays that could be expected to reduce their ability to respond to vernal pool management issues that arise on the ecological reserves and wildlife areas. Therefore, the benefits of exclusion include relieving additional regulatory burden that might be imposed by the designation of critical habitat for vernal pool species, which could divert resources from substantive resource protection to procedural regulatory efforts.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the benefits of inclusion for these lands are low as these lands already are publicly-owned and managed by a wildlife agency to protect and enhance unique and important natural resource values. Therefore, designation of critical habitat would add little value. The benefits of exclusion are higher, as federal actions on these lands may result in the need for consultation, most often on activities that would enhance wildlife conservation. These consultations would result in additional administrative burdens without significant accompanying conservation benefits.

We, therefore, conclude that the benefits of excluding CDFG ecological reserves and wildlife areas from the final critical habitat designation outweigh the benefits of including them. Such exclusion will not result in the extinction of the vernal pool species. Further, we do not believe that such exclusion will increase the likelihood that activities would be proposed that would appreciably diminish the value of the habitat for the conservation of these species.

In accordance with section 4(b)(2) of the Act, we have excluded California Department of Fish and Game-owned lands within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas and State-owned lands within Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves.

Relationship of Critical Habitat to Military Lands

As stated above we are prohibited from designating Military lands with approved INRMPs as critical habitat according to section 4(a)(3)(B) of the Act as long as the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. It also requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including the Unites States Air Force and the United States Army. The following discussions are provided on Travis AFB, Beale AFB, Camp Roberts, and Fort Hunter Liggett.

Travis Air Force Base

Travis AFB has several vernal pool complexes that support the vernal pool fairy shrimp and *Lasthenia conjugens* and also contain PCEs for *Neostapfia*

colusana, Conservancy fairy shrimp, *Tuctoria mucronata*, and vernal pool tadpole shrimp. As a result of wetland surveys, Travis AFB had identified 235 vernal pools on approximately 100 ac (40 ha) of the 1,100 ac (445 ha) that are not developed on the base. To date, only *Lasthenia conjugens* and the vernal fairy shrimp have been discovered on Travis AFB within these 100 ac (40 ha). Travis AFB has a Service approved INRMP in place that provides a benefit for the vernal pool fairy shrimp and *Lasthenia conjugens* and provides protection of the PCEs for *Neostapfia colusana*, Conservancy fairy shrimp, *Tuctoria mucronata*, and vernal pool tadpole shrimp. As a result we are prohibited from designating critical habitat on Travis AFB in compliance with our section 4(a)(3)(B) responsibilities.

Beale Air Force Base

Beale AFB has several substantial vernal pool complexes that support the vernal pool fairy shrimp and vernal pool tadpole shrimp, especially on the western side of the base. Beale AFB completed their INRMP in 1999. The completed INRMP provides for management and conservation of vernal pools with the base and establishes a Vernal Pool Conservation and Management Area to protect vernal pool complexes on the western side of the base. Beale AFB has provided an updated INRMP for the Service's review. The Beale AFB is also currently preparing a Habitat Conservation Management Plan (HCMP) for the area. We will consult with Beale AFB under section 7 of the Act on the development and implementation of the revised INRMP, HCMP and base comprehensive plan. A final revised and Service approved INRMP is expected to be completed by March 2005. Beale AFB has a Service approved INRMP in place that provides a benefit for the vernal pool fairy shrimp and vernal pool tadpole shrimp. As a result we are prohibited from designating critical habitat on Beale AFB in compliance with our section 4(a)(3)(B) responsibilities.

Camp Roberts

Camp Roberts has substantial vernal pool complexes that support the vernal pool fairy shrimp. Camp Roberts completed their INRMP in 1999. The completed INRMP provides for the vernal pool fairy shrimp. We will consult with Camp Roberts under section 7 of the Act on the development and implementation of the INRMP. Camp Roberts has a final INRMP in place that provides a benefit for the vernal pool fairy shrimp. As a result we are prohibited from designating critical habitat on Camp Roberts (13,247 ha (33,117 ac)) in compliance with our section 4(a)(3)(B) responsibilities.

Fort Hunter Liggett

Fort Hunter Liggett (6,519 ha (16,298 ac)) and Camp Roberts (13,247 ha (33,117 ac)) occur in San Luis Obispo and Monterey Counties. Fort Hunter Liggett has submitted draft INRMPs for our review. We are currently reviewing the INRMPs and expect completion of the section 7 consultation by April 2005. Fort Hunter Ligget has several substantial vernal pool complexes that support the vernal pool fairy shrimp.

(1) Benefits of Inclusion

Inclusion of these military lands could provide additional areas of conserved species habitat. However, the principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. The military also has an obligation under the Sykes Act, and Section 7(a)(1) of the Act to conserve threatened and endangered species on lands under its jurisdiction. Therefore, the benefits of inclusion are low.

(2) Benefits of Exclusion

Military operations in training areas with listed fairy shrimp at Fort Hunter Liggett could be modified, activities affected include the use of field artillery pieces, range training, drop zone use, and use of tank trails or roads. One of these training areas contains a multi-purpose range complex that only occurs at four military bases in the country (FHL 2002b). Consistent access to the facility is critical because comparable facilities at other locations are scheduled for use several months to years in advance. Initiating and completing section 7 consultations that would arise from a critical habitat designation would likely result in alterations to, and delays in, training schedules at the multi-purpose range complex. If critical habitat is designated on these bases, the military would need to consider and possibly implement alternatives that modify the timing, location, and intensity of training activities. Failure to complete the training and activities these bases are intended for would adversely affect national security.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Fort Hunter Liggett as critical habitat for vernal pool fairy shrimp (Unit 29) outweigh the benefits of including them as critical habitat for vernal pool species. We base this determination on the need for maintaining mission-critical military training activities. Further, we have determined that excluding Fort Hunter Liggett will not result in the extinction of the vernal pool fairy shrimp.

Relationship of Critical Habitat to Tribal Lands

Section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes. In accordance with Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997); the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments, and Executive Order 13175, we recognize the need to consult with federally recognized Indian Tribes on a Government-to-Government basis. The Secretarial Order 3206 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (1997)" provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to conserve a listed species.

The Benefits of Exclusion Outweigh the Benefits of Inclusion

The benefits of including the Tribe's land are limited to minor educational benefits. Because one or more of the species occupies all these areas, consultation on federal actions will occur regardless of whether critical habitat is designated. While some additional benefit might accrue from these adverse modification analyses, we expect them to be small. Tribal areas represent a small proportion of this designation and the tribe has demonstrated the will and ability to manage these lands in a manner that preserves their conservation benefits. The benefits of excluding these areas from being designated as critical habitat are more significant, and include our policy of maintaining a government-to-government relationship with tribes, as

well as encouraging the continued development and implementation of special management measures. For Tribal Lands, the Mechoopda Tribe has their own environmental agency, the Mechoopda Environmental Protection Agency, which is responsible for the management of the Tribe's natural resources, and which recognizes the importance of implementing conservation measures that will contribute to the conservation of federally listed species on their lands. The Mechoopda Tribe have already demonstrated their willingness to work with us to address the habitat needs of listed species that may occur on Mechoopda lands. The exclusion of critical habitat for the Mechoopda trust lands is consistent with our published policies on Native American natural resource management by allowing the Mechoopda Tribe to manage their own natural resources.

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Mechoopda Tribal land as critical habitat outweigh the benefits of including it as critical habitat for the vernal pool tadpole shrimp (Unit 4) and will not result in the extinction of the vernal pool tadpole shrimp. For a complete discussion of these Tribal lands, please refer to our August 6, 2003, final designation (68 FR 46684).

Exclusion Summary

We have reviewed the overall effect of excluding from the designated critical habitat for the vernal pool species lands covered by the following authorities: The above-mentioned approved HCPs, the State, national wildlife refuges, national fish hatcheries, Tribal trusts, and military installations, and we have determined that the benefits of excluding these areas outweigh the benefits of including them in this critical habitat designation. The exclusion of vernal pool critical habitat in Butte, Madera, Merced, Solano, and Sacramento Counties, California, will be evaluated in a future **Federal Register** document. The lands removed from critical habitat as a result of these exclusions will not jeopardize the long-term survival and conservation of the species or lead to their extinction.

Economic Analysis

An economic analysis of the effect of critical habitat in the 36 counties in California and 1 county in Oregon was conducted for the final rule. For a complete discussion of the economic analysis, please refer to our August 6, 2003, final rule (68 FR 46684). A re-analysis of the economic impacts of critical habitat designation in the five counties that were excluded in the final rule will be conducted in a future **Federal Register** document.

Required Determinations

We have reviewed our analyses of Required Determinations and subsequent conclusions that were made in the August 6, 2003, final rule designating critical habitat for the 15 vernal pool species (68 FR 46684). On the basis that we are affirming our treatment and decisions of noneconomic exclusions from the August 2003 final rule and are making no additional exclusions or changes to the designation, we believe that our previous conclusions stand. Thus, we refer the public to our previous analyses and conclusions of the Required Determinations in the August 6, 2003, final rule.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the staff of the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Dated: February 28, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–4173 Filed 3–7–05; 8:45 am]

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Proposed Rules

Federal Register
Vol. 70, No. 44
Tuesday, March 8, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO–F&V–927–A1; FV04–927–1 PR]

Winter Pears Grown in Oregon and Washington; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amending the marketing agreement and order (order) for winter pears grown in Oregon and Washington, and provides producers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on recommendations jointly proposed by the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee, which are responsible for local administration of orders 927 and 931, respectively. Marketing Agreement and Order No. 931 regulates the handling of fresh Bartlett pears grown in Oregon and Washington. The amendments would combine the winter pear and fresh Bartlett orders into a single program under marketing order 927, and would add authority to assess pears for processing. All of the proposals are intended to streamline industry organization and improve the administration, operation, and functioning of the program.

DATES: The referendum will be conducted from March 22 through April 8, 2005. The representative period for the purpose of the referendum is July 1, 2003, through June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 24, 2004, and published in the March 30, 2004, issue of the **Federal Register** (69 FR 16501), and a Recommended Decision issued on January 5, 2005, and published in the January 13, 2005, issue of the **Federal Register** (70 FR 2520).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

The amendments are based on the record of a public hearing held on April 13 and 14, 2004, in Yakima, Washington and on April 16, 2004, in Portland, Oregon. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in the States of Oregon and Washington, hereinafter referred to as the "order."

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Notice of this hearing was published in the **Federal Register** on March 30, 2004 (69 FR 16501). The notice of hearing contained order changes proposed by both the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee, which are responsible for local administration of orders 927 and 931, respectively. Marketing order 927 regulates the handling of winter pears grown in Oregon and Washington. Marketing order 931 regulates the handling of Bartlett pears in the same production area.

The amendments included in this decision would:

1. Expand the definition of "pears" to include all varieties of pears classified as summer/fall pears in addition to winter pears; add Concorde, Packham, and Taylor's Gold pears to the current list of winter pear varieties; and add a third category of pears which would include varieties not classified as summer/fall or winter pears. This amendment would extend program coverage to all pears grown in Oregon and Washington.
2. Revise the definition of "size" to include language currently used within the industry.
3. Extend the order's coverage to pears for processing by revising the definition of "handle," and adding definitions of "processor" and "process."
4. Establish districts for pears for processing. This amendment would divide the order's production area into two districts for pears for processing: one being the State of Oregon and the other being the State of Washington.
5. Dissolve the current Winter Pear Control Committee and establish two new administrative committees: The Fresh Pear Committee and the Processed Pear Committee (Committees). This proposal would add a public member and public alternate member seat to both of the newly established Committees and would remove Section 927.36, Public advisors. The Committees would coordinate administration of Marketing Order 927, with each Committee recommending assessments and administering program functions specific to their commodity. Coordinated administration would allow each Committee to make decisions on behalf of the commodity they represent, yet combine administrative functions, when applicable, to maximize efficiencies and minimize program costs.

Additionally, related changes would be made to order provisions governing nomination and selection of members and their alternates, terms of office, eligibility for membership, and quorum and voting requirements, to reflect the proposed dual committee structure.

6. Authorize changes in the number of Committee members and alternates, and allowing reapportionment of committee membership among districts and groups (*i.e.*, growers, handlers, and processors). Such changes would require a Committee recommendation and approval by the Department.

7. Add authority to establish assessment rates for each category of pears, including: summer/fall pears, winter pears, and all other pears. In addition, rates of assessment could be different for fresh pears and pears for processing in each category, and could include supplemental rates on individual varieties.

8. Add authority for container marking requirements for fresh pears.

9. Remove the order provision allowing grower exemptions from regulation. This is a tool no longer used by the industry and, thus, is considered obsolete.

10. Amend § 927.70, Reports, to update order language regarding confidentiality requirements to conform to language under the Act.

11. Clarify inspection requirements and adding authority to eliminate those requirements if an alternative, adequate method of ensuring compliance with quality and size standards in effect under the order can be developed.

12. Eliminate the current exemptions for pears for processing and for pears shipped to storage warehouses.

13. Provide that separate continuance referenda be held every 6 years for fresh pears and processing pears.

14. Add the authority for the Committees to conduct post-harvest research, in addition to production research and promotion (including paid advertising).

15. Update several order provisions to make them more current.

16. Revise order provisions to reflect the two-committee structure being recommended for administration of the program.

AMS also proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on January 5, 2005, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 14, 2005. No comments were filed.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that most of the proposed amendments are designed to enhance industry efficiencies and reduce costs, thereby improving grower returns.

The record indicates that there are approximately 1,850 pear growers in Oregon and Washington. Of that total, 1,345 growers report Bartlett or other summer/fall pear production, and 1,753 growers report winter pear production. Two-year average NASS figures (the 2002 crop year and preliminary figures for 2003) provides the following production profile for Washington and Oregon, respectively: bearing acres, 24,800 and 17,600; yield per acre, 16.8 tons and 11.8 tons; annual production, 417,500 tons and 207,500 tons. Total acres planted in pears for Washington and Oregon (including non-bearing acres) in 2002 were 26,586 and 22,822, respectively.

Summing average Washington and Oregon pear acreage for 2002 and 2003, and dividing by the number of growers (1,850), the estimated average acreage per grower in the two-state area is 26.7 total acres and 22.9 bearing acres. According to the 1997 Agricultural Census, the average Oregon and Washington pear grower had approximately 23 and 15 total acres, respectively. The sum of average Washington and Oregon pear production for 2002 and 2003, divided by the number of growers, yields an estimated average production per grower in the two-state area of 338 tons (676,000 pounds).

The average fresh market grower return for the two States has been between 20 and 22 cents per pound in recent years, and between 10 and 12 cents per pound for processing. Estimated 2-year average pear sales revenue per grower in the production area is approximately $101,000, which is between 1/7 and 1/8 of the revenue that would qualify a grower to be a large grower according to the SBA definition (if based on pear sales alone). According to the hearing record, roughly 75 percent of the fresh pear producers in the States of Oregon and Washington qualify as small producers. One witness stated that a 1,000-acre farm represents the threshold between a small and a large producer (a substantially different definition from what the SBA uses).

There are 55 handlers that handle fresh pears produced in Oregon and Washington; 73 percent of these fall into the SBA definition of "small business." There are five processing plants in the production area, with one in Oregon and four in Washington. All five processors are larger than the SBA's definition of small business. According to information presented by processors testifying at the hearing, roughly 90 percent of pears received for processing come from small grower entities.

The proposals put forth at the hearing would streamline industry organization, but would not result in a significant change in industry production, harvest or distribution activities. In discussing the impacts of the proposed amendments on small growers and handlers, witnesses indicated that the changes are expected to result in lower costs.

If implemented, the amendments would result in the consolidation of marketing orders 927 and 931, regulating fresh winter pears and summer/fall pears, respectively. Program coverage would also be extended to pears for processing. The combined programs would be administered by two new administrative committees, one for fresh pears and one for pears for processing. Cost savings could occur as a result of more efficient coordination of administrative activities between the two proposed committees.

Record evidence indicates the proposal to revise the order's inspection provisions may result in cost savings for handlers. Handlers within the production area typically have about 75 percent of their product inspected on a voluntary basis. The remaining 25 percent represents the amount of additional product that would be required to be inspected if regulations were in effect.

Handler witnesses also reported that inspection costs average 12½ cents per hundredweight, with a $9.00 minimum fee. In addition to paying the inspection fee, handlers may also experience delays in shipments while waiting for inspection to be completed. Handlers

indicated that such delays could be longer for smaller shippers that do not have inspectors regularly stationed at their warehouses. This proposal seeks to reduce these costs by allowing alternatives to mandatory inspection.

Traditionally, the pear industry has used end-line inspection procedures. Under this scenario, samples of packed pears are examined at the end of the production process, and the results are certified by Federally licensed inspectors. The record shows that in recent years, the Federal-State Inspection Service has developed effective, less costly alternatives to the end-line inspection program. One alternative is the "Partners in Quality" program, a documented quality assurance system. Under this program, individual packing houses must demonstrate and document their ability to pack product that meets all relevant quality requirements. Effectiveness of the program is verified through periodic, unannounced audits of each packer's system by USDA-approved auditors.

Another program recently developed is the Customer Assisted Inspection Program (CAIP). Under CAIP, USDA inspectors oversee the in-line sampling and inspection process performed by trained company staff. USDA oversight ranges from periodic visits throughout the day to a continuous on-site presence. Witnesses at the hearing testified that the fresh pear industry should be able to utilize any method of inspection acceptable to the Federal-State Inspection Service. These alternative methods have been developed by USDA as a means of reducing costs to industry. If this amendment were implemented, individual pear handlers could choose the method of inspection best suited to their operations, thereby possibly reducing costs associated with inspection.

Additionally, the authority to eliminate inspection requirements could have handler cost implications. However, any increase or decrease in costs could not be determined until specific alternative methods are developed to assure compliance with any quality and size standards in effect.

The proposal to authorize container marking requirements is not expected to result in significant cost increases for fresh pear handlers. Testimony indicated that packing facilities are already configured for labeling and container marking. Witnesses noted that there would be little, if any, need for equipment changes or additions. Thus, the proposed change is not expected to have any adverse financial impact related to handling fresh pears. It should be noted that the proposed amendment would only grant the committees authority to recommend container markings; implementation of this authority could be done through informal rulemaking in the future. The amendment itself would therefore not impose any new regulatory requirements on Oregon or Washington fresh pear handlers.

Witnesses explained that the winter, summer/fall, fresh and processed pear industries are closely inter-related. Growing, harvesting, packing, processing and marketing activities of these industries all impact each other. Thus, bringing all industry segments together under a single marketing program would be beneficial for the Oregon and Washington pear industry. Proponent witnesses stated that the combined amendments, if implemented, would help to improve the orderly marketing of product within the industry.

Similarly, coordinated marketing and distribution efforts for fresh varieties that appear in the marketplace simultaneously would assist in maximizing grower returns from each variety. While the industries currently undertake coordinated marketing and promotional activities, witnesses stated that combining these industries would further synchronize activities and facilitate industry discussions and decision-making.

The amendments would add authority to assess summer/fall pear handlers and undertake promotional activities on their behalf in a manner similar to that done currently for winter pears. When asked if assuming this authority would be acceptable to the summer/fall pear industry, witnesses supported promotional activities, including paid generic advertising, as a way to boost sales and maintain market share.

Post-harvest research would also benefit the pear industries by focusing on a section of the pear crop-to-market flow that, until now, has not benefited from research activities. Improved storage techniques resulting from industry-funded post-harvest research could benefit the pear industry by decreasing the loss of product due to storage, or by increasing the storability of product to help prolong the marketing season.

A significant market-facilitating function carried out by the current marketing order committees is the collection of statistical data. That function would continue under the amended marketing order and the authority to collect information would extend to additional varieties that are currently produced. Flexibility is provided for including other varieties in the future. Witnesses emphasized the importance and value of collecting and disseminating accurate statistical information to enable industry participants to make economic and marketing decisions.

The proposal to establish two administrative committees also includes the addition of a public member to each of those committees. The benefit of adding a non-industry, consumer perspective to committee deliberations and decision-making could prove very beneficial. Witnesses stated that this additional perspective would improve the committees' understanding of the consumer in the marketplace and could enhance committee activities aimed at increasing consumer demand for Oregon and Washington pears.

The addition of a public member to each committee is not expected to result in any substantial cost increases. While these members would be entitled to reimbursement for certain expenses allowed for under the order, this expense is neither different nor any more burdensome than the current reimbursement arrangement for committee members.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence is that most of the amendments are designed to reduce costs. While some of the proposals could impose some minimal costs, those costs would be outweighed by the benefits expected to accrue to the Oregon and Washington pear industry.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the winter pear industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Current information collection requirements for part 927 are approved by OMB under OMB number 0581–0089. Any changes in those requirements as a result of this proceeding would be submitted to OMB for approval. Witnesses stated that existing forms could be adequately modified to serve the needs of the proposed fresh and processed pear committees. While conforming changes to the forms would need to be made (such as changing the name of the committee), the functionality of the forms would remain the same. Therefore, there would be no modification to reporting and recordkeeping burdens generated from these proposed amendments.

Civil Justice Reform

The amendments to Marketing Agreement and Order 927 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the January 13, 2005, issue of the **Federal Register** (70 FR 2520) are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon and Washington." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register.**

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of winter pears grown in Oregon and Washington is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of pears in the production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 2003, through June 30, 2004.

The agent of the Secretary to conduct such referendum is hereby designated to be Susan Hiller and Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, room 385, Portland, Oregon 97204; telephone (503) 326–2724.

List of Subjects in 7 CFR Part 927

Marketing agreements, Winter pears, Reporting and recordkeeping requirements.

Dated: February 28, 2005.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon and Washington [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of pears grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pears grown in the production area; and

(5) All handling of pears grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of pears grown in Oregon and Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on January 5, 2005, and published in the **Federal Register** on January 13, 2005, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise the heading of part 927 to read as set forth above.

3. Revise § 927.1 to read as follows:

§ 927.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

4. Revise § 927.3 to read as follows:

§ 927.3 Person.

Person means an individual partnership, corporation, association, legal representative, or any other business unit.

5. Revise § 927.4 to read as follows:

§ 927.4 Pears.

(a) *Pears* means and includes any and all varieties or subvarieties of pears with the genus *Pyrus* that are produced in the production area and are classified as:

(1) Summer/fall pears including Bartlett and Starkrimson pears;

(2) Winter pears including Beurre D'Anjou, Beurre Bosc, Doyenne du Comice, Concorde, Forelle, Winter Nelis, Packham, Seckel, and Taylor's Gold pears; and

(3) Other pears including any or all other varieties or subvarieties of pears not classified as summer/fall or winter pears.

(b) The Fresh Pear Committee and/or the Processed Pear Committee, with the approval of the Secretary, may recognize new or delete obsolete varieties or subvarieties for each category.

6. Revise § 927.5 to read as follows:

§ 927.5 Size.

Size means the number of pears which can be packed in a 44-pound net weight standard box or container equivalent, or as "size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end, or such other specifications more specifically defined in a regulation issued under this part.

7. Revise § 927.6 to read as follows:

§ 927.6 Grower.

Grower is synonymous with producer and means any person engaged in the production of pears, either as owner or as tenant.

8. Revise § 927.7 to read as follows:

§ 927.7 Handler.

Handler is synonymous with shipper and means any person (except a common or contract carrier transporting pears owned by another person) who, as owner, agent, broker, or otherwise, ships or handles pears, or causes pears to be shipped or handled by rail, truck, boat, or any other means whatsoever.

9. Revise § 927.8 to read as follows:

§ 927.8 Ship or handle.

Ship or handle means to sell, deliver, consign, transport or ship pears within the production area or between the production area and any point outside thereof, including receiving pears for processing: *Provided*, That the term "'handle'" shall not include the transportation of pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market or delivery for processing.

10. Revise § 927.9 to read as follows:

§ 927.9 Fiscal period.

Fiscal period means the period beginning July 1 of any year and ending June 30 of the following year or such may be approved by the Secretary pursuant to a joint recommendation by the Fresh Pear Committee and the Processed Pear Committee.

11. Revise § 927.11 to read as follows:

§ 927.11 District.

District means the applicable one of the following-described subdivisions of the production area covered by the provisions of this subpart:

(a) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for the fresh market, districts shall be defined as follows:

(1) *Medford District* shall include all the counties in the State of Oregon except for Hood River and Wasco counties.

(2) *Mid-Columbia District* shall include Hood River and Wasco counties in the State of Oregon, and the counties of Skamania and Klickitat in the State of Washington.

(3) *Wenatchee District* shall include the counties of King, Chelan, Okanogan, Douglas, Grant, Lincoln, and Spokane in the State of Washington, and all other counties in Washington lying north thereof.

(4) *Yakima District* shall include all of the State of Washington, not included in the Wenatchee District or in the Mid-Columbia District.

(b) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for processing, districts shall be defined as follows:

(1) The State of Washington.

(2) The State of Oregon.

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee, may reestablish districts within the production area.

12. Revise § 927.13 to read as follows:

§ 927.13 Subvariety.

Subvariety means and includes any mutation, sport, or other derivation of any of the varieties covered in § 927.4 which is recognized by the Fresh Pear Committee or the Processed Pear Committee and approved by the Secretary. Recognition of a subvariety shall include classification within a varietal group for the purposes of votes conducted under § 927.52.

13. Add a new § 927.14 to read as follows:

§ 927.14 Processor.

Processor means any person who as owner, agent, broker, or otherwise, commercially processes pears in the production area.

14. Add a new § 927.15 to read as follows:

§ 927.15 Process.

Process means to can, concentrate, freeze, dehydrate, press or puree pears, or in any other way convert pears commercially into a processed product.

15. Revise the undesignated center heading preceding § 927.20 to read as follows:

Administrative Bodies

16. Revise § 927.20 to read as follows:

§ 927.20 Establishment and membership.

There are hereby established two committees to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 through 927.35:

(a) A Fresh Pear Committee, consisting of 13 individual persons as its members is established to administer order provisions relating to the handling of pears for the fresh market. Six members of the Fresh Pear Committee shall be growers, six members shall be handlers, and one member shall represent the public. For each member

there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. Each district shall be represented by one grower member and one handler member, except that the Mid-Columbia District and the Wenatchee District shall be represented by two grower members and two handler members.

(b) A Processed Pear Committee consisting of 10 members is established to administer order provisions relating to the handling of pears for processing. Three members of the Processed Pear Committee shall be growers, three members shall be handlers, three members shall be processors, and one member shall represent the public. For each member there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. District 1, the State of Washington, shall be represented by two grower members, two handler members and two processor members. District 2, the State of Oregon, shall be represented by one grower member, one handler member and one processor member.

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee may reapportion members among districts, may change the number of members and alternates, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in pear acreage within districts and within the production area during recent years;

(2) The importance of new pear production in its relation to existing districts;

(3) The equitable relationship between membership and districts;

(4) Economies to result for growers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) Other relevant factors.

17. Revise § 927.21 to read as follows:

§ 927.21 Nomination and selection of members and their respective alternates.

Grower members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the growers in such district. Handler members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the handlers in such district. Processor members and their respective alternates shall be selected by the Secretary from nominees elected by the processors. Public members for each committee shall be nominated by the Fresh Pear Committee and the Processed Pear Committee, each independently, and selected by the Secretary. The Fresh Pear Committee and the Processed Pear Committee may, each independently, prescribe such additional qualifications, administrative rules and procedures for selection for each candidate as it deems necessary and as the Secretary approves.

18. Revise § 927.22 to read as follows:

§ 927.22 Meetings for election of nominees.

(a) Nominations for members of the Fresh Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Fresh Pear Committee.

(b) Nominations for grower and handler members of the Processed Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Processed Pear Committee. Nominations for processor members of the Processed Pear Committee and their alternates shall be made at a meeting of processors at such time and place designated by the Processed Pear Committee.

19. Revise § 927.23 to read as follows:

§ 927.23 Voting.

Only growers in attendance at meetings for election of nominees shall participate in the nomination of grower members and their alternates, and only handlers in attendance at meetings for election of nominees shall participate in the nomination of handler members and their alternates, and only processors in attendance for election of nominees shall participate in the nomination of processor members and their alternates. A grower may participate only in the election held in the district in which he or she produces pears, and a handler may participate only in the election held in the district in which he or she handles pears. Each person may vote as a grower, handler or processor, but not a combination thereof. Each grower, handler and processor shall be entitled to cast one vote, on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, for each nominee to be elected.

20. Revise § 927.24 to read as follows:

§ 927.24 Eligibility for membership.

Each grower member and each of his or her alternates shall be a grower, or an officer or employee of a corporate or LLC grower, who grows pears in the district in which and for which he or she is nominated and selected. Each handler member and each of his or her alternates shall be a handler, or an officer or employee of a handler, handling pears in the district in and for which he or she is nominated and selected. Each processor member and each of their alternates shall be a processor, or an officer or employee of a processor, who processes pears in the production area.

21. Revise § 927.26 to read as follows:

§ 927.26 Qualifications.

Any person prior to or within 15 days after selection as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee shall qualify by filing with the Secretary a written acceptance of the person's willingness to serve.

22. Revise § 927.27 to read as follows:

§ 927.27 Term of office.

The term of office of each member and alternate member of the Fresh Pear Committee and the Processed Pear Committee shall be for two years beginning July 1 and ending June 30: *Provided,* That the terms of office of one-half the initial members and alternates shall end June 30, 2006; and that beginning with the 2005–2006 fiscal period, no member shall serve more than three consecutive two-year terms unless specifically exempted by the Secretary. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each June 30.

23. Revise § 927.28 to read as follows:

§ 927.28 Alternates for members.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that a member of the Fresh Pear Committee or the Processed Pear Committee and both that member's alternates are unable to attend a meeting, the member may designate any other alternate member from the same

group (handler, processor, or grower) to serve in that member's place and stead.

24. Revise § 927.29 to read as follows:

§ 927.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee to qualify, or in the event of death, removal, resignation, or disqualification of any qualified member or qualified alternate for a member, a successor for his or her unexpired term shall be nominated and selected in the manner set forth in §§ 927.20 to 927.35. If nominations to fill any such vacancy are not made within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

25. Revise § 927.30 to read as follows:

§ 927.30 Compensation and expenses.

The members and alternates for members shall serve without compensation, but may be reimbursed for expenses necessarily incurred by them in the performance of their respective duties.

26. Revise § 927.31 to read as follows:

§ 927.31 Powers.

The Fresh Pear Committee and the Processed Pear Committee shall have the following powers to exercise each independently:

(a) To administer, as specifically provided in §§ 927.20 to 927.35, the terms and provisions of this subpart:

(b) To make administrative rules and regulations in accordance with, and to effectuate, the terms and provisions of this subpart; and

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart.

27. Revise § 927.32 to read as follows:

§ 927.32 Duties.

The duties of the Fresh Pear Committee and the Processed Pear Committee, each independently, shall be as follows:

(a) To act as intermediary between the Secretary and any grower, handler or processor;

(b) To keep minutes, books, and records which will reflect clearly all of the acts and transactions. The minutes, books, and records shall be subject at any time to examination by the Secretary or by such person as may be designated by the Secretary;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions relative to pears, and to furnish to the Secretary such available information as may be requested;

(d) To perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress, approved August 24, 1935 (49 Stat. 774), as amended;

(e) To cause the books to be audited by one or more competent accountants at the end of each fiscal year and at such other times as the Fresh Pear Committee or the Processed Pear Committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports made;

(f) To appoint such employees agents, and representatives as it may deem necessary, and to determine the compensation and define the duties of each;

(g) To give the Secretary, or the designated agent of the Secretary, the same notice of meetings as is given to the members of the Fresh Pear Committee or the Processed Pear Committee;

(h) To select a chairman of the Fresh Pear Committee or the Processed Pear Committee and, from time to time, such other officers as it may deem advisable and to define the duties of each; and

(i) To submit to the Secretary as soon as practicable after the beginning of each fiscal period, a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period.

28. Revise § 927.33 to read as follows:

§ 927.33 Procedure.

(a) *Quorum and voting.* A quorum at a meeting of the Fresh Pear Committee or the Processed Pear Committee shall consist of 75 percent of the number of committee members, or alternates then serving in the place of any members, respectively. Except as otherwise provided in § 927.52, all decisions of the Fresh Pear Committee or the Processed Pear Committee at any meeting shall require the concurring vote of at least 75 percent of those members present, including alternates then serving in the place of any members.

(b) *Mail voting.* The Fresh Pear Committee or the Processed Pear Committee may provide for members voting by mail, telecopier or other electronic means, telephone, or telegraph, upon due notice to all members. Promptly after voting by telephone or telegraph, each member thus voting shall confirm in writing, the vote so cast.

29. Revise § 927.34 to read as follows:

§ 927.34 Right of the Secretary.

The members and alternates for members and any agent or employee appointed or employed by the Fresh Pear Committee or the Processed Pear Committee shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

30. Revise § 927.35 to read as follows:

§ 927.35 Funds and other property.

(a) All funds received pursuant to any of the provisions of this subpart shall be used solely for the purposes specified in this subpart, and the Secretary may require the Fresh Pear Committee or the Processed Pear Committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in his or her possession belonging to the Fresh Pear Committee or the Processed Pear Committee shall be delivered to his or her successor in office or to the Fresh Pear Committee or Processed Pear Committee, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Fresh Pear Committee or Processed Pear Committee full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

31. Remove § 927.36, Public advisors.

32. Revise § 927.40 to read as follows:

§ 927.40 Expenses.

The Fresh Pear Committee and the Processed Pear Committee are authorized, each independently, to incur such expenses as the Secretary finds may be necessary to carry out their functions under this subpart. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 927.41.

33. Revise § 927.41 to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Fresh Pear

Committee or the Processed Pear Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Fresh Pear Committee or the Processed Pear Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

(b)(1) Based upon a recommendation of the Fresh Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for the fresh market during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears, classified as winter; and one rate of assessment for any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Fresh Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the above-defined assessment classifications to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Fresh Pear Committee recommendation or other information that different rates are necessary for fresh pears or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal period for fresh market.

(2) Based upon a recommendation of the Processed Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for processing during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears, classified as winter; and one rate of assessment for any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Processed Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the above-defined assessment classifications to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Processed Pear Committee recommendation or other information that different rates are necessary for pears for processing or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new rate shall apply to any or all varieties or subvarieties of pears that are shipped during the fiscal period for processing.

(c) Based on the recommendation of the Fresh Pear Committee, the Processed Pear Committee or other available data, the Secretary may establish additional base rates of assessments, or change or modify the base rate classifications defined in paragraphs (a) and (b) of this section.

(d) The Fresh Pear Committee or the Processed Pear Committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Fresh Pear Committee or the Processed Pear Committee may impose an additional charge in the form of interest on such outstanding amount. The Fresh Pear Committee or the Processed Pear Committee, with the approval of the Secretary, shall prescribe the amount of such late payment charge and rate of interest.

(e) In order to provide funds to carry out the functions of the Fresh Pear Committee or the Processed Pear Committee prior to commencement of shipments in any season, handlers may make advance payments of assessments, which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of each variety or subvariety of pears handled by such handlers during such season. Further, payment discounts may be authorized by the Fresh Pear Committee or the Processed Pear Committee upon the approval of the Secretary to handlers making such advance assessment payments.

34. Revise § 927.42 to read as follows:

§ 927.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Fresh Pear Committee or the Processed Pear Committee may carryover such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve may be used to cover any expense authorized under this part and to cover necessary expenses of liquidation in the event of termination of this part. Any such excess not retained in a reserve or applied to any outstanding obligation of the person from whom it was collected shall be refunded proportionately to the persons from whom it was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Fresh Pear Committee or the Processed Pear Committee and its members to account for all receipts and disbursements.

35. Revise § 927.43 to read as follows:

§ 927.43 Use of funds.

From the funds acquired pursuant to § 927.41 the Fresh Pear Committee and the Processed Pear Committee, each independently, shall pay the salaries of its employees, if any, and pay the expenses necessarily incurred in the performance of the duties of the Fresh Pear Committee or the Processed Pear Committee.

36. Remove § 927.44, Collection of unpaid assessments.

37. Revise § 927.45 to read as follows:

§ 927.45 Contributions.

The Fresh Pear Committee or the Processed Pear Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Fresh Pear Committee or the Processed Pear Committee shall retain complete control of their use.

38. Revise § 927.47 to read as follows:

§ 927.47 Research and development.

The Fresh Pear Committee or the Processed Pear Committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds

collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety or subvariety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety or subvariety of pears.

39. Revise § 927.50 to read as follows:

§ 927.50 Marketing policy.

(a) It shall be the duty of the Fresh Pear Committee to investigate, from time to time, supply and demand conditions relative to pears and each grade, size, and quality of each variety or subvariety thereof. Such investigations shall be with respect to the following:

(1) Estimated production of each variety or subvariety of pears and of each grade, size, and quality thereof;

(2) Prospective supplies and prices of pears and other fruits, both in fresh and processed form, which are competitive to the marketing of pears;

(3) Prospective exports of pears and imports of pears from other producing areas;

(4) Probable harvesting period for each variety or subvariety of pears;

(5) The trend and level of consumer income;

(6) General economic conditions; and

(7) Other relevant factors.

(b) On or before August 1 of each year, the Fresh Pear Committee shall recommend regulations to the Secretary if it finds, on the basis of the foregoing investigations, that such regulation as is provided in § 927.51 will tend to effectuate the declared policy of the act.

(c) In the event the Fresh Pear Committee at any time finds that by reason of changed conditions any regulation issued pursuant to § 927.51 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

40. Revise § 927.51 to read as follows:

§ 927.51 Issuance of regulations; and modification, suspension, or termination thereof.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that regulation, in the manner specified in this section, of the shipment of fresh pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of such pears during a specified period or periods. Such regulation may:

(1) Limit the total quantity of any grade, size, quality, or combinations thereof, of any variety or subvariety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets;

(2) Limit, during any period or periods, the shipment of any particular grade, size, quality, or any combination thereof, of any variety or subvariety, of pears grown in any district or districts of the production area; and

(3) Provide a method, through rules and regulation issued pursuant to this part, for fixing markings on the container or containers, which may be used in the packaging or handling of pears, including appropriate logo or other container markings to identify the contents thereof.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of fresh pears grown in any district in order to effectuate the declared policy of the act, he or she shall so modify, suspend, or terminate such regulation. If the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation obstructs or does not tend to effectuate the declared policy of the act, he or she shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

41. Revise § 927.52 to read as follows:

§ 927.52 Prerequisites to recommendations.

(a) Decisions of the Fresh Pear Committee or the Processed Pear Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety or subvariety of pears shall be made by affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner hereinafter described in this section, of all members. Decisions of the Fresh Pear Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner hereinafter prescribed in this section, of all members.

(b) With respect to a particular variety or subvariety of pears, the applicable total number of votes shall be the aggregate of the votes allotted to the members in accordance with the following: Each member shall have one vote as an individual and, in addition, shall have a vote equal to the percentage of the vote of the district represented by such member; and such district vote shall be computed as soon as practical after the beginning of each fiscal period on either:

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for varieties or subvarieties with less than 200,000 standard boxes or container equivalents) of the average quantity of such variety or subvariety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

(2) Such other basis as the Fresh Pear Committee or the Processed Pear Committee may recommend and the Secretary may approve. The votes so allotted to a member may be cast by such member on each recommendation relative to the variety or subvariety of pears on which such votes were computed.

42. Revise § 927.53 to read as follows:

§ 927.53 Notification.

(a) The Fresh Pear Committee shall give prompt notice to growers and handlers of each recommendation to the Secretary pursuant to the provisions of § 927.50.

(b) The Secretary shall immediately notify the Fresh Pear Committee of the issuance of each regulation and of each modification, suspension, or termination of a regulation and the Fresh Pear Committee shall give prompt notice thereof to growers and handlers.

42a. Remove § 927.54, Exemption certificates.

43. Amend § 927.60 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 927.60 Inspection and certification.

(a) Handlers shall ship only fresh pears inspected by the Federal-State Inspection Service or under a program developed by the Federal-State Inspection Service: except, that such inspection and certification of shipments of pears may be performed by such other inspection service as the Fresh Pear Committee, with the approval of the Secretary, may designate. Promptly after shipment of any pears, the handler shall submit, or cause to be submitted, to the Fresh Pear Committee a copy of the inspection certificate issued on such shipment.

* * * * *

(c) The Fresh Pear Committee may, with the approval of the Secretary, prescribe rules and regulations modifying or eliminating the requirement for mandatory inspection and certification of shipments: *Provided,* That an adequate method of ensuring compliance with quality and size requirements is developed.

44. Revise § 927.65 to read as follows:

§ 927.65 Exemption from regulation.

(a) Nothing contained in this subpart shall limit or authorize the limitation of shipment of pears for consumption by charitable institutions or distribution by relief agencies, nor shall any assessment be computed on pears so shipped. The Fresh Pear Committee or the Processed Pear Committee may prescribe regulations to prevent pears shipped for either of such purposes from entering commercial channels of trade contrary to the provisions of this subpart.

(b) The Fresh Pear Committee or the Processed Pear Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

45. Revise § 927.70 to read as follows:

§ 927.70 Reports.

(a) Upon the request of the Fresh Pear Committee or the Processed Pear Committee, and subject to the approval of the Secretary, each handler shall furnish to the aforesaid committee, respectively, in such manner and at such times as it prescribes, such information as will enable it to perform its duties under this subpart.

(b) All such reports shall be held under appropriate protective classification and custody by the Fresh Pear Committee or the Processed Pear Committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the pears received and of pears disposed of, by such handler as may be necessary to verify reports pursuant to this section.

46. Revise § 927.75 to read as follows:

§ 927.75 Liability.

No member or alternate for a member of the Fresh Pear Committee or the Processed Pear Committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this subpart or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate for a member, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

47. Revise § 927.76 to read as follows:

§ 927.76 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the Government or any bureau or division in the Department of Agriculture to act as his or her agent or representative in connection with any of the provisions of this subpart.

48. Revise § 927.77 to read as follows:

§ 927.77 Effective time.

The provisions of this subpart and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 927.78.

49. Amend § 927.78 by revising paragraphs (b), (c), and (d) to read as follows:

§ 927.78 Termination.

* * * * *

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart applicable to fresh pears for market or pears for processing at the end of any fiscal period whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers of fresh pears for market or pears for processing, respectively: *Provided,* That such majority has during such period produced more than 50 percent of the volume of fresh pears for market or pears for processing, respectively, in the production area. Such termination shall be effective only if announced on or before the last day of the then current fiscal period.

(d) The Secretary shall conduct a referendum within every six-year period beginning on the date this section becomes effective, to ascertain whether continuance of the provisions of this subpart applicable to fresh pears for market or pears for processing are favored by producers of pears for the fresh market and pears for processing, respectively. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of fresh pears for market or pears for processing in the production area: *Provided,* That termination of the order shall be effective only if announced on or before the last day of the then current fiscal period.

* * * * *

50. Revise § 927.79 to read as follows:

§ 927.79 Proceedings after termination.

(a) Upon the termination of this subpart, the members of the Fresh Pear Committee or the Processed Pear Committee then functioning shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Fresh Pear Committee or the Processed Pear Committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time account for all receipts and disbursements; deliver all funds and property on hand, together with all books and records of the Fresh Pear Committee or the Processed Pear Committee and of the joint trustees, to such person as the Secretary shall direct; and, upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Fresh Pear Committee or the Processed Pear Committee or in said joint trustees.

(c) Any funds collected pursuant to this subpart and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Fresh Pear Committee or the Processed Pear Committee or its members, upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members or upon said joint trustees.

51. Revise § 927.80 to read as follows:

§ 927.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Fresh

Pear Committee or the Processed Pear Committee or by the Secretary.

[FR Doc. 05–4306 Filed 3–7–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20511; Directorate Identifier 2004–SW–32–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters. This proposal would require, within 5 hours time-in-service (TIS), locating relay K7212 and its associated cable in the overhead panel assembly and visually inspecting the electrical cable in the splice area for arcing or burns. If arcing or burns are found, this proposal would require, before further flight, replacing an unairworthy cable with an airworthy cable kit. This proposal is prompted by an overhead panel inspection report of incorrect crimping of the pins on the cable that connects to the relay. An electrical cable fault during assembly could result in arcing or burning of the cable junction at a relay in the overhead electrical panel. The actions specified by this proposed AD are intended to detect arcing or burns of the cable or relay and to prevent burning of the cable junction at a relay, a fire in the cockpit, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 9, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: (202) 493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2005–20511, Directorate Identifier 2004–SW–32–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Ente Nazionale per l'Aiazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. ENAC advises carrying out the controls and modification called for by Agusta Bollettino Tecnico No. 109EP–22, dated November 12, 2001 (BT 109EP–22).

Agusta has issued BT 109EP–22, which specifies visually inspecting the cable for the possible presence of arcing or burns. If the presence of arcing or burns are found, the BT specifies modifying the direct current electrical system bus bar connections with a kit, P/N 109–0823–01–101.

ENAC classified this service bulletin as mandatory and issued AD No. 2001–481, dated November 13, 2001, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Italy has kept us informed of the situation described above. We have examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require, within 5 hours TIS, visually inspecting the cable, P/N 109–0753–10, for arcing and burns in the splice area where it connects to relay K7212. If no arcing or burns are found, no further action would be required. If arcing or burns are found, this AD would require, before further flight, replacing the cable with an airworthy cable kit, P/N 109–0823–01–101, and testing the electrical system. The actions would be required to be done by following the service bulletin described previously.

We estimate that this proposed AD would affect 12 helicopters of U.S. registry. The proposed actions would take about 1/2 work hour to visually inspect and 2.5 work hours to replace the cable per helicopter at an average labor rate of $65 per work hour. Required parts would cost about $707.

Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $10,824 assuming the cable would be replaced on the entire fleet.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, this proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Augusta S.p.A: Docket No. FAA–2005–20511; Directorate Identifier 2004–SW–32–AD.

Applicability: Model A109E helicopters, serial numbers (S/N) 11084 through 11113 except S/N 11096, 11103, 11105, 11106, 11107, 11110, and 11111, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect arcing or burns of the cable or relay and to prevent burning of the cable junction at a relay, a fire in the cockpit, and subsequent loss of control of the helicopter, do the following:

(a) Within 5 hours time-in-service, visually inspect the cable, part number (P/N) 109–0753–10, for arcing and burns in the splice area where it connects to relay K7212. Refer to Figures 1 and 3 of the Agusta Bollettino Tecnico No. 109EP–22, dated November 12, 2001 (ABT) for the location of the cable and the relay in the cockpit overhead panel.

(b) If arcing or burns are found, before further flight, replace the cable, P/N 109–0753–10, with an airworthy cable kit, P/N 109–0823–01–101 and test the electrical system by following the Compliance Instructions, Part II, of the ABT.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD 2001–481, dated November 13, 2001.

Issued in Fort Worth, Texas, on March 1, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–4405 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20512; Directorate Identifier 2004–SW–35–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) that applies to Eurocopter France (Eurocopter) Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 helicopters. That AD currently requires inspecting the hydraulic brake hose (hose) for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose, if necessary. That AD also requires inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. This action would require the same actions as the existing AD and would add a model to the applicability. This proposal is prompted by notification by the manufacturer and the European Authority that another affected model helicopter, the Model EC155B1, may have the same unsafe condition and should be added to the existing AD. The actions specified by the proposed AD are intended to prevent failure of a hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel, and subsequent loss of control of the helicopter during a run-on landing.

DATES: Comments must be received on or before May 9, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: 202–493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2005–20512, Directorate Identifier 2004–SW–35–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On August 26, 2003, we issued AD 2003–18–03, Amendment 39–13294 (68 FR 52832, September 8, 2003). That AD requires, within the next 10 hours time-in-service (TIS), inspecting the hose for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose before further flight, if necessary. AD 2003–18–03 also requires, at the next 100-hour TIS inspection, inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. That action was prompted by a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe. The requirements of that AD are intended to prevent failure of a hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel, and subsequent loss of control of the helicopter during a run-on landing.

Since issuing that AD, the manufacturer has issued a revision to its Alert Service Bulletin No. 32A004 to now include the Model EC155B1 helicopters that we did not include in the applicability of that AD.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155 B1 helicopters as well as the other affected model helicopters. The DGAC has advised in AD No. F–2004–099, dated July 7, 2004, that a report of a wheel brake hose compression due to interference with a clamp that attaches the emergency flotation gear pipe led to the issue of AD No. 2002–475–007, which defined measures applicable to EC 155 version B aircraft. DGAC AD No. 2002–475–007 was cancelled by its Revision 1, and the DGAC issued AD No. F–2004–099, dated July 7, 2004, which supersedes and covers the requirements of AD 2002–475–007, extends its affectivity to EC 155 version B1 aircraft, and refers to revised service information, with no change to the technical content. The DGAC issued that AD after Eurocopter issued Alert Service Bulletin No. 32A004, Revision 1, dated June 16, 2004. The revised service bulletin added the Eurocopter Model EC155B1 to it's applicability but didn't change any technical content.

Eurocopter has also replaced Alert Telex No. 32.00.09, dated July 31, 2002, with Alert Service Bulletin No. 32.00.09, dated October 27, 2003. The service bulletin applies to Eurocopter Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters and was issued to replace Alert Telex No. 32.00.09, dated July 31, 2002, and contained no technical changes. The DGAC classified this service bulletin as mandatory and issued AD No. F–2002–474–058 R1, dated March 3, 2004. The proposed AD contains references to both of these revised documents.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would supersede AD 2003–18–03. The proposed AD would add the Eurocopter Model EC155B1 helicopters to the applicability and continue to require, within the next 10 hours TIS, inspecting the hose for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose before further flight, if necessary. The proposed AD would also continue to require, at the next 100-hour TIS inspection, inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. The inspections would have to be done in accordance with the alert service bulletins described previously.

We estimate that this proposed AD would affect 48 helicopters of U.S. registry. It would take approximately 5 work hours per helicopter to accomplish each inspection and 5 work hours to replace any parts, as necessary. The average labor rate is $65 per work hour. Required parts would cost approximately $459 for the hose; if replacing the hose on two sides is required, the cost would be approximately $918. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,568 per helicopter, or $56,448 for the entire fleet, assuming 75 percent of the fleet (36 helicopters) is equipped with emergency flotation gear, that one inspection is done, and that the hose on two sides is replaced on those 36 helicopters).

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, this proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–13294 (68 FR 52832, September 8, 2003), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. FAA–2005–20512; Directorate Identifier 2004 SW–35. Supersedes AD 2003–18–03, Amendment 39–13294, Docket No. 2002–SW–53–AD.

Applicability: Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, with emergency flotation gear installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a hydraulic brake hose (hose), resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel and subsequent loss of control of the helicopter during a run-on landing, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect the hose for crazing, pinching, distortion, or leaks as illustrated in Area A of Figure 1 of Eurocopter Alert Service Bulletin No. 32.00.09, dated October 27, 2003 (ASB No. 32.00.09), for Model SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, and Eurocopter Alert Service Bulletin No. 32A004, Revision 1, dated June 16, 2004 (ASB No. 32A004R1), for Model EC 155B and EC155B1 helicopters.

(b) If crazing, pinching, distortion, or leaks exist, replace the hose with an airworthy hose before further flight.

(c) At the next 100-hour TIS inspection, inspect the hose and the emergency flotation gear pipe to ensure adequate clearance and adjust the landing gear leg, if necessary, in accordance with the Operational Procedure, paragraph 2.B.2., of ASB No. 32.00.09 or ASB No. 32A004R1, as applicable.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. F–2002–474–058 R1, dated March 3, 2004 and AD No. F–2004–099, dated July 7, 2004.

Issued in Fort Worth, Texas, on March 1, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–4406 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20481; Directorate Identifier 2004–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposed AD would require operators to install torque tube catchers on the control columns of the flight controls. This proposed AD is prompted by the discovery that a single malfunction of the torque tube could result in both flight control columns being supported by only one self-aligning bearing. We are proposing this AD to prevent the torque tube from fouling against the underfloor control cables, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 7, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department

of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20481; the directorate identifier for this docket is 2004–NM–183–AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20481; Directorate Identifier 2004–NM–183–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. TCCA advises that a single shear failure in the torque tube of the control column, inboard of the self-aligning bearings on the affected airplanes, could result in the pilot's and co-pilot's control column being supported by only one self-aligning bearing. This condition, if not corrected, could cause the torque tube to foul against the underfloor control cables and result in reduced controllability of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletin S.B.8–27–90, dated October 28, 2003, which describes procedures for installing torque tube catchers on the control columns of the flight controls. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued airworthiness directive CF–2004–08, dated April 20, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require operators to install torque tube catchers on the control columns of the flight controls. The proposed AD would require you to use the Bombardier service information described previously to perform these actions, except as discussed under "Difference Between the Proposed AD and Canadian AD."

Difference Between the Proposed AD and Canadian Airworthiness Directive

While the Canadian airworthiness directive applies to certain Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 series airplanes, this AD applies only to certain Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. Model DHC–8–314 series airplanes are not type certificated for operation in the United States.

Costs of Compliance

This proposed AD would affect about 160 airplanes of U.S. registry. The proposed actions would take about 9 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $490 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $172,000, or $1,075 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD will not have federalism implications under Executive Order 13132. This proposed AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this proposed AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES**

section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–20481; Directorate Identifier 2004–NM–183–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8 102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 003 through 584 inclusive, certificated in any category.

Unsafe Condition

(d) This AD is prompted by the discovery that a single malfunction of the torque tube could result in both flight control columns being supported by only one self-aligning bearing. We are issuing this AD to prevent the torque tube from fouling against the underfloor control cables, which could result in reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation

(f) Within 5,000 flight hours after the effective date of this AD, install control column torque tube catchers on the control columns of the flight controls by incorporating Modsum 8Q101338 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin S.B.8–27–90, dated October 28, 2003.

Alternative Methods of Compliance

(g) The Manager, New York Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Canadian airworthiness directive CF–2004–08, dated April 20, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on February 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4407 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20500; Directorate Identifier 2004–NM–235–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A320 series airplanes. This proposed AD would require post-maintenance bleeding of accumulated air from, or ground functional testing of, the ram air turbine (RAT) system; modifying and reidentifying the airborne ground check module of the RAT system; and replacing the RAT reducer assembly if applicable. This proposed AD is prompted by reports of unsuccessful in-flight RAT tests during which a deployed RAT failed to pressurize the blue hydraulic circuit of the RAT system. We are proposing this AD to prevent failure of the RAT during an in-flight emergency, which could lead to loss of hydraulic and electrical power and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 7, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20500; the directorate identifier for this docket is 2004–NM–235–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20500; Directorate Identifier 2004–NM–235–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that several operators have reported unsuccessful in-flight ram air turbine (RAT) system tests during which a deployed RAT failed to pressurize the blue hydraulic circuit of the RAT system. Investigation revealed that the warming flow jet plug installed in the RAT main housing can allow free air to accumulate within the RAT system, leading to RAT pump cavitations. This condition, if not corrected, could result in failure of the RAT during an in-flight emergency, which could lead to loss of hydraulic and electrical power and reduced controllability of the airplane.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A320–29A1112, Revision 01, dated April 8, 2004. The AOT describes procedures for either bleeding accumulated air from the RAT system or doing ground functional testing of the RAT after performing any maintenance on the blue hydraulic circuit of the RAT system.

Airbus has issued Service Bulletin A320–29–1111, dated June 29, 2004. The service bulletin describes procedures for modifying and reidentifying the airborne ground check module (AGCM) of the RAT system; and, for certain airplanes, replacing the reducer assembly with a new reducer assembly. Accomplishing the actions of the service bulletin would end the need for the actions specified by the AOT.

Airbus Service Bulletin A320–29–1111 refers to Hamilton Sundstrand Service Bulletin ERPS13GCM–29–5, dated June 29, 2004, as an additional source of service information for modifying and reidentifying the AGCM.

The DGAC mandated the service information and issued French airworthiness directive F–2004–150, dated September 1, 2004, to ensure the continued airworthiness of these airplanes in France.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 130 airplanes of U.S. registry.

The proposed system bleed/functional test would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $8,450, or $65 per airplane.

The proposed AGCM replacement would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would be supplied at no charge. Based on these figures, the estimated cost of this proposed action for U.S. operators is $16,900, or $130 per airplane.

The proposed reducer replacement, for subject airplanes, would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would be supplied at no charge. Based on these figures, the estimated cost of this proposed action is $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–20500; Directorate Identifier 2004–NM–235–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320 series airplanes, certificated in any category; equipped with Hamilton Sundstrand airborne ground check module (AGCM) having part number 769104, 769105, or 760106 installed; except those airplanes on which Airbus Modification 27189 has been done in production and on which Airbus Modification 28413 has not been done.

Unsafe Condition

(d) This AD was prompted by reports of unsuccessful in-flight ram air turbine (RAT) tests during which a deployed RAT failed to pressurize the blue hydraulic circuit of the RAT system. We are issuing this AD to prevent failure of the RAT system during an in-flight emergency, which could lead to loss of hydraulic and electrical power and reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

RAT System Bleeding/Functional Test

(f) For airplanes on which maintenance has been performed on the blue hydraulic circuit as of the effective date of this AD: Within 3 days or 20 flight hours after the effective date of this AD, whichever occurs first, bleed accumulated air from, or perform a ground functional test of, the RAT system; by accomplishing all the actions specified in Airbus All Operators Telex (AOT) A320–29A1112, Revision 01, dated April 8, 2004. Thereafter, bleed the blue hydraulic circuit as specified in the AOT within 3 days or 20 flight hours after performing any maintenance on the blue hydraulic circuit.

(g) For airplanes on which maintenance has not been performed on the blue hydraulic circuit as of the effective date of this AD: Bleed the blue hydraulic circuit as specified in the AOT within 3 days or 20 flight hours after performing any maintenance on the blue hydraulic circuit.

Replacement of AGCM and Reducer

(h) Within 35 months after the effective date of this AD, replace the AGCM with a modified and reidentified AGCM; and replace the reducer with a new reducer as applicable; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1111, dated June 29, 2004. Replacing the AGCM, and the reducer as applicable, ends the actions required by paragraphs (f) and (g) of this AD.

Note 1: Airbus Service Bulletin A320–29–1111 refers to Hamilton Sundstrand Service Bulletin ERPS13GCM–29–5, dated June 29, 2004, as an additional source of service information for modifying and reidentifying the AGCM.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) French airworthiness directive F–2004–150, dated September 1, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4408 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20501; Directorate Identifier 2004–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all EMBRAER Model ERJ 170 series airplanes. This proposed AD would require inspecting the engine fire handles of the overhead panel in the cockpit, and replacing the engine fire handles if necessary. This proposed AD is prompted by reports of failure of the internal circuit of the engine fire handles of the overhead panel in the cockpit. We are proposing this AD to prevent failure of the internal circuit of the engine fire handles, which could result in failure of the fuel shut-off valves to close and failure of the fire extinguishing agent to discharge in the event of an engine fire.

DATES: We must receive comments on this proposed AD by April 7, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20501; the directorate identifier for this docket is 2004–NM–251–AD.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20501; Directorate Identifier 2004–NM–251–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can

review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model ERJ 170 series airplanes. The DAC advises that the internal circuit of the engine fire handles of the overhead panel in the cockpit failed due to a design error of the flex circuit subassembly that was introduced with the engine fire handles. This condition, if not corrected, could result in failure of the fuel shut-off valves to close and failure of the fire extinguishing agent to discharge in the event of an engine fire.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–26–0001, Revision 02, dated January 11, 2005. The service bulletin describes procedures for inspecting the engine fire handles of the overhead panel in the cockpit to determine the part number (P/N) installed, and replacing the engine fire handles with new ones if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2004–10–02, dated October 30, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 24 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,560, or $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–20501; Directorate Identifier 2004–NM–251–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of failure of the internal circuit of the engine fire handles of the overhead panel in the cockpit. We are issuing this AD to prevent failure of the internal circuit of the engine fire handles, which could result in failure of the fuel shut-off valves to close and failure of the fire extinguishing agent to discharge in the event of an engine fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first, inspect the engine fire handles of the overhead panel in the cockpit to determine the part number (P/N) installed, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–26–0001, Revision 02, dated January 11, 2005.

(1) If only engine fire handles having P/N 1–7054–1 (left-hand side) and P/N 2–7054–1 (right-hand side) are found installed, no further action is required by this paragraph.

(2) If any engine fire handle having P/N 1–7054–2 (left-hand side) or P/N 2–7054–2 (right-hand side) is found installed, before further flight, replace the engine fire handle with a new engine fire handle having P/N 1–7054–1 (left-hand side) or P/N 2–7054–1 (right-hand side), as applicable, in accordance with the Accomplishment Instructions of the service bulletin.

(g) Applicable actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 170–26–0001, dated October 6, 2004; or Revision 01, dated November 3, 2004; are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a engine fire handle having P/N 1–7054–2 (left-hand side) or P/N 2–7054–2 (right-hand side), on any airplane.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) Brazilian airworthiness directive 2004–10–02, dated October 30, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4409 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 34]

RIN 1513–AA64

Proposed Fort Ross-Seaview Viticultural Area (2003R–191T)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 27,500-acre Fort Ross-Seaview viticultural area in western Sonoma County, California. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before May 9, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 34, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Fort Ross-Seaview Petition

Patrick Shabram, on his own behalf and on behalf of David Hirsch of Hirsch Vineyards, submitted a petition to establish the "Fort Ross-Seaview" American viticultural area in western Sonoma County, California. The proposed Fort Ross-Seaview viticultural area is within the existing North Coast (27 CFR 9.30) and Sonoma Coast (27 CFR 9.116) viticultural areas. The area is close to the Pacific Ocean about 65 miles north-northwest of San Francisco. The petitioner states that the proposed

area currently has 18 commercial vineyards on 506 acres.

Name Evidence

Russian fur trappers established Fort Ross in 1812 on a bluff overlooking the Pacific Ocean, just west of the boundary of the proposed Fort Ross-Seaview viticultural area. The fort served as Russia's southern-most outpost in the Pacific Northwest until it was abandoned in 1841. The site of the fort has been a California State historical park since 1906, and, today, the reconstructed fort is open to the public. Seaview is a small, unincorporated community and real estate development located along the Pacific Coast Highway (State Route 1), a short distance northwest of the Fort Ross historical park. Much of the Seaview community is within the proposed viticultural area.

United States Geological Survey (USGS) and California State Automobile Association maps note the Fort Ross and Seaview names. The 1978 Fort Ross USGS quadrangle map covers a substantial portion of the proposed viticultural area and shows Fort Ross Road winding through the southern portion of the proposed area. The map also shows Seaview Road and Seaview Cemetery within the proposed area. The October 2000 California State Automobile Association Mendocino and Sonoma Coast map identifies Fort Ross and shows Fort Ross and Seaview Roads.

Local winegrowers, the petitioner explains, commonly refer to the area as "Fort Ross-Seaview" to better define its remote location. According to Daniel Schoenfeld, a resident of the area since 1972 and a grape grower for 22 years, the Fort Ross-Seaview name is used to identify the proposed area and eliminate possible confusion with other geographic names. He also notes an increase in the use of the Fort Ross-Seaview name in the past several years. For example, Charles L. Sullivan's 2001 history of western Sonoma County viticulture, "A Miraculous Intersection," uses the term "Fort Ross-Seaview district" to describe the land in and near the proposed viticultural area. Mr. Schoenfeld further explains that, historically and in modern times, all three names, "Fort Ross," "Seaview," and "Fort Ross-Seaview," have served to identify the area.

Boundary Evidence

The petition notes that viticulture within the proposed Fort Ross-Seaview viticultural area dates to 1817 when Captain Leontii Andreianovich Hagemeister brought Peruvian grape cuttings to Fort Ross. The petition states that modern viticulture began in the proposed Fort Ross-Seaview area in 1973 when Michael Bohan planted 2 acres of grapes 3 miles east of Fort Ross, between Seaview Road and Creighton Ridge. In 1974, he planted another 15 acres, and in 1976 he started selling his grape harvest to wineries in Sonoma and Santa Cruz Counties, California. David Hirsch states in an April 15, 2003, letter that he planted a vineyard in 1980 between the 1,300- and 1,600-foot elevations in the Fort Ross-Seaview area. As of spring 2003, the petition notes that 18 commercial vineyards covering 506 acres exist within the proposed viticultural area.

The petitioner states that the boundary of the proposed Fort Ross-Seaview viticultural area incorporates the higher elevations of the hills and mountains located along the Pacific coast near Fort Ross and Seaview in western Sonoma County. The 920-foot elevation line defines much of the proposed area's boundary, the petitioner explains, since it marks the separation between the higher, sunnier elevations of the proposed area and the surrounding lower, foggy elevations. According to the petitioner, the lack of coastal marine fog at the higher elevations within the proposed Fort Ross-Seaview viticultural area gives it a unique microclimate.

David Hirsch notes in an April 2003 letter that, due to the lack of coastal fog above the 920-foot contour, the proposed viticultural area receives more hours of solar radiation than the surrounding lower elevations, where grapes fail to grow. Hirsch states, "[d]uring the summer, fog usually covers the Sonoma Coast during the morning and burns off about noon. This marine fog layer seldom rises above 900 feet which explains why there are no vineyards below this elevation in the proposed area." The petitioner adds that the Pacific Ocean's moderating temperatures reduce the risk of nighttime freeze and frost within the proposed viticultural area.

Growing Conditions

Topography

The proposed Fort Ross-Seaview viticultural area is composed of steep, mountainous terrain that includes canyons, narrow valleys, ridges, and 800- to 1,800-foot peaks, as shown on the USGS maps of the area. Elevations within the proposed area generally run between 920 and 1,800 feet. Light-duty and unimproved roads and jeep trails meander through the area, and creeks and ponds are scattered within it as well. The petitioner explains that vineyards within the proposed area are generally located on rounded ridges with summits that extend above 1,200 feet.

The USGS maps provided by the petitioner show the western boundary of the proposed Fort Ross-Seaview viticultural area to be located between 0.5 mile and 2.5 miles from the Pacific coastline and mostly at or above the 920-foot elevation line. The maps also show that the San Andreas Rift Zone runs generally parallel to the proposed western boundary line, between the boundary and the Pacific coastline.

Soils

A large variety of soils exist within the proposed Fort Ross-Seaview viticultural area, according to the petitioner. No predominant soil type exists, the petitioner explains, and diverse soil series are common to the area, including Yorkville, Boomer, Sobrante, and Laughlin. The Hugo Series soils are abundant in the proposed Fort Ross-Seaview viticultural area and are common in the mountain ranges of Sonoma County and in Mendocino County to the north, according to the petitioner. These soils, derived from sandstone and shale parent material, as noted on pages 44 and 45 of the 1990 Soil Survey of Sonoma County, California, are well-drained, very gravelly loams.

The petitioner emphasizes that the majority of soils are derived from metamorphic rock, which is altered by heat, pressure, shearing, or infusion. These metamorphic soils are common in the proposed area, especially east of the San Andreas Rift Zone. M.E. Huffman and C.F. Armstrong documented these soils on California Department of Conservation Division of Mines and Geology maps, which were reprinted in 2000.

Climate

As noted above in the *Boundary Evidence* discussion, the petitioner states that the proposed Fort Ross-Seaview viticultural area has a unique microclimate due to the lack of marine fog within its boundary. The proposed area, which is generally above 900 feet in elevation, receives more sun and is warmer than the surrounding land below 900 feet. The surrounding, lower elevation land is cooler and has a shorter growing season than the proposed area due to the prevalence of marine fog below the 900-foot elevation line.

Robert Sisson, former County Director and Farm Advisor for Sonoma County, studied the coastal fog and its effects on agriculture for more than three decades

according to Carol Ann Lawson in her 1976 University of California-Davis M.A. thesis, "Guidelines for Assessing the Viticultural Potential of Sonoma County: An Analysis of the Physical Environment." According to Lawson and the petitioner, Sisson understood the climatic diversity of the lower elevation, foggy coastal areas that surround some of the higher, sunnier elevations. Sisson's work substantiates the warmer climate classification for the high elevations within the proposed Fort Ross-Seaview viticultural area, according to Lawson and the petitioner.

Lawson's 1976 map "Lines of Heaviest and Average Maximum Fog Intrusion for Sonoma County" places the proposed Fort Ross-Seaview viticultural area in the heaviest fog intrusion area, which spans the entire coast of Sonoma County. While this map's heavy fog line does not detail the higher elevations and the contrasting warmer and sunnier microclimates, Sisson's climatic data is depicted on the "Climate Types of Sonoma County" map (Vassen, 1986), which documents that the proposed viticultural area is in the "Coastal Cool" area. According to the petitioner, this region grows some grape varietals, in contrast to the surrounding lower, cooler and less sunny "Marine" climate areas that cannot sustain viticulture.

The north California ocean water, rarely above 60 degrees Fahrenheit, as the petitioner notes, creates a fogbank from mid-spring to fall. This fog moves inland through lower-elevation mountain gaps and valleys. The fog cools temperatures and reduces sunshine in the early morning and late afternoon at elevations of 900 feet or less, according to the petitioner. Also, the marine-influenced fog rarely rises above the 900-foot elevation line in this Pacific coastal region. Conversely, the proposed viticultural area, primarily between the 920- and 1,800-foot elevation lines, has more daily sun, warmer temperatures, and less fog during the growing season than the surrounding, lower areas.

The established Sonoma Coast and Russian River Valley viticultural areas, unlike the proposed Fort Ross-Seaview viticultural area, generally have marine fog, which, the petitioner notes, creates a cool, less sunny climate within those areas. Although the proposed Fort Ross-Seaview viticultural area is within the much larger Sonoma Coast viticultural area and not far from the Russian River Valley viticultural area, the petitioner documents that it has a warmer microclimate despite its high elevation.

The petitioner provides a 1995 comparison of temperatures between Fort Ross State Historical Park at the 112-foot elevation just west of the proposed boundary, and Campmeeting Ridge at the 1,220-foot elevation inside the proposed area's boundary. The comparison shows that the higher elevation ridge within the proposed Fort Ross-Seaview area has warmer temperatures from May through October. Campmeeting Ridge has both warmer daily high temperatures May through October and warmer daily low temperatures in June, and in August through October when compared to the lower elevations of the State park. This comparison, based on National Climatic Data Center information, shows significant growing season temperature variations between the lower and higher elevations.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, "Fort Ross-Seaview," will be recognized as a name of viticultural significance, as will its abbreviated form, "Ft. Ross-Seaview."

In addition, with the establishment of the Fort Ross-Seaview viticultural area, the name "Fort Ross," or its abbreviated form, "Ft. Ross," standing alone will be considered a term of viticultural significance because consumers and vintners could reasonably attribute the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Fort Ross-Seaview viticultural area to the name Fort Ross itself. We note in this regard that searches of the Geographic Names Information System maintained by the U.S. Geological Survey and the Internet reveal that the names "Fort Ross" and "Ft. Ross" appear to apply only to the region of Sonoma County, California, where the proposed Fort Ross-Seaview viticultural area is located. Similar searches show that the name "Seaview" standing alone is used for a number of places across the United States. We therefore do not believe that "Seaview" standing alone would have viticultural significance. Also see 27 CFR 4.39(i)(3), which provides that a name has viticultural significance when determined by a TTB officer. Therefore, the proposed part 9 regulatory text set forth in this document specifies that "Fort Ross-Seaview," "Ft. Ross-Seaview," "Fort Ross," and "Ft. Ross" as terms of viticultural significance for purposes of part 4 of the TTB regulations.

If this proposed text is adopted as a final rule, wine bottlers using "Fort Ross-Seaview," "Ft. Ross-Seaview," "Fort Ross," or "Ft. Ross" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use one of those names as an appellation of origin.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use as an appellation of origin a viticultural area name or other viticulturally significant term that appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name "Fort Ross-Seaview," Ft. Ross-Seaview," "Fort Ross," or "Ft. Ross" for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Fort Ross-Seaview viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, climatic, boundary and other required information submitted in support of the petition. In addition, we are interested

in receiving comments on our proposal to also identify "Ft. Ross-Seaview," "Fort Ross," and "Ft. Ross," as terms of viticultural significance. While we do not believe that "Seaview" standing alone would have viticultural significance, we also seek comments on this point. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Fort Ross-Seaview viticultural area on brand labels that include the words "Fort Ross-Seaview," "Ft. Ross-Seaview," "Fort Ross," or "Ft. Ross" as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5- by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *E-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5- by 11-inch paper.
- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "Send comments via e-mail" link under this notice number.
- *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copies of this notice and the posted comments, visit *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "View Comments" link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Amend subpart C by adding § 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.____ Fort Ross-Seaview.

(a) *Name.* The name of the viticultural area described in this section is "Fort Ross-Seaview". For purposes of part 4 of this chapter, "Fort Ross-Seaview", "Ft. Ross-Seaview", "Fort Ross", and "Ft. Ross" are terms of viticultural significance.

(b) *Approved Maps.* The five United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Fort Ross-Seaview viticultural area are titled—

(1) Arched Rock, California—Sonoma Co., 1977 edition;

(2) Fort Ross, California—Sonoma Co., 1978 edition;

(3) Plantation, California—Sonoma Co., 1977 edition;

(4) Annapolis, California—Sonoma Co., 1977 edition; and

(5) Tombs Creek, California—Sonoma Co., 1978 edition.

(c) *Boundary.* The Fort Ross-Seaview viticultural area is located in Sonoma County, California. The area's boundary is defined as follows:

(1) The beginning point is on the Arched Rock map at the intersection of the 920-foot elevation line and Meyers Grade Road, T8N, R12W. From the beginning point, the boundary line proceeds northwest on Meyers Grade Road about 4.3 miles to the road's intersection with Seaview and Fort Ross Roads, T8N, R12W (Fort Ross Quadrangle); then

(2) Continues northwest on Seaview Road about 6.4 miles to its intersection with Kruse Ranch and Hauser Bridge

Roads in the southeast corner of section 28, T9N, R13W (Plantation Quadrangle); then

(3) Continues west on Kruse Ranch Road about 0.2 mile to its intersection with the 920-foot elevation line, T9N, R13W (Plantation Quadrangle); then

(4) Proceeds northerly then easterly along the 920-foot elevation line about 2.2 miles to its intersection with Hauser Bridge Road, section 27, T9N, R13W (Plantation Quadrangle); then

(5) Proceeds east on Hauser Bridge Road about 1.5 miles to its intersection with the 920-foot elevation line, section 23, T9N, R13W (Plantation Quadrangle); then

(6) Proceeds northwesterly then easterly along the 920-foot elevation line about 7.8 miles to its intersection with an unnamed, unimproved road that forks to the south from Tin Barn Road, section 8, T9N, R13W (Annapolis Quadrangle); then

(7) Proceeds east then north along the unnamed, unimproved road to its intersection with Tin Barn Road, section 8, T9N, R13W (Annapolis Quadrangle); then

(8) Proceeds east in a straight line about 1.55 miles to the line's intersection with Haupt Creek, section 10, T9N, R13W (Annapolis Quadrangle); then

(9) Follows Haupt Creek southeasterly about 1.2 miles to its junction with the western boundary of section 11, T9N, R13W (Annapolis Quadrangle); then

(10) Proceeds straight north along the western boundary of section 11 about 0.9 mile to the northwest corner of section 11 (near Buck Spring), T9N, R13W (Annapolis Quadrangle); then

(11) Proceeds 1.1 miles straight east along the northern boundary of section 11 and then section 12 to the section line's intersection with an unnamed, unimproved road along Skyline Ridge, section 12, T9N, R13W (Annapolis Quadrangle);

(12) Follows the unnamed, unimproved road southeast about 1.3 miles to the road's intersection with the 1,200-foot elevation line, section 13, T9N, R13W (Tombs Creek Quadrangle); then

(13) Proceeds southeasterly along the 1,200-foot elevation line about 0.6 mile its intersection with Allen Creek, section 18, T9N, R12W (Tombs Creek Quadrangle); then

(14) Follows Allen Creek north about 0.2 mile to its intersection with the 920-foot elevation line, section 18, T9N, R12W (Tombs Creek Quadrangle); then

(15) Proceeds easterly and then southeasterly along the meandering 920-foot elevation line to its intersection with Jim Creek, south of a 1,200-foot plateau named The Island, section 21, T9N, R12W (Fort Ross Quadrangle); then

(16) Follows Jim Creek southeast about 0.7 mile to its intersection with the northern boundary of section 27, T9N, R12W (Fort Ross Quadrangle); then

(17) Proceeds along the northern boundary of section 27, T9N, R12W, to the northeast corner of that section (Fort Ross Quadrangle); then

(18) Proceeds south along the eastern boundaries of sections 27 and 34, T9N, R12W, and continues south along the eastern boundaries of sections 3, 10, 15, and 22, T8N, R12W, to the intersection of the eastern boundary of section 22 and Fort Ross Road (Fort Ross Quadrangle); then

(19) Proceeds east a short distance on Fort Ross Road to the road's intersection with the Middle Branch of Russian Gulch Creek, and then follows the creek south for about 1.2 miles to the creek's intersection with the 920-foot elevation line, east-southeast of the Black Mountain Conservation Camp, section 26, T8N, R12W (Fort Ross Quadrangle); then

(20) Proceeds southerly along the meandering 920-foot elevation line about 8.1 miles, passing between the Fort Ross and Arched Rock maps as the 920-foot elevation line meanders north then south around the West Branch of Russian Gulch, and returns to the beginning point at Meyers Grade Road, T8N, R12W (Arched Rock Quadrangle).

Dated: February 20, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–4390 Filed 3–7–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 35; Re: Notice No. 29]

RIN 1513–AA72

Proposed Realignment of the Santa Lucia Highlands and Arroyo Seco Viticultural Areas (2003R–083P); Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; comment period extension.

SUMMARY: In response to an industry request, the Alcohol and Tobacco Tax and Trade Bureau extends the comment period for Notice No. 29, Proposed Realignment of the Santa Lucia Highlands and Arroyo Seco Viticultural Areas, a notice of proposed rulemaking published in the **Federal Register** on January 25, 2005, for an additional 60 days.

DATES: We must receive written comments regarding Notice No. 29 on or before May 25, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 29, P.O. Box 14412, Washington, DC 20044–4412.
- (202) 927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this extension notice, Notice No. 29, the petition, the appropriate maps, and any comments we receive on Notice No. 29 by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call (202) 927–2400. You may also access copies of this extension notice, Notice No. 29, and the related comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., #158, Petaluma, CA 94952; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION: Paul Thorpe, on behalf of E.&J. Gallo Winery, submitted a petition to TTB requesting the realignment of a portion of the common boundary between the established Santa Lucia Highlands viticultural area (27 CFR 9.139) and the established Arroyo Seco viticultural area (27 CFR 9.59). Both viticultural areas are within the Monterey viticultural area (27 CFR 9.98) in Monterey County, California, which is in turn within the larger multi-county Central Coast viticultural area (27 CFR 9.75). The proposed realignment would transfer about 200 acres from the Arroyo Seco viticultural area to the Santa Lucia Highlands area.

In Notice No. 29, published in the **Federal Register** (70 FR 3333) on Monday, January 24, 2005, we described the petitioner's reasons for the proposed realignment and requested comments on that proposal on or before March 25, 2005.

On February 11, 2005, we received a request from Pete Downs of Kendall-Jackson Winery to extend the comment period for Notice No. 29. Mr. Downs requested the extension in order to study the proposal in greater depth.

In response to this request, we extend the comment period for Notice No. 29 an additional 60 days from the original closing date. Therefore, comments on Notice No. 29 are now due on or before May 25, 2005.

Drafting Information

Nancy Sutton of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: February 25, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–4483 Filed 3–7–05; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 311–0471b; FRL–7878–4]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from wood combustion and the recision of a rule exempting wet plumes from opacity measurement. We are proposing approval of a local rule and a recision of a rule that administer regulations and regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 7, 2005.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revision and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local KCAPCD Rule 416.1 and recision of Rule 403. In the Rules section of this **Federal Register,** we are approving this local rule and rule recision in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 8, 2005.

Karen Schwinn,

Acting Regional Administrator, Region IX.

[FR Doc. 05–4341 Filed 3–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA–01–003; FRL–7881–9]

Approval and Promulgation of State Implementation Plans; State of Washington; Spokane Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA invites public comment on its proposal to approve Washington State Implementation Plan (SIP) revisions submitted to EPA by the State of Washington on September 20, 2001, September 26, 2001 and November 22, 2004. The revisions consist of changes to the State of Washington Inspection and Maintenance Program and a Plan for attaining carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS) in the Spokane Serious CO Nonattainment Area.

The EPA also invites public comment on its proposal to approve certain source-specific SIP revisions relating to Kaiser Aluminum and Chemical Corporation.

DATES: Written comments must be received by April 7, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. WA–01–003, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *R10aircom@epa.gov*.
- Fax: (206)–553–0110.
- Mail: Office of Air, Waste, and Toxics, Environmental Protection Agency, Mail code: OAWT–107, 1200 Sixth Ave., Seattle, Washington 98101.
- Hand Delivery: Environmental Protection Agency, Office of Air, Waste, and Toxics, OAWT–107, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. WA–01–003. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to I. General Information in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Publicly available docket materials are available in hard copy at the Office of Air, Waste, and Toxics, EPA Region 10, Mail code: OAWT–107, 1200 Sixth Ave., Seattle, Washington 98101, open from 8 a.m.–4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number is (206) 553–4273. Copies of the State's request and other information relevant to this action are also available at the State of Washington Department of Ecology, P.O. Box 47600, Olympia, Washington, 98504–7600.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air, Waste and Toxics (OAWT–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–4273.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

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I. General Information

What Should I Consider as I Prepare My Comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI-and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background Information

A. What NAAQS Is Considered in Today's Proposal?

CO is among the ambient air pollutants for which EPA has established a health-based standard and is the pollutant that is the subject of this action. CO is a colorless, odorless gas emitted in combustion processes. CO enters the bloodstream through the lungs and reduces oxygen delivery to the body's organs and tissues. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

Under section 109(a)(1)(A) of the Act, we have established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Spokane has never exceeded the

1-hour NAAQS; therefore, the Spokane CO Plan and this proposal address only the 8-hour CO NAAQS. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average per monitoring site exceeds 9 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances) in either year of a consecutive 2-year period.

The area has been monitoring ambient air for CO levels since the early 1980's. In 1987, the Spokane area recorded 87 exceedances of the 8-hour NAAQS; however, the area has recorded no violations of the standard since 1995.

B. What Is the History Behind This Proposal?

Upon enactment of the 1990 Clean Air Act Amendments (the Act), areas meeting the requirements of section 107(d) of the Act were designated nonattainment for CO by operation of law. Under section 186(a) of the Act, each CO nonattainment area was also classified by operation of law as either moderate or serious depending on the severity of the area's air quality problems. Spokane was classified as a moderate CO nonattainment area. Moderate CO nonattainment areas were expected to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. If a moderate CO nonattainment area was unable to attain the CO NAAQS by December 31, 1995, the area was reclassified as a serious CO nonattainment area by operation of law. Spokane was unable to meet the CO NAAQS by December 31, 1995, and was reclassified as a serious nonattainment area effective April 13, 1998.

Spokane monitored 2 years of clean data to attain the standard by December 31, 2000, the required attainment date for all serious CO areas. Therefore, EPA made a determination that Spokane attained the CO NAAQS by the attainment date deadline (66 FR 44060, August 22, 2001).

On September 20, 2001, the Washington State Department of Ecology (Ecology) submitted the Spokane CO Plan as a revision to the Washington SIP. On November 22, 2004, Ecology submitted an addendum to the Spokane CO Plan to replace a TCM commitment which they had not been able to implement.

C. What Statutory, Regulatory, and Policy Requirements Must be Met To Approve This Proposal?

Section 172 of the Act contains general requirements applicable to SIP revisions for nonattainment areas. Sections 186 and 187 of the Act set out additional air quality planning requirements for CO nonattainment areas.

EPA has issued a "General Preamble" describing the agency's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I requirements. In this proposed rulemaking, we are applying these policies to the Spokane CO Plan, taking into consideration the specific factual issues presented.

III. EPA's Review of the Spokane CO Plan

A. Does the Spokane CO Plan Meet All the Procedural Requirements as Required by Section 110(a)(2) of the Clean Air Act (the Act)?

Yes. The Act requires States to observe certain procedural requirements in developing implementation plans for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Public noticing for public meetings held on August 28, 2001, and October 26, 2004, occurred through advertisements in the Spokesman Review and the Washington State Register. The SIP submittal includes a hearing summary and notes that during the public meetings no public testimony was offered. Written comments were received from the public and included in the submittal along with the response developed by Ecology staff. Following the required public participation, the State adopted the Spokane CO Plan on September 19, 2001, and the addendum on November 17, 2004. The Spokane CO Plan demonstrates it has met the procedural requirements of section 110(a)(2) of the Act.

B. Does the Spokane CO Plan Include a Comprehensive, Accurate, Current Base Year Inventory From All Sources as Required in Sections 172(c)(3) and 187(a)(1)?

Yes. Spokane submitted a 1996 base year emissions inventory in the Spokane CO Plan consistent with our guidance documents. The motor vehicle emission factors used in the plan were generated by the MOBILE5b program. The base year inventory is an estimate of actual emissions representative of a typical peak CO season day. The table below contains a detailed listing of average daily, CO season emissions by source category.

TABLE 1.—1996 BASE YEAR EMISSIONS

Emission category	Point sources	Area sources	Non-road mobile sources	On-road mobile sources	Total emissions (tons/day)
Base Year 1996	79.9	70.4	31.3	167.2	348.8

The methodologies used to prepare the base year emissions inventory, as described in the Spokane CO Plan, are acceptable. The inventory meets base year emissions inventory requirements of sections 172(c)(3) and 187(a)(1) of the Act and is approvable. A discussion of how the inventory meets the requirements for approval is in the technical support document (TSD) for this proposal. Detailed inventory data is contained in the docket maintained by EPA.

C. Does the Spokane CO Plan Include Periodic Inventories as Required in Section 187(a)(5) of the Act?

Yes. Section 187(a)(5) of the Act requires the submission of periodic emission inventories at 3-year intervals until an area is redesignated to attainment. Ecology submitted the Spokane 1999 periodic emission inventory in September 2001, and submitted the 2002 periodic emission inventory on November 29, 2004, as the base year inventory in their Spokane CO Maintenance Plan. Ecology has agreed to submit periodic inventories at 3-year intervals until Spokane is redesignated to attainment.

D. Does the Spokane CO Plan Meet the Requirement of Section 187(a)(7) of the Act That Serious CO Areas Submit an Attainment Demonstration Which Includes Annual Emissions Reductions Necessary for Reaching Attainment by the Deadline?

Yes. The Spokane CO Plan contains an attainment demonstration that includes both an area-wide and a hot-spot modeling analysis at heavily-traveled intersections. The area-wide modeling is used to assess the cumulative impact of all sources of CO in an urban area. The modeled concentrations define the background CO concentration. The intersection modeling assesses the direct impact of traffic on CO concentrations at intersections.

The area-wide modeling resulted in two key findings. First, the modeling results indicated that elevated CO concentrations generally occur in the grids covering Spokane's central business district (CBD) where major traffic intersections with significant congestion exist. CO levels appear to rise and fall with traffic activity in the CBD. Secondly, the Kaiser Aluminum and Chemical Corporation, Mead Works aluminum smelter appeared at times to contribute significantly to widespread elevated CO concentrations. Since the modeled concentration was close to the CO standard of 9 ppm, Kaiser was required to verify that CO exceedances were not occurring on the hilltop to the southeast of the plant during smelter operations. See section V. Kaiser Aluminum and Chemical Corporation Administrative Orders.

Microscale intersection modeling was conducted for seven intersections within the CBD. These seven intersections were selected based on their level of service, congestion volume, and potentials for elevated levels of CO buildup. Only one intersection failed to demonstrate attainment of the 8-hour CO NAAQS of 9 ppm. However, with inclusion of the TCM implementation at Third Avenue & Washington Street, the modeled results demonstrate attainment. See Table 2.

TABLE 2.—INTERSECTION MAXIMUM PREDICTED 8-HOUR CO LEVELS (PPM)

Intersection	CAL3QHCR+UAM maximum 8-hour average (ppm)	
	Uncontrolled	Controlled
Third Avenue & Washington	9.38	8.93 with TCM.
Hamilton St. & Sharp	8.71	Not affected by TCM.
Second Avenue & Browne	8.08	Not affected by TCM.
Third Avenue & Browne	8.68	Not affected by TCM.
Second Avenue & Division	8.59	Not affected by TCM.
Third Avenue & Division	7.59	Not affected by TCM.
Northwest Blvd. & Indiana	8.76	Not affected by TCM.

Attainment of the standard in 2000 is demonstrated for all analyzed intersections. A detailed description of all the control measures used to demonstrate attainment, including those previously approved, is contained in the TSD for this proposal.

E. Has Spokane Adopted Transportation Control Measures (TCMs) for the Purpose of Reducing CO Emissions as Required by Sections 182(d)(1) and 187(b)(2) and Described in Section 108(f)(1)(A) of the Act?

Yes. Sections 182(d)(1) and 187(b)(2) of the Act require states with serious CO nonattainment areas to submit a SIP revision that includes transportation control strategies and measures to offset any growth in emissions due to growth in VMT or vehicle trips. In developing such strategies, a state must consider measures specified in section 108(f)(1)(A) of the Act and choose and implement such measures as are necessary to demonstrate attainment with the NAAQS. TCMs are designed to reduce mobile pollutant emissions by either improving transportation efficiency or reducing single-occupant vehicle trips.

The TCM that is used in the Spokane CO attainment demonstration adds a new left turn channel on eastbound Third Avenue at Washington Street. The TCM focuses on geometric improvements at the intersection designed to accommodate left turns and prevent an exceedance during worse case wintertime conditions. The EPA has reviewed the TCM in the Spokane CO Plan and is proposing to approve it.

F. Does the Spokane CO Plan Include a Forecast of Vehicle Miles Traveled (VMT) for Each Year Before the Attainment Year of 2000 as Required by Section 187(a)(2)(A) of the Act?

Yes. The Spokane Regional Transportation Council (SRTC) developed the daily VMT forecasts for the period 1993 to 2000 using a network-based travel demand model. The Transportation Data Office of the Washington State Department of Transportation developed the estimates of actual VMT from the Highway Performance Monitoring System (HPMS) data. Tracking results presented in the Spokane CO Plan demonstrate that actual VMT is consistently less than forecasted.

SRTC has committed to prepare annual VMT estimates and forecasts and to submit these reports ("VMT tracking reports") to Ecology for submittal to EPA until Spokane is redesignated to attainment. Under section 187(a)(3) of the Act, annual VMT tracking reports provide a potential basis for triggering implementation of contingency measures in the event that estimates of actual VMT exceed the forecasts contained in the prior annual VMT tracking report.

G. Does the Spokane CO Plan Include Contingency Measures as Required by Section 187(a)(3) of the Act?

Section 187(a)(3) of the Act requires serious CO nonattainment areas, such as Spokane, to submit a plan that provides for contingency measures. The Act specifies that such measures are to be implemented if any estimate of actual VMT submitted in an annual VMT tracking report exceeds the VMT predicted in the most recent prior forecast or if the area fails to attain the NAAQS by the attainment date. As a general rule, contingency measures must be structured to take effect without further action by the State or EPA upon the occurrence of certain triggering events.

The Spokane CO Plan includes contingency measures that meet the requirements of section 187(a)(3) of the Act. If Spokane exceeds the ambient CO standard, two contingency measures have been established to provide additional emission reduction. The two

contingency measures are channelization on Browne Street, and signage improvements on Division Street. Both measures have been modeled to show a reduction in CO concentrations by improving traffic flow.

In addition, in the event that Spokane's actual VMT exceeds the forecasted VMT, a contingency measure has been established to provide emission reductions. The measure is a voluntary no-drive day program called Air Watch. The measure focuses on notifying the public of poor air quality days and encourages alternatives to single occupancy vehicles. Public education along with daily CO forecasts for the following day and drive times and funds for free bus rides are used to encourage motorists to reduce their use of motor vehicles on bad air quality days. Air Watch reduces actual VMT and resulting emissions on the worst air quality days. This contingency measure is structured to take effect without any further action by the State or EPA. In fact, Spokane is currently implementing this measure on bad air quality days.

States may implement contingency measures early to obtain additional emission reductions without being required to adopt replacement contingency measures to put in place should one of the triggering events for implementation of contingency measures occur. This policy is described in a memorandum from Tom Helms, Chief of the OAQPS Ozone Policy and Strategies Group entitled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas," August 13, 1993.

H. Is the Motor Vehicle Emission Budget Approvable as Required by Section 176(c)(2)(A) of the Act and Outlined in Conformity Rule 40 CFR 93.118(e)(4)?

EPA found the Spokane 2001 motor vehicle emissions budget (MVEB) adequate for conformity purposes in 67 FR 69740, November 19, 2002. Section 176(c)(2)(A) of the Act requires regional transportation plans to be consistent with the MVEB contained in the applicable air quality plan for the area. The MVEB for 2001 is as follows:

SPOKANE 2001 MOTOR VEHICLE EMISSIONS BUDGET

Source category	CO emissions (pounds/winter weekday)
On-Road Sources—Total Rural	633
On-Road Sources—Total Urban	268,238
Motor Vehicle Emissions Budget	268,871

The TSD summarizes how the 2001 MVEB meets the criteria contained in the conformity rule (40 CFR 93.118(e)(4)). EPA is proposing approval of the 2001 MVEB.

I. Does Spokane Have an I/M Program in Place That Meets the Requirements in Sections 182(a)(2)(B) and 187(a)(6) of the Act?

Yes. EPA previously approved the Washington I/M program (61 FR 50235, September 25, 1996). Ecology submitted a SIP revision on September, 26, 2001, to two sections of 173–422 WAC, Motor Vehicle Emission Inspection, to provide an inspection schedule for motor vehicles between five and 25 years old. Vehicles less than five years old and more than twenty-five years are exempt beginning January 1, 2000. See section IV below.

J. Are There Controls on Stationary Sources of CO as Required by Section 172(c)(5) of the Act?

Yes. Section 172(c)(5) of the Act requires states with nonattainment areas to include in their SIPs a permit program for the construction and operation of new or modified major stationary sources in nonattainment areas. In a separate, prior action, we approved the new source review permit program for Washington. (See 60 FR 28726, June 2, 1995.)

K. Has Spokane Implemented an Oxygenated Fuel Program as Described in Section 187(b)(3) of the Act?

Yes. In a separate, prior action, we approved the oxygenated gasoline program for Spokane (59 FR 2994, January 20, 1994). However, in the 1995 attainment year, the 8-hour CO standard was exceeded four times at the monitor located at the intersection of Third & Washington. An April 24, 1996, letter from EPA Region 10 informed Ecology that Spokane had not met the CO standard. As a result of EPA's letter, SCAPCA implemented the contingency measure specified in the moderate attainment plan. The measure requires the maximum allowable oxygenate in wintertime gasoline beginning with the 1996–1997 CO season. This requirement raised the amount of ethanol, the oxygenate normally used in Spokane, to 3.5 percent by weight.

IV. EPA's Evaluation of the Washington Inspection and Maintenance (I/M) Program Revision

A. What Is Being Revised in the Washington I/M Program?

On September 26, 2001, Washington Department of Ecology submitted a revision to the State Implementation Plan (SIP) for the state of Washington. The revision is to two sections of 173–422 WAC, Motor Vehicle Emission Inspection, to provide an inspection schedule for motor vehicles between five and 25 years old. Vehicles less than five years old and more than twenty-five years old are exempt. The testing schedule and exemption provisions are changed accordingly. This rule revision addresses when different model-year vehicles are required to have an emission inspection.

B. Have All the Procedural Requirements for Approval of This Revision Been Met?

The Act requires states to observe certain procedural requirements in developing revisions for submission to EPA. Public noticing for a public meeting held on August 28, 2001, occurred through advertisements in the Spokesman Review and the Washington State Register. The SIP submittal notes that during the public meeting no public testimony was offered. Following the required public participation, the State adopted the I/M revision on September 26, 2001. The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102.

C. How Does This Revision to the Washington I/M Program Affect the Attainment Demonstration for the Spokane CO Serious Nonattainment Area?

Ecology and SRTC evaluated the impact of the modified new car exemption on the attainment demonstration. The result was an

estimated CO concentration of 8.93 ppm at the intersection with the highest modeled concentration (Third & Washington). Since the estimated CO concentration remained below the CO standard, the dispersion modeling continues to demonstrate attainment. We are proposing approval of the revision in this **Federal Register**.

V. Kaiser Aluminum and Chemical Corporation, Administrative Orders

In order to analyze Kaiser Aluminum and Chemical Corporation, Mead Works' contribution to the elevated CO level described in Section III D, Ecology used screening and refined modeling techniques for point source analysis (40 CFR 51 Appendix W, 6.2.d.). Results of this analysis indicated a maximum total 8-hour modeled concentration of 8.6 ppm on the hilltop to the southeast of the Kaiser smelter (CO standard is 9 ppm). Therefore, Kaiser, through enforceable Administrative Order No. DE 01AQIS–3285 dated October 24, 2001, was only required to verify that CO exceedances were not occurring on the hilltop. In December 2000, Kaiser fully curtailed its primary aluminum production operations at Mead Works. Due to the full curtailment of the facility, Ecology approved a nearby existing ambient air monitoring location as being satisfactory for gathering background ambient CO concentration levels. On April 9, 2003, Ecology approved Administrative Order No. DE 01AQIS–3285, Amendment #1 allowing Kaiser the option to terminate the collection of data during curtailment once 2 years of background data was collected. The Order requires Kaiser Mead Works to resume monitoring and reporting of ambient CO concentrations at a site approved by Ecology if and when primary aluminum production is resumed at the site. In this action, EPA is proposing approval of Kaiser Mead Works Administrative Order No. DE 01AQIS–3285 and Administrative Order No. DE 01AQIS–3285, Amendment #1.

VI. Summary of EPA's Proposal

We are proposing to approve the following elements of the Spokane CO Attainment Plan, submitted on September 20, 2001 and November 22, 2004:

A. Procedural requirements, under section 110(a)(2) of the Act;

B. Base year emission inventory, under sections 172(c)(3) and 187(a)(1) and periodic inventories under 187(a)(5) of the Act;

C. Attainment demonstration, under section 187(a)(7) of the Act;

D. The TCM program under 187(b)(2), 182(d)(1) and 108(f)(1)(A) of the Act;

E. VMT forecasts under section 187(a)(2)(A) of the Act;

F. Contingency measures under section 187(a)(3) of the Act;

G. The conformity budget under section 176(c)(2)(A) of the Act and § 93.118 of the transportation conformity rule (40 CFR part 93, subpart A).

H. Administrative Order No. DE 01AQIS–3285 and Order No. DE 01AQIS–3285, Amendment #1 relating to Kaiser Aluminum and Chemical Corporation, Mead Works.

We are also proposing to approve a SIP revision submitted on September 26, 2001, to two sections of 173–422 WAC Motor Vehicle Emission Inspection, to provide an inspection schedule for motor vehicles between 5 and 25 years old.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: March 1, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 05–4470 Filed 3–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: Based on the agency's evaluation, NHTSA denies the petition for rulemaking from Mr. Kazyaka of TVK Industries, Inc. to amend our safety standards to require the shift patterns on vehicles equipped with manual transmissions to be illuminated and to indicate the gear selected.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Mr. William D. Evans, Office of Crash Avoidance Standards, phone (202) 366–2272. For legal issues, contact Dorothy Nakama, Office of Chief Counsel, phone (202) 366–2992. You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2003, NHTSA responded to a request for interpretation from Mr. Thomas V. Kazyaka of TVK Industries, Inc. regarding Federal Motor Vehicle Safety Standard (FMVSS) No. 102. Mr. Kazyaka expressed the view that manual transmission shift patterns are required to be backlit and must display the shift lever position in order to comply with S3.2 of FMVSS No. 102. TVK Industries, Inc. markets the SureShifter, which is an aftermarket device that illuminates the shift pattern and indicates the shift lever position on manual transmission-equipped vehicles. NHTSA interpreted S3.2 of FMVSS No. 102 as not requiring manual transmission shift patterns to have backlighting or to identify the shift lever position. The interpretation also stated that no other FMVSSs require vehicles with only manual transmissions to have shift pattern backlighting or to identify the shift lever position.

On December 9, 2003, NHTSA responded to another letter from Mr. Kazyaka, which requested reconsideration of the October 2003 interpretation. In response, NHTSA restated the position expressed in its original interpretation of FMVSS No. 102 to Mr. Kazyaka. Paragraph S3.2 of FMVSS No. 102 requires the identification of the shift lever pattern of manual transmissions, however, it does not require identification of the shift lever position nor backlighting.

On March 9, 2004, NHTSA received a "Petition for Rulemaking, Defect, and Non-compliance Orders" from Mr. Kazyaka per 49 CFR Part 552. In this document, Mr. Kazyaka cites several sections in FMVSS Nos. 101 and 102 and petitions the Administrator to initiate a proceeding to determine whether to issue an order concerning the notification and remedy of a failure of motor vehicles equipped with manually shifted transmissions and replacement manual shift knob equipment as specified by FMVSS No. 101 and FMVSS No. 102. This notice responds to Mr. Kazyaka's recent petition.

Petition Response

In his petition, Mr. Kazyaka cites several sections in FMVSS No. 101 and claims that these sections require the shift patterns on manual transmission-equipped vehicles to have backlighting and to indicate the shift lever position. The purpose of FMVSS No. 101 is to ensure the accessibility and visibility of motor vehicle controls and displays. In FMVSS No.101, the only place where manual shift levers are mentioned is under S5.1 (Location of Hand Operated Controls). This section requires that the manual transmission shift lever be in a location where it is operable by and visible to the driver when restrained by crash protection equipment. This requirement refers strictly to the location of the manual transmission shift lever and does not require the lever or shift pattern to be visible under low light conditions. There is no other mention of the manual gearshift lever in FMVSS No. 101. In S5.3.1, under illumination requirements, hand-operated controls mounted upon the floor, floor console or steering column are specifically excluded from illumination requirements. Since they are mounted on the floor, manual transmission gearshift levers are excluded from FMVSS No. 101 illumination requirements. Therefore, FMVSS No. 101 does not require the shift patterns of vehicles equipped with manual transmissions to have backlighting or to indicate the shift lever position.

In the petition, there were also sections in FMVSS No. 102 cited as justification for illuminating shift patterns and indicating shift lever positions on manual transmission-equipped vehicles. One of the purposes of FMVSS No. 102 is to reduce the likelihood of shifting errors. For *automatic transmission*-equipped vehicles, there are requirements for the shift sequence, the identification of shift lever positions, the identification of shift positions in relation to one another and the identification of the gear selected. The only requirement for *manual transmission*-equipped vehicles is that the shift lever pattern must be identified and in view of the driver when the driver is present in the driver's seating position. This requirement refers strictly to the *location* of the shift lever pattern and in no way refers to illumination of the shift pattern under low light conditions. Also, it does not require identification of the shift lever position.

Mr. Kazyaka interprets FMVSS Nos. 101 and 102 as requiring the illumination of manual transmission shift patterns and the identification of the shift lever position by equating them incorrectly with automatic transmission controls. The requirements for manual and automatic transmission controls are different because the controls are used differently. The shift patterns for automatic transmissions are usually in a relatively straight line and the shift positions are close together, which make it difficult for the driver to distinguish the position of the lever without looking at it. Also, automatic transmission shift levers are usually shifted when the vehicle is stationary.

The simple shift pattern identification for manual transmissions enables the driver to learn the shift positions and operate the lever. A manual transmission shift lever sequence usually has a distinct pattern. Once drivers learn the pattern, they can determine what gear their vehicles are in by feel, without looking at the pattern and the lever position each time they shift. A manual transmission shift lever is shifted very often. If drivers had to look at the shift lever and pattern each time they changed gears, this would be a tremendous distraction. The fact that the driver does not refer to the shift pattern after it is learned is evidenced by the location of the shift pattern on the majority of vehicles. The shift pattern is located on the shift lever knob, which is covered up by the driver's hand during shifting.

Mr. Kazyaka also asserts that vehicles "equipped with automatic/manual transmissions have taken to display the gear selection in dash-mounted indicators," further noting that these devices are not available for retrofit and the "shifting pattern is not displayed." In an interpretation letter of April 3, 1989, to Porsche addressing FMVSS No. 102 issues, NHTSA concluded that vehicles with dual function (automatic and manual) transmissions are in fact automatic transmissions for the purposes of the FMVSS. Thus, vehicles with dual function transmissions (even when the driver selects the "manual" mode) must meet the illumination and identification of shift lever position requirements, as well as other requirements in FMVSS No. 102. NHTSA further notes that in these dual function vehicles, the "manual" system typically does not have gear selections

in an "H" configuration, but displays the gear positions in a row.

The petition states that the consequences of motorist in manual transmission-equipped vehicles committing shifting errors while stopped at pedestrian crosswalks and railroad crossings may be fatal. It also states that multiple vehicle operators encounter various shifting patterns, and the petition claims they are at risk of causing property damage and injuries without shift pattern illumination and shift lever position identification. The petition also claims that shift pattern illumination and the identification of shift lever position are more important on vehicles equipped with idle-stop technology where the engine stops and starts automatically while the vehicle is stationary. The agency has searched both its crash and complaint databases and has found no indication of a shifting error problem relative to manual transmission-equipped vehicles both with and without the idle-stop feature. Drivers of manual transmission-equipped vehicles shift and know what gear they are in by feel. Once drivers learn their shift patterns, (a process that is completed very quickly), there is no need for them to look at the shift pattern each time they shift or want to know their gear position.

In accordance with 49 CFR part 552, this completes the agency's technical review of the petition for rulemaking from TVK Industries, Inc. NHTSA believes that Mr. Kazyaka's interpretations relative to FMVSS Nos. 101 and 102 are incorrect and the standards do not require manual transmission shift patterns to be illuminated or to indicate the shift lever position. Also, NHTSA believes that any suggested amendments to the FMVSSs that would require manual transmission shift lever patterns to be illuminated or indicate the shift lever position would not change the performance requirements in a manner that would result in improved safety. Thus, after considering the allocation of agency resources and agency priorities, NHTSA has decided that the rulemaking requested by the petitioner is not warranted. Accordingly, the rulemaking requested by the petition is denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Issued on: March 2, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–4433 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2005–20028]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Richard T. Ince of C & J Technology Inc., to amend provisions of the Federal motor vehicle safety standard (FMVSS) for rearview mirrors pertaining to the test procedure for school bus driving mirrors.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Charles R. Hott, Office of Crashworthiness Standards, NVS–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0247. Fax: (202) 366–7002.

For legal issues: Eric Stas, Office of Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992 and fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2004, the agency received a petition from Mr. Richard T. Ince, C & J Technology Inc., requesting that the agency review and amend paragraph S13.3(g) of FMVSS No. 111, "Rearview Mirrors," which provides procedures for the placement of "cones" "P" and "L" in the school bus mirror test procedure for the driving mirrors. The petitioner stated that the change is needed "because the rule as stated provides unnecessary and dangerous blind spots in the operator's field of indirect vision along the sides of the school bus."

The petitioner stated that S9.1 of the standard requires that exterior driving mirrors be tested using cones placed in accordance with the requirements specified in S13. S13 requires the placement of 18 cylinders [1] of a specified height and size at various locations around the school bus. He said cylinder P on the passenger side of the vehicle is placed at 3.6 meters (12 feet) to the right of the longitudinal vertical plane tangent at the center of the rear axle. He said that cylinder L on the driver side, is placed at 1.8 meters (6 feet) to the left of the longitudinal vertical plane tangent at the center of the rear axle. The petitioner asserted that meeting such requirements "builds into the vehicle blind spots along the sides of the vehicle that are unnecessary and dangerous," and he illustrated this with an Exhibit B (Figure 1). C & J Technology claims that these blind spots put the operator and any children along the sides of the vehicle in a dangerous position as the bus leaves a stop, because the driver cannot see the blind spot areas in the rearview mirror system. The petitioner claims that in such situations the driver would be forced to physically look at these areas before moving the bus forward; however, if the driver does not, it could be especially dangerous to children in these blind spots.

C & J Technology's recommended solution is to amend the standard so that cylinders L and P are moved out from the center of the rear axle to a point that would reduce or eliminate the alleged blind spot problem. The petitioner stated that with the use of the "BDS Dead Angle Spot Mirror," the field of vision could increase to a level up to 65 percent greater than that provided by the standard's current requirements. The petitioner further stated that the "BDS Dead Angle Spot Mirror" is a wide angle glass, and it is cut in such a manner as to make it possible to move the cylinders out to approximately 21.4 meters (70 feet) from the center of the rear axle, thereby making "the entire side of the bus visible with just a glance in the mirror by the operator."

Analysis of the Petitioner's Argument

The statement provided by C & J Technology, which asserts that the test procedure requirements in the standard builds into the vehicle dangerous blind spots, is inaccurate. Currently, all school buses are required to have two mirror systems, System A mirrors that are typically called "driving mirrors," and System B mirrors which are pedestrian detection mirrors. The System A mirrors are used by the operator to maneuver the school bus safely in traffic. The System B mirrors are pedestrian detection mirrors that are

[1] It is noted that the petitioner incorrectly implies that the regulation uses "cones" to measure compliance with the standard. The standard uses cylinders that are 0.3048 meters (1 foot) high and 0.0348 meters (1 foot) in diameter. The standard uses cylinders (not cones) because, as stated in the December 2, 1992 final rule, the agency believes 0.3048 meter (1 foot) cylinders more accurately represent a child that is bending over or has fallen down. (57 FR 57000)

used by the operator while loading and unloading passengers. The requirements for two mirror systems were established to ensure that the school bus driver has the requisite field of vision for both pedestrian detection and navigation of the roadway. The standard requires that the driver have a direct or indirect field-of-view immediately in front of the bus and along both sides of the school bus in order to ensure that there are no blind spots. Figure 2 presents a graphic with the minimum viewing areas required by the standard. The petition asserts that the System A driving mirrors may not serve as adequate pedestrian detection mirrors. Even accepting this as true, the driving mirrors are not intended to serve as pedestrian detection mirrors.

Decision To Deny the Petition

In accordance with 49 CFR part 552, this completes the agency's review of the petition for rulemaking. For the reasons stated above, the petition for rulemaking is denied.

Authority: 49 U.S.C. 322, 3011, 30115, 30117, and, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

BILLING CODE 4910–59–P

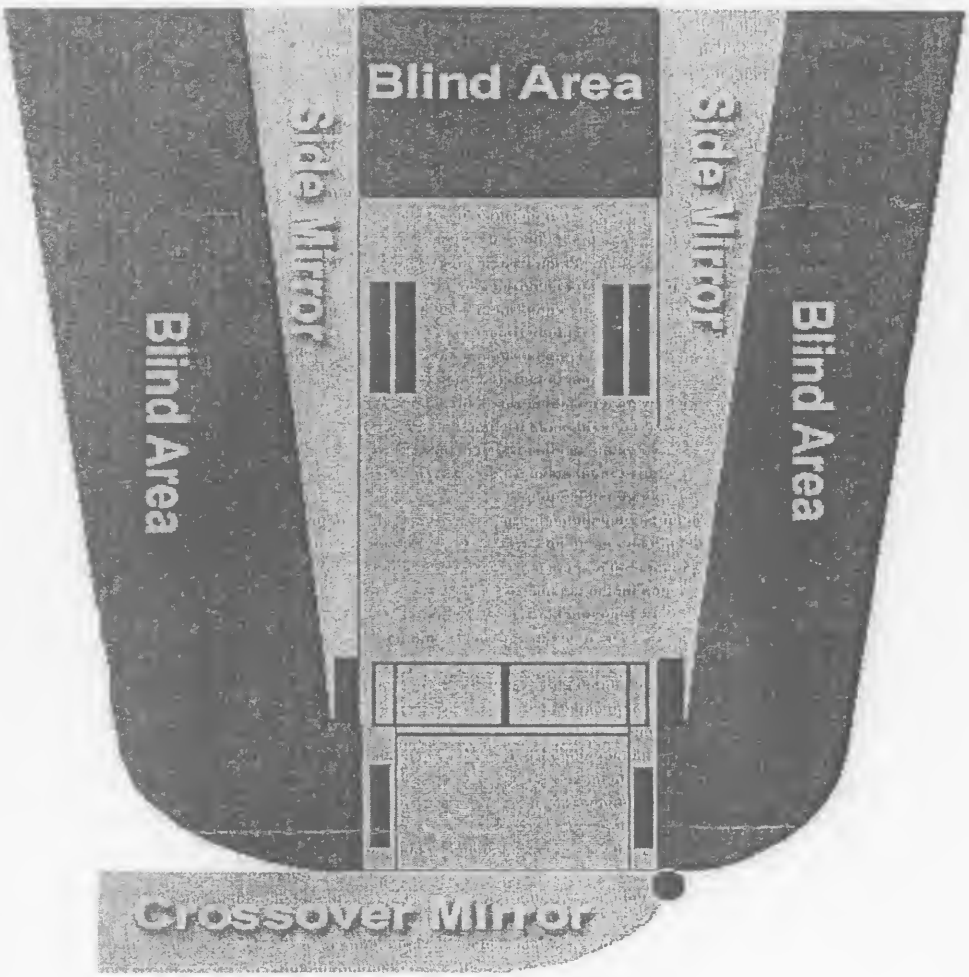

Figure 1. Ince Exhibit B.

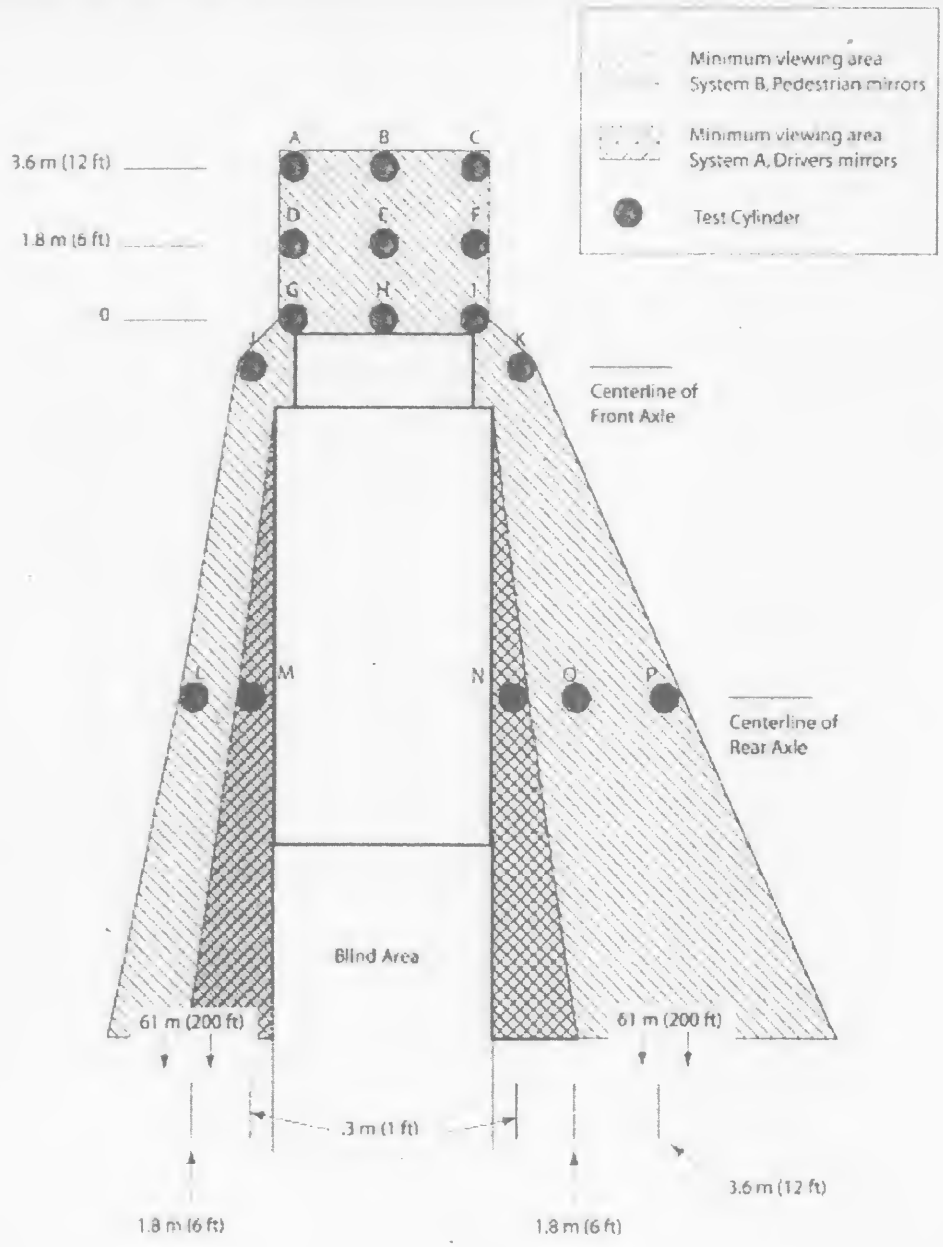

Figure 2, Minimum viewing area, School Bus System A and B Field-Of-View

Issued on: March 2, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–4434 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2004–18865]

RIN 2127–AJ16

Anthropomorphic Test Devices; SID-IIsFRG Side Impact Crash Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: On December 8, 2004, NHTSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed to amend 49 CFR part 572 to add specifications and qualification requirements for a 5th percentile adult female test dummy for use in vehicle side impact tests. In that NPRM, NHTSA established a March 8, 2005, deadline for submission of written comments. NHTSA has received a request from the Alliance of Automobile Manufacturers to extend the comment period "to facilitate a comprehensive technical evaluation of that test device and allow manufacturers the opportunity to perform necessary fleet testing with the proposed test device." In response to that request, NHTSA is extending the comment period to April 12, 2005.

DATES: Comments must be received by April 12, 2005. Comments received after that date will be considered to the extent possible.

ADDRESSES: You may submit comments (identified by the DOT DMS Docket Number) by any of the following methods:

Web Site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for the rulemaking to which you are commenting. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act discussion under the Public Participation heading.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Stan Backaitis, NHTSA Office of Crashworthiness Standards (202) 366–4912, or Deirdre Fujita, NHTSA Office of Chief Counsel (telephone (202) 366–2992). Both of these officials may be reached at 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On December 8, 2004 (69 FR 70947; Docket No. 18865), the agency published an NPRM proposing to add specifications and qualification requirements for a 5th percentile adult female side impact crash test dummy to NHTSA's regulation on anthropomorphic test devices (49 CFR part 572). The test dummy, called the SID–IIsFRG, was part of an NPRM that NHTSA published in May 2004 that proposed to upgrade FMVSS No. 214, "Side Impact Protection." The NPRM on FMVSS No. 214 proposed to require that all passenger vehicles with a gross vehicle weight rating of up to 4,536 kilograms (10,000 pounds) protect front seat occupants against head, thoracic, abdominal and pelvic injuries in a vehicle-to-pole test simulating a vehicle crashing sideways into narrow fixed objects like telephone poles and trees (69 FR 27990, May 17, 2004; Docket 2004–17694). The NPRM proposed that compliance with the pole test would be determined in tests using the SID–IIsFRG, and in tests using a new test dummy representing mid-size adult males (the "ES–2re" crash test dummy).

The comment period for the NPRM on the SID–IIsFRG closes March 8, 2005. The Alliance of Automobile Manufacturers has petitioned to extend the comment period "until mid 2005 to facilitate a comprehensive technical evaluation of that test device and allow manufacturers the opportunity to perform necessary fleet testing with the proposed test device. Further, the requested extension aligns the comment closing date with that requested by the Alliance in its October 14, 2004 petition." That October 14, 2004, petition of the Alliance was to extend, for eight months, the comment periods for the FMVSS No. 214 NPRM and for an NPRM on specifications for the ES–2re (which was published September 15, 2004; 69 FR 55550; Docket No. 18864). On January 12, 2005, in response to the petition, NHTSA reopened the comment period for those NPRMs for 90 days (70 FR 2105; Docket No. 17694, 18864). The 90-day period closes April 12, 2005.

We are extending the comment period for the SID–IIsFRG NPRM from March 8, 2005, to April 12, 2005, to align the comment closing date with those of the related NPRMs on FMVSS No. 214 and the ES–2re test dummy. The extended comment period gives interested parties additional time to submit comments without unnecessarily delaying key decisions by NHTSA about the FMVSS No. 214 rulemaking and without overly delaying the potential societal benefits associated with a final rule.

Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the appropriate docket number in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/)*.
2. On that page, click on "search."
3. On the next page *(http://dms.dot.gov/search/)*, type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–2004–12345," you would type "12345." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

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

Authority: 49 U.S.C. 322, 30111, 30115. 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on March 2, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–4432 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 050228049–5049–01; I.D. 021105C]

RIN 0648–AT05

Atlantic Highly Migratory Species; Lifting Trade Restrictive Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments, notice of public hearing.

SUMMARY: NMFS proposes to adjust the regulations governing the trade of tuna and tuna-like species in the North and South Atlantic Ocean to implement recommendations adopted at the 2004 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The proposed rule would lift the trade restrictions on importing bigeye tuna (BET) from Cambodia; the ban on importing BET and bluefin tuna (BFT) from Equatorial Guinea; and the ban on importing BET, BFT, and swordfish (SWO) from Sierra Leone. Additionally, the proposed rule would also correct section reference conflicts between two rules that were published in the **Federal Register** on November 17, 2004, and December 6, 2004.

DATES: Written comments on the proposed rule must be received by 5 p.m. on April 7, 2005.

The public hearing will be held on March 21, 2005, from 2:45 p.m. to 5 p.m.

ADDRESSES: The public hearing will be held at the Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Written comments on the proposed rule may be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division:

- Email: *SF1.021105€@noaa.gov*
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule for Lifting Trade Restrictive Measures."
- Fax: 301–713–1917.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Include in the subject line the following identifier: I.D. 021105C.

Copies of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks and other relevant documents are also available from the Highly Migratory Species Management Division website at *www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Megan Gamble, by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish and tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the promulgation of regulations as may be necessary and appropriate to carry out ICCAT recommendations. Trade-related ICCAT recommendations from 2004

include but are not limited to, 04–13, 04–14, and 04–15.

Trade Measures

In 1999, 2000, and 2002, ICCAT found, based on available information, that Equatorial Guinea, Sierra Leone, and Cambodia were engaged in fishing activities that diminish the effectiveness of ICCAT conservation and management measures (Recommendations from 1999 and 2000, 02–19, and 00–15, respectively). Thus, ICCAT previously recommended that Contracting Parties (i.e., any member of the United Nations or any specialized agency of the United Nations that has signed on to the International Convention for the Conservation of Atlantic Tunas) prohibit the import of Atlantic BET and BFT from Equatorial Guinea; BET, BFT, and SWO from Sierra Leone; and Atlantic BET from Cambodia. NMFS promulgated regulations prohibiting the import of these species from these countries in 2000, 2002, and 2004.

During the 2004 meeting, ICCAT determined that Sierra Leone, Equatorial Guinea, and Cambodia have changed their fishing practices to be consistent with ICCAT conservation and management measures and recommended the import prohibitions be lifted on all three countries. Specifically, ICCAT Recommendation 04–14 lifts the trade restriction on importing Atlantic BET and BFT from Equatorial Guinea. In reaching this decision, ICCAT considered the actions taken by Equatorial Guinea to cancel the licenses and flags of large-scale longline vessels previously found participating in unreported and unregulated catches of tuna in the Convention Area. ICCAT also considered the information presented by Equatorial Guinea guaranteeing compliance with ICCAT conservation and management measures. This proposed rule would lift the restrictions on importing BET from Equatorial Guinea implemented on November 20, 2002, (67 FR 70023) and BFT implemented on December 12, 2000 (65 FR 77523).

Further, ICCAT recommends removing the trade restrictions on the import of Atlantic BET, BFT, and SWO from Sierra Leone (Recommendation 04–13). The Commission recognized that Sierra Leone addressed concerns regarding data reporting, developed a monitoring and control plan, and deregistered a vessel previously identified as conducting illegal, unregulated, and unreported (IUU) fishing in the Convention area. In this action, NMFS proposes to lift the import restrictions on Atlantic BET, BFT, and SWO from Sierra Leone implemented on December 6, 2004 (69 FR 70396).

Finally, ICCAT Recommendation 04–15 removes the trade restrictive measures on importing BET from Cambodia. The Commission recognized the efforts made by Cambodia to deregister vessels previously identified as conducting IUU fishing activities in the Convention Area, change registry companies, and not authorize other vessels to fish in the Convention Area. This rule proposes to lift the trade restrictions on importing BET from Cambodia implemented on November 20, 2002 (67 FR 70023).

Section Reference Correction

This action proposes to correct section reference conflicts between two rules that were published in the **Federal Register** in late 2004. A final rule implementing BET statistical documents was published on November 17, 2004 (69 FR 67284), and will be effective on July 1, 2005. This rule removes § 635.41 Species Subject to Documentation Requirements and re-designates the content of § 635.45 Products Denied Entry as § 635.41, so that § 635.41 will address Products Denied Entry. A second final rule implementing trade restrictive measures and establishing chartering permits published on December 6, 2004 (69 FR 70401), and was effective on January 5, 2005, and contains references to § 635.45 Productions Denied Entry that will be overwritten when the first rule becomes effective on July 1, 2005. References to § 635.45 Productions Denied Entry are re-designated as § 635.41 Productions Denied Entry in this proposed rule.

Public Hearings and Special Accommodations

NMFS will hold a public hearing (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding this proposed rule. This hearing will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Megan Gamble at (301) 713–2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et. seq., and ATCA, 16 U.S.C. 971 et. seq. The Assistant Administrator for Fisheries has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has preliminarily determined that this proposed rule would not have significant economic, environmental, or social impacts as defined in NEPA. It is categorically excluded from the need to prepare an Environmental Assessment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable provisions of the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean states. Letters have been sent to the relevant states asking for their concurrence.

This action does not contain policies with federalism implications under Executive Order 13132.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The small entities are identified as the 466 dealers with a permit to buy or sell Atlantic BET, BFT, or SWO. Lifting the trade restrictions on Cambodia, Equatorial Guinea, and Sierra Leone would have an insignificant impact on the dealers because no tuna or tuna-like species were imported from these states prior to the ban and none was expected to be imported in the future. Thus there will likely be no positive or negative economic impact on the dealers.

From 1989 to 2002, the United States did not import any Atlantic BET from Cambodia or Equatorial Guinea. From 1989 to 2000, there were no imports of BFT from Equatorial Guinea. There were also no imports of Atlantic BET, BFT, or SWO from Sierra Leone from 1989 to 2004. If the trade restrictions are lifted from these countries, the import of BET, BFT, or SWO from any of the three countries is expected to be low or non-existent. As a result, the proposed measures are not expected to have a significant economic impact on a substantial number of small entities and an initial regulatory flexibility analysis is not required and has not been prepared.

The fishing activities conducted pursuant to this rule will not affect endangered or threatened species or critical habitat under Endangered Species Act. This action is not likely to result in any significant changes to the

quantity of BET, BFT, and SWO imported from Cambodia, Equatorial Guinea, and Sierra Leone, as past import level of these fish species from these countries are low or nonexistent.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Treaties.

Dated: March 3, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.41, paragraphs (a) and (b) are removed, paragraphs (c) through (g) are re-designated as paragraph (a) through (e)and newly redesignated paragraph (a) is revised to read as follows:

§ 635.41 Products Denied Entry.

(a) All shipments of Atlantic bigeye tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Bolivia or Georgia will be denied entry into the United States.

* * * * *

3. In § 635.71, paragraphs (b)(26) and (e)(16) are removed, paragraphs (b)(27) through (b)(30) are redesignated as (b)(26) through (b)(29), and paragraphs (a)(24), and (a)(45) through (a)(47), and newly redesignated paragraph (b)(29) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at §§ 635.40 or 635.41.

* * * * *

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.41(b).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.41(c).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.41(d).

(b) * * *

(29) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia or Georgia as specified in § 635.41.

* * * * *

[FR Doc. 05–4477 Filed 3–7–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 44
Tuesday, March 8, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by three Florida avocado producers for trade adjustment assistance. The Administrator will determine within 40 days whether or not increasing imports of avocados contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 2004 and ending December 2004. If the determination is positive, all producers who produce and market their avocados in Florida will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 25, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–4445 Filed 3–7–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463 as amended by Public Law 94–409, Public Law 96–523, Public Law 97–375 and Public Law 105–153), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. Director's report/update; 2. update on NRC study on nonmarket accounts; 3. update on revision of international guidelines for national accounts (SNA); 4. preliminary results from pricing project; and 5. report on BEA/NSF R&D project

DATES: Friday, May 13, 2005, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Bureau Of Economic Analysis, 1441 L Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James J. Murphy, Public Affairs Specialist, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–2787.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact James Murphy of BEA at (202) 606–2787 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to James Murphy at (202) 606–2787.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's regional economic accounts and proposed revisions to the International System of National Accounts. This will be the Committee's ninth meeting.

Dated: February 24, 2005.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 05–4387 Filed 3–7–05; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–822

Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 8, 2005.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482–2336 or Cathy Feig at (202) 481–3962, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2004, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on helical spring lock washers from the People's Republic of China. *See Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 64903. This review covers the period October 1, 2002, through September 30, 2003. The final results of this administrative review are currently due not later than March 9, 2005.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time specified, the administering authority may extend the final results to not later than 180 days following the publication of the preliminary results.

In order to fully consider the issue of Hangzhou's market–economy purchases of steel wire rod from the United Kingdom raised in Hangzhou's December 10, 2004, case brief, it is not

practicable to complete this review within the time limit mandated by the Act. Due to the complex nature and broader implications raised by this issue, the Department needs extra time to analyze and address this issue. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for issuing the final results of review from March 9, 2005, until not later than May 8, 2005.

Dated: March 1, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–973 Filed 3–7–05; 8:45 am]

BILLING CODE:3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 8, 2005.

FOR FURTHER INFORMATION CONTACT: Angela Strom at (202) 482–2704, Maryanne Burke at (202) 482–5604 or Robert James at (202) 482–0649, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On July 30, 2004, the Department of Commerce (the Department) received timely requests to conduct an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. On August 30, 2004, the Department published a notice of initiation of this administrative review, covering the period of July 1, 2003, to June 30, 2004 (69 FR 52857). The preliminary results are currently due no later than April 2, 2005.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

We are currently analyzing a number of complex issues with respect to the basis for normal value which must be addressed prior to the issuance of the preliminary results. Specifically, further analysis is needed in relation to downstream sales, billing adjustments, currency conversions and cost of production data used in the margin calculation program. This requires additional time and makes it impracticable to complete the preliminary results of this review within the originally anticipated time limit. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review no later than July 31, 2005, which is 365 days from the last day of the anniversary month. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

Dated: March 2, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–974 Filed 3–7–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Oceanic and Atmospheric Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council: Whale Watching (Member), Education (Alternate), and Business and Industry (Member and Alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2–3 years terms, pursuant to the Council's Charter.

DATES: Applications are due by April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Application kits may be downloaded from Stellwagan bank Web site: *http://stellwagen.nos.noaa.gov/* or obtained from *Ruthetta.Halbower@noaa.gov* or Ruthetta Halbower 175 Edward Foster Road Scituate, MA 02066. Completed applications should be sent to the same address.

SUPPLEMENTARY INFORMATION: The Council of SBNMS was originally established in 1992. The current Council was established in October 2001. The Council has 21 members covering the wide spectrum of interests in the region, with fifteen voting seats representing various facets of the community including conservation, education, research, fishing, whale watching, recreation, business/industry, and the community at large. The remaining ex-officio seats represent the SBNMS's state and federal partners. The Council generally meets four times a year.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 18, 2005.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05–4392 Filed 3–7–05; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030105G]

Fisheries of the Exclusive Economic Zone Off Alaska; Notice of Crab Rationalization Program Quota Share and Processor Quota Share Application Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of application period.

SUMMARY: NMFS will accept applications to receive quota share (QS) and processor quota share (PQS) for the Crab Rationalization Program (Program) from participants in the Bering Sea and

Aleutian Islands (BSAI) king and Tanner crab fisheries through June 3, 2005, consistent with the regulations implementing the program. Any applications received by NMFS after this date will be considered untimely and will be denied.

DATES: Applications to receive QS and PQS under the Crab Rationalization Program will be accepted by NMFS from April 4, 2005, through 5 p.m. Alaska local time (A.l.t) on June 3, 2005.

ADDRESSES: An application to receive crab QS or PQS may be submitted by mail to NMFS, Alaska Region, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802, by facsimile (907–586–7354), or by hand delivery to the NMFS, 709 West 9th Street, room 713, Juneau, AK.

SUPPLEMENTARY INFORMATION: NMFS published a final rule implementing the Crab Rationalization Program (Program) as authorized under Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs March 2, 2005 (70 FR 10173).

Section 680.20(f)(1)(iii) of the final rule notes that NMFS will specify the application period for crab QS and PQS in the **Federal Register** and any applications received after this date will be considered untimely and denied. This notice specifies A 60-day application period. This 60-day application period was referenced in the proposed rule published on October 29, 2004, to implement the Program (69 FR 63223). This 60-day application period is consistent with the intent of the final rule to provide adequate time for participants in the crab fisheries to review the final rule and prepare materials necessary for the application process specified in § 680.40(f)(2). This application period will provide NMFS with sufficient time to process applications and issue QS and PQS for crab fisheries occurring later in 2005.

Applications to receive QS or PQS may be received by contacting NMFS (see **ADDRESSES**) or by downloading at *http://www.fakr.noaa.gov.*

Dated: March 2, 2005.

Alan D. Risenhoover

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–4476 Filed 3–7–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050301050–5050–01]

Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for public comments.

SUMMARY: NOAA publishes this notice to announce the availability of a Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes for public comment.

DATES: Comments on this draft document must be submitted by April 4, 2005.

ADDRESSES: The Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes is available at *ftp://www.oarhq.noaa.gov/coopinst.pdf.*

The public is encouraged to submit comments on the Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes Draft electronically to *coop.inst@noaa.gov.* For commenters who do not have access to a computer, comments on documents may be submitted in writing to Office of Oceanic and Atmospheric Research, c/o Dr. John Cortinas, Office of Scientific Support, 1315 East-West Highway, R/OSSX5, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. John Cortinas, Office of Scientific Support, OAR, 1315 East West Highway, R/OSSX5, Silver Spring, Maryland 20910, Phone (301) 713–2465, ext. 206.

SUPPLEMENTARY INFORMATION: The Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes is being developed in response to a January 2004 recommendation from the NOAA Science Advisory Board (SAB). The SAB recommended that NOAA develop a NOAA-wide process by which cooperative institutes and other cooperative arrangements with extramural partners are established and maintained. A copy of the SAB report is available at *http://www.sab.noaa.gov/Reports/RRT_Report_080604.pdf.*

The Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes defines the policy and process for establishing and managing all new NOAA cooperative institutes. This proposed policy includes guidelines for the review process, renewal process, and sunset clauses. Upon adoption of a final policy document, NOAA will evaluate all current cooperative institutes and create a plan to transition them to the new cooperative institute policy and process.

The Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes is being issued for comment only and is not intended for interim use. Suggested changes will be incorporated, where appropriate, in the final version. Upon adoption of the final policy and process, NOAA will issue a NOAA Administrative Order to institute the policy.

NOAA welcomes all comments on the content of the document. We also request comments on any inconsistencies perceived within the document, and possible omissions of important topics or issues. For any shortcoming noted within the draft document, please propose specific remedies.

Please adhere to the instructions detailed herein for preparing and submitting your comments. Using the format guidance described below will facilitate the consideration of all reviewer comments. Please provide background information about yourself on the first page of your comments: Your name(s), organization(s), and area of expertise, mailing address(es), and telephone and fax number, e-mail address(es). Overview comments should follow your background information and should be numbered. Comments that are specific to particular pages and paragraphs should follow any overview comments and should identify the page numbers to which they apply. Please number and print identifying information at the top of all pages.

Dated: March 2, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05–4429 Filed 3–7–05; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of public comment period for the Revised Management Plan for the Delaware National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty day public comment period on the Delaware National Estuarine Research Reserve Management Plan Revision which will begin on the day this announcement is published. Comments should be sent within the comment period in hard copy or e-mail to Cory Riley at *Cory.Riley@noaa.gov* or NOAA's Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

The Delaware National Estuarine Research Reserve was designated in 1993 pursuant to section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating under a management plan approved in 1993. Pursuant to 15 CFR 921.33(c), a state must revise its management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve. Changes in the administrative structure of the reserve, a boundary expansion, new facility and land acquisition plans, and updated programmatic objectives are notable revisions to the 1993 approved management plan.

When the Delaware National Estuarine Research Reserve was designated, it was managed jointly by three divisions within the Delaware Department of Natural Resources and Environmental Control. Since that time, the Division of Soil and Water has become the sole state agency administering reserve activities. The revised management plan outlines the administrative structure; the education, stewardship, and research goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations.

One hundred and forty seven (147) acres adjacent to the Blackbird Creek component site are incorporated through the boundary amendment in the management plan revision. The previous reserve boundary around Blackbird Creek did not include an access point to the estuarine habitat. The expansion adds land that was acquired in fee simple from willing sellers. The new boundary and will provide direct access to the Blackbird Creek for reserve related research and education programs. These parcels also provide excellent passive recreation and educational opportunities in an area that was previously not accessible to the public. Forested uplands, wetlands and marsh habitat will be protected through this expansion to ensure the Blackbird Creek component is an appropriate site for long term research and education.

FOR FURTHER INFORMATION CONTACT: Cory Riley at (301) 563–7222 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Delaware Management Plan revision, visit *http://www.dnrec.state.de.us/DNREC2000/Divisions/Soil/DNERR/.*

Dated: March 2, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 05–4389 Filed 3–7–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF EDUCATION

Proposed Collection; Comment Request

AGENCY: Department of Education.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2006–2007 award year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs). The Secretary also requests comments on changes under consideration for the 2006–2007 award year FAFSA.

DATES: Interested persons are invited to submit comments on or before May 9, 2005.

ADDRESSES: Comments may be submitted electronically through e-mail to *FAFSAComments@ed.gov*. Written comments and requests for copies of the proposed information collection requests should be addressed to Joseph Schubart, Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700.

In addition, interested persons can access this document on the Internet:

(1) Go to IFAP at *http://ifap.ed.gov*;

(2) Scroll down to "Publications".

(3) Click on "FAFSAs and Renewal FAFSAs";

(4) Click on "By 2006–2007 Award Year";

(5) Click on "Draft FAFSA Form/Instructions".

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's Web site: *http://www.adobe.com*

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 245–6566. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, "in cooperation with agencies and organizations involved in providing student financial assistance," to "produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under" the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

FSA has awarded a Front-End Business Integration contract that will re-engineer the front-end student aid application processes, disbursement processes, funds management, and customer service functions into a single integrated business solution. The first implementation activities are scheduled for January, 2007. For this reason, we propose to make minimal changes to the 2006–2007 FAFSA, and will consider recommendations for improving the FAFSA and the application process in the 2007–2008 development cycle.

The draft 2006–2007 FAFSA (posted to the IFAP Web site) does not propose to add or to delete data elements. The questions appear in the same format and the same order as in 2005–2006. Several changes to the working on the 2006–2007 FAFSA are proposed as follows: (1) Page 1, "Using Your Tax Return" is revised to note that applicants required to file a fax return must do so to receive student aid. (2) Page 2, Under Notes for Questions 43–45, two lines referring to filing on the Web are deleted. (3) Page 2, The paragraph beginning "Investments include * * *" is revised to direct applicants to a Web site for further guidance. (4) Pages 4 and 5,

Questions 32 and 70, option "c" is revised to indicate that "I (and my parents) will not file and I am not (my parents are not) requires to file." (5) Page 8, Worksheet B, item 1, adds the word "voluntary" before "contributions to tax-deferred pension and savings plans." A more detailed summary of changes is posted on the IFAP Web site. The Secretary requests comments on these proposed changes to wording, as well as suggestions for ways to further simplify the application for students, parents, and schools.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 2, 2005.

Angela C. Arrington,

Leader, Information Management Case Service Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: Free Application for Federal Student Aid (FAFSA).
Frequency: Annually
Affected Public: Individuals and families.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 14,867,558;
Burden Hours: 7,598,016.
Abstract: The FAFSA collects identifying and financial information about a student applying for Title IV, HEA program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used for determining a student's eligibility for grants and loans under the Title IV, HEA Program. It is further used for determining a student's eligibility for State and institutional financial aid programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2696. When you access the information collection, click on "Download attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

[FR Doc. 05–4391 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 3, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.
Title: Impact Evaluation of Academic Instruction for After-School Programs.
Frequency: On Occasion.
Affected Public: State, local, or tribal gov't, SEAs or LEAs; Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 5,050.
Burden Hours: 13,201.
Abstract: Data collection for impact evaluation of intensive academic reading and math instruction in after-school programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2703. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the

complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–4451 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 3, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Part C State Performance Plan (SPP) and Annual Performance Report (APR).

Frequency: State Performance Plan—every 6 years; Annual Performance Report—Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Not-for-profit institutions; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 8,400.

Abstract: The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004, became Public Law 108–446. In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, not later than one year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each Lead Agency must have in place a performance plan that evaluates the Lead Agency's efforts to implement the requirements and purposes of Part C and describe how the Lead Agency will improve such implementation. This plan, referenced here-to-after, is called the Part C State Performance Plan (Part C–SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) and 20 U.S.C. 1442 the Lead Agency shall report annually to the public on the performance of each Part C program located in the State on the targets in the Lead Agency's performance plan. The Lead Agency shall report annually to the Secretary on the performance of the State under the Lead Agency's performance plan. This report. referenced here-to-after, is called the Part C Annual Performance Report (Part C–APR).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2706. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–4452 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each

proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 3, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Part B State Performance Plan (SPP) and Annual Performance Report (APR).

Frequency: State Performance Plan—every 6 years; Annual Performance Report—annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal government.

Reporting and Recordkeeping Hour Burden:

Respones: 60.

Burden Hours: 18,000.

Abstract: The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004, became Public Law 108–446. In accordance with 20 U.S.C. 1416(b)(1), not later than one year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State must have in place a performance plan that evaluates the States efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan, referenced here-to-after, is called the Part B State Performance Plan (Part B—SPP). In accordance with 20 U.S.C. 1416(b)(C)(ii) the State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall report annually to the Secretary on the performance of the State under the State's performance plan. This report, referenced here-to-after, is called the Part B Annual Performance Report (Part B—APR).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2705. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–4453 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.206A.

DATES: *Applications Available:* March 8, 2005.

Deadline for Notice of Intent To Apply: April 4, 2005.

Deadline for Transmittal of Applications: April 22, 2005.

Deadline for Intergovernmental Review: June 21, 2005.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), or both.

Estimated Available Funds for New Awards: $3,522,122. Contingent upon the availability of funds and quality of applications, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$400,000.

Estimated Average Size of Awards: $270,000.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to carry out a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary and secondary schools nationwide to meet the special educational needs of gifted and talented students.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority implements section 5464(c) of the Jacob K. Javits Gifted and Talented Students Education Act of 2001 (20 U.S.C. 7253 *et seq.*).

Absolute Priority: For FY 2005 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is based on the "Special Rule" in section 5464(c) of the statute, which provides that in a year in which the Javits appropriation exceeds the appropriation for FY 2001, the Secretary must use such excess funds to award grants, on a competitive basis, to State educational agencies, local educational agencies, or both, to implement activities described in section 5464(b). In accordance with section 5464(c) and because the FY 2001 Javits appropriation was $7.5 million and the FY 2005 appropriation is $11 million, the Secretary will utilize approximately $3.5 million to fund new awards under the "Special Rule." Therefore, the Secretary establishes an absolute priority for this competition such that applications submitted in response to this announcement must propose to carry out one or more of the following 5464(b) activities:

(1) Conducting—

(A) Scientifically based research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods to serve all students; and

(B) Program evaluations, surveys, and the collection, analysis, and development of information needed to

accomplish the purpose of the Javits program.

(2) Carrying out professional development (which may include fellowships) for personnel (which may include leadership personnel) involved in the education of gifted and talented students.

(3) Establishing and operating model projects and exemplary programs for serving gifted and talented students, including innovative methods for identifying and educating students who may not be served by traditional gifted and talented programs (such as summer programs, mentoring programs, service learning programs, and cooperative programs involving business, industry, and education).

(4) Implementing innovative strategies, such as cooperative learning, peer tutoring, and service learning.

(5) Carrying out programs of technical assistance and information dissemination, including assistance and information with respect to how gifted and talented programs and methods, where appropriate, may be adapted for use by all students.

(6) Making materials and services available through State regional educational service centers, institutions of higher education, or other entities.

(7) Providing funds for challenging, high-level course work, disseminated through technologies (which may include distance learning), for individual students or groups of students in schools and local educational agencies that would not otherwise have the resources to provide such course work.

Program Authority: 20 U.S.C. 7253 *et seq.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,522,122. Contingent upon the availability of funds and quality of applications, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$400,000.

Estimated Average Size of Awards: $270,000.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs), local educational agencies (LEAs), or both.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.206A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

You may also obtain an application package for this program via the Internet at the following address: *http://www.ed.gov/programs/javits/applicant.html.*

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: We strongly encourage each potential applicant to notify us by April 4, 2005, of its intent to submit an application for funding. We will be able to develop a more efficient process for reviewing grant applications if we have an estimate of the number of entities that intend to apply for funding under this competition. Notifications should be sent by e-mail to the following Internet address: *javits@ed.gov.* Please put "Notice of Intent" in the subject line. Applicants that do not provide this e-mail notification may still apply for funding.

Page Limit: It is recommended that the program narrative not exceed 20 pages, size 12 font, double-spaced.

3. *Submission Dates and Times:*

Applications Available: March 8, 2005.

Deadline for Notice of Intent to Apply: April 4, 2005.

Deadline for Transmittal of Applications: April 22, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 21, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m.

Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with *any* page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

Submission of Paper Applications by Mail: If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.206A, 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: CFDA Number 84.206A, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.206A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt to you. If you do not receive the grant application receipt acknowledgement within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* We use the following selection criteria from 34 CFR 75.210 to evaluate applications for new grants under this competition. The maximum score for each criterion is indicated in parenthesis.

We evaluate an application by determining how well the proposed project meets the following criteria:

(a) *Need for project (20 points).* The Secretary considers the need for the proposed project. In determining the

need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Quality of the project design (25 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

i. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

ii. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

iii. The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(c) *Quality of project personnel (10 points).* The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following:

i. The qualifications, including relevant training and experience, of the project director or principal investigator.

ii. The qualifications, including relevant training and experience, of key project personnel.

(d) *Quality of the management plan (20 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) *Quality of the project evaluation (25 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

i. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

ii. The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Pursuant to the Government Performance and Results Act (GPRA), the Department developed two measures for evaluating the overall effectiveness of projects funded under the Javits program. These measures gauge project quality and improvements in professional knowledge for teachers and academic achievement in students served by the projects by assessing: (1) The number of project designs that are rated by an independent review panel of qualified scientists and practitioners as being of "high or above" quality; and (2) the number of projects that have evidence of significant gains in teacher knowledge or student achievement, or both.

The Department will collect data for these measures from grantees' annual performance reports and other existing data sources.

VII. Agency Contact

For Further Information Contact: Danita Woodley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W253, Washington, DC 20202–6200. Telephone: (202) 260–8735 or by e-mail: *Danita.Woodley@ed.gov*. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 3, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–4436 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement Program (OII); Overview Information; Star Schools Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.203G.

DATES: *Applications Available:* March 8, 2005.

Date of Pre-Application Meeting: March 11, 2005 (webcast).

Deadline for Notice of Intent to Apply: April 7, 2005.

Deadline for Transmittal of Applications: May 9, 2005.

Deadline for Intergovernmental Review: July 6, 2005.

Eligible Applicants: Eligible entities, which include any one of the following

that is organized on a Statewide or multistate basis:

(1) A public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, except that any such agency or corporation shall represent the interests of elementary schools and secondary schools that are eligible to participate in the program under part A of title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB).

(2) A partnership that will provide telecommunications services and that includes three or more of the following entities, at least one of which must be an agency, as described in paragraphs (A) or (B) below:

(A) A local educational agency (LEA) that serves a significant number of elementary and secondary schools that are eligible for assistance under part A of title I of the ESEA, or elementary and secondary schools operated or funded for Indian children by the Department of the Interior eligible under section 1121(d)(1)(A) of the ESEA.

(B) A State educational agency.

(C) An adult and family education program.

(D) An institution of higher education or a State higher education agency, as that term is defined in section 103 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1003.

(E) A teacher training center or academy that provides teacher preservice and inservice training, and receives Federal financial assistance or has been approved by a State agency.

(F) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computer; or a public broadcasting entity with such experience.

(G) A public or private elementary or secondary school.

Note: To receive funding, at least one LEA must participate in the proposed project.

Estimated Available Funds: $14,400,000.

Estimated Range of Awards: $1,500,000–$3,000,000.

Estimated Average Size of Awards: $2,000,000.

Maximum Award: An award granted under this competition cannot, in any single fiscal year, exceed $10,000,000.

Estimated Number of Awards: 5–7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Star Schools program is to—

(A) Encourage improved instruction in mathematics, science, and foreign languages, as well as other subjects (such as literacy skills and vocational education); and

(B) Serve underserved populations, including disadvantaged, illiterate, limited English proficient populations, and individuals with disabilities through grants to eligible telecommunications partnerships to enable the partnerships to—

(i) Develop, construct, acquire, maintain and operate telecommunications audio and visual facilities and equipment;

(ii) Develop and acquire educational and instructional programming; and

(iii) Obtain technical assistance for the use of such facilities and instructional programming.

Priorities: This competition includes two absolute priorities and six competitive preference priorities.

Absolute Priorities: We are establishing these priorities for the FY 2005 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA). For FY 2005 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

The priorities are:

Absolute Priority 1—Supplemental Educational Services (SES) Using Emerging Mobile Technologies in Urban and Rural Communities To Enhance Reading and Mathematics Achievement

The Secretary establishes an absolute priority for applications that propose SES using emerging mobile technologies for students attending schools in urban and rural communities that have not achieved Annual Yearly Progress (AYP) in two or more years. Student achievement must be evaluated using online assessment strategies.

Absolute Priority 2—Educational Gaming and Simulations Applications for Emerging Mobile Technologies To Enhance Literacy Skills and Mathematics at Any Grade Level or Span of Grade Levels

The Secretary establishes an absolute priority for applications that propose to develop partnerships with technology-based research centers, entertainment companies, or other high-technology entities to produce and deliver educational gaming and simulations applications to improve mathematics and reading literacy through scientifically based research strategies as appropriate. The applicant must ensure that no less than 50 percent of the schools participating in this activity include a high concentration of low-income children who attend schools in urban or rural communities. Student achievement must be evaluated using online assessment strategies.

The term *low-income children* is defined on the basis of the poverty criteria in section 1113(a)(5) of the ESEA. Under those criteria, low-income children are children ages 5 through 17 who are: (i) Living in poverty (as counted in the most recent census data approved by the Secretary); (ii) eligible for free or reduced priced lunches under the Richard B. Russell National School Lunch Act; (iii) living in families receiving funding under the State program funded under part A of title IV of the Social Security Act; or (iv) eligible to receive medical services under the Medicaid program. This definition applies to all uses of the term low-income children in this notice.

Competitive Preference Priority 1: This priority is from the notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586). For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 25 points to an application, depending on the extent to which the application meets this priority.

Note: In awarding additional points to applications that address this competitive preference priority, we will consider only those applications that have top-ranked scores on the basis of the Selection Criteria in Section V of this notice.

This priority is:

Competitive Preference Priority 1

The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an

experimental design under which participants—*e.g.*, students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—*e.g.*, students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cutting point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

If the priority is used as a competitive preference priority, points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

Definitions

As used in this notice—

Scientifically based research (section 9101(37) of the ESEA, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individual entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score ("cut score") are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the "cut score" is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which

the outcome of interest is measured multiple times before and after the treatment for program participants only.

Competitive Preference Priorities 2–6: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from section 5474(c)(2) of the ESEA, 20 U.S.C. 7255c(c)(2). Under 34 CFR 75.105(c)(2)(ii), we give preference to an application that meets one or more of these priorities over an application of comparable merit that does not meet the priorities.

These priorities are:

Competitive Preference Priority 2

To meet this priority, an application must describe a program that proposes high-quality plans, will provide instruction consistent with State academic content standards, or will otherwise provide significant and specific assistance to States and LEAs undertaking systemic education reform.

Competitive Preference Priority 3

To meet this priority, an application must describe a program that will provide services to programs serving adults, especially parents, with low levels of literacy.

Competitive Preference Priority 4

To meet this priority, an application must describe a program that will serve schools with significant numbers of children counted for the purposes of part A of title I of the ESEA.

Competitive Preference Priority 5

To meet this priority, an application must describe a program that ensures that the eligible entity will—

(1) Serve the broadest range of institutions, programs providing instruction outside of the school setting, programs serving adults, especially parents, with low levels of literacy, institutions of higher education, teacher training centers, research institutes, and private industry;

(2) Have substantial academic and teaching capabilities, including the capability of training, retraining, and inservice upgrading of teaching skills and the capability to provide professional development;

(3) Provide a comprehensive range of courses for educators to teach instructional strategies for students with different skill levels;

(4) Provide training to participating educators in ways to integrate telecommunications courses into existing school curriculum;

(5) Provide instruction for students, teachers, and parents;

(6) Serve a multistate area; and

(7) Give priority to the provision of equipment and linkages to isolated areas.

Competitive Preference Priority 6

To meet this priority, an application must describe a program that involves a telecommunications entity (such as a satellite, cable, telephone, computer, or public or private television stations) participating in the eligible entity and donating equipment or in-kind services for telecommunications linkages.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 437(d)(1) of GEPA, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under the reauthorized Star Schools program, which was revised by the NCLB, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the absolute priorities in this notice under section 437(d)(1). These absolute priorities will apply to the FY 2005 grant competition only.

Program Authority: 20 U.S.C. 7255–7255f.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $14,400,000.

Estimated Range of Awards: $1,500,000–$3,000,000.

Estimated Average Size of Awards: $2,000,000.

Maximum Award: An award granted under this competition cannot, in any single fiscal year, exceed $10,000,000.

Estimated Number of Awards: 5–7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

Eligible Applicants: Eligible entities, which include any one of the following that is organized on a Statewide or multistate basis:

(1) A public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, except that any such agency or corporation shall represent the interests of elementary schools and secondary schools that are eligible to participate in the program under part A of title I of the ESEA.

(2) A partnership that will provide telecommunications services and that includes three or more of the following entities, at least one of which must be an agency, as described in paragraphs (A) or (B) below:

(A) A LEA that serves a significant number of elementary and secondary schools that are eligible for assistance under part A of title I of the ESEA, or elementary and secondary schools operated or funded for Indian children by the Department of the Interior eligible under section 1121(d)(1)(A) of the ESEA.

(B) A State educational agency.

(C) An adult and family education program.

(D) An institution of higher education or a State higher education agency, as that term is defined in section 103 of the HEA, 20 U.S.C. 1003.

(E) A teacher training center or academy that provides teacher preservice and inservice training, and receives Federal financial assistance or has been approved by a State agency.

(F) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computer; or a public broadcasting entity with such experience.

(G) A public or private elementary or secondary school.

Note: To receive funding, at least one LEA must participate in the proposed project.

2. *Cost Sharing or Matching:* The Star Schools program requires a matching commitment on the part of the applicant. The Federal share of the cost of the grants funded under this program shall not exceed 75 percent for the first and second years, 60 percent for the third and fourth years, and 50 percent for the fifth year. The Secretary may reduce or waive this matching

requirement upon a showing of financial hardship.

3. *Indirect Cost Recovery:* Grants under this program are subject to "supplement, not supplant" requirements of the authorizing statute. Projects may recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements found at 34 CFR 75.563 and 34 CFR 76.564–569. As soon as they decide to apply, applicants are urged to contact the ED Indirect Cost Group on (202) 377–3833 for guidance about obtaining a restricted indirect cost rate to use on the Budget Information form (ED Form 524) included with the application package.

IV. Application and Submission Information

1. *Address To Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.* To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.203G.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contacts).

2. *Content and Form of Application Submission:* a. *Allowable Activities and Application Requirements:* As set forth in statute, to receive a grant under this program, applicants may propose support for one or more of the following:

(1) The development, construction, acquisition, maintenance and operation of telecommunications facilities and equipment.

(2) The development and acquisition of live, interactive instructional programming.

(3) The development and acquisition of preservice and inservice teacher training programs based on established research regarding teacher-to-teacher mentoring, and ongoing, in-class instruction.

(4) The establishment of teleconferencing facilities and resources for making interactive training available to teachers.

(5) Obtaining technical assistance.

(6) The coordination of the design and connectivity of telecommunications networks to reach the greatest number of schools.

Applications must—

(1) Describe how the proposed project will assist all students to have an opportunity to meet challenging State academic achievement standards, how the project will assist State and local educational reform efforts, and how the project will contribute to creating a high quality system of educational development;

(2) Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include—

(A) The design, development, construction, acquisition, maintenance and operation of State or multistate educational telecommunications networks and technology resource centers;

(B) Microwave, fiber optics, cable, and satellite transmission equipment or any combination thereof;

(C) Reception facilities;

(D) Satellite time;

(E) Production facilities;

(F) Other telecommunications equipment capable of serving a wide geographic area;

(G) The provision of training services to instructors who will be using the facilities and equipment for which assistance is sought, including training in using such facilities and equipment and training in integrating the proposed program into the classroom curriculum; and

(H) The development of educational and related programming for use on a telecommunications network;

(3) In the case of an application for assistance for instructional programming, describe the types of programming that will be developed to enhance instruction and training and provide an assurance that such programming will be designed in consultation with professionals (including classroom teachers) who are experts in the applicable subject matter and grade level;

(4) Describe how the eligible entity has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the eligible entity will increase the availability of courses of instruction in English, mathematics, science, foreign languages, arts, history, geography, or other disciplines;

(5) Describe the professional development policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought;

(6) Describe the manner in which historically underserved students (such as students from low-income families, limited English proficient students, students with disabilities, or students who have low literacy skills) and their families will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming;

(7) Describe how existing telecommunications equipment, facilities, and services, where available, will be used;

(8) Provide an assurance that the financial interest of the United States in the telecommunications facilities and equipment will be protected for the useful life of such facilities and equipment;

(9) Provide an assurance that a significant portion of any facilities and equipment, technical assistance, and programming for which assistance is sought for elementary and secondary schools will be made available to schools or LEAs that have a high number or percentage of children eligible to be counted under part A of title I of the ESEA;

(10) Provide an assurance that the applicant will use the funds provided under this program to supplement and not supplant funds available for the purposes of the program;

(11) Describe how funds received under this program will be coordinated with funds received for educational technology in the classroom;

(12) Describe the activities or services for which assistance is sought, such as—

(A) Providing facilities, equipment, training services, and technical assistance;

(B) Making programs accessible to students with disabilities through mechanisms such as closed captioning and descriptive video services;

(C) Linking networks around issues of national importance (such as elections) or to provide information about employment opportunities, job training, or student and other social service programs;

(D) Sharing curriculum resources between networks and development of

program guides which demonstrate cooperative, cross-network listing of programs for specific curriculum areas;

(E) Providing teacher and student support services, including classroom and training support materials which permit student and teacher involvement in the live interactive distance learning telecasts;

(F) Incorporating community resources, such as libraries and museums, into instructional programs;

(G) Providing professional development for teachers, including, as appropriate, training to early childhood development and Head Start teachers and staff and vocational education teachers and staff, and adult and family educators;

(H) Providing programs for adults to maximize the use of telecommunications facilities and equipment;

(I) Providing teacher training on proposed or established models of exemplary academic content standards in mathematics and science and other disciplines as such standards are developed; and

(J) Providing parent education programs during and after the regular school day which reinforce a student's course of study and actively involve parents in the learning process;

(13) Describe how the proposed project as a whole will be financed and how arrangements for future financing will be developed before the project expires;

(14) Provide an assurance that a significant portion of any facilities, equipment, technical assistance, and programming for which assistance is sought for elementary and secondary schools will be made available to schools in LEAs that have a high percentage of children counted for the purpose of part A of title I of the ESEA; and

(15) Provide an assurance that the applicant will provide such information and cooperate in any evaluation that the Secretary may conduct under this program.

b. *Other Requirements:* Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: Applicants that plan to apply for funding under this program are encouraged to indicate an intent to apply via e-mail notification sent to starschoolsintent@ed.gov no later than April 7, 2005. Applicants that fail to supply this e-mail notification may still apply for funding under this program.

Page Limit for Program Narrative: The program narrative is where you, the applicant, address the selection criteria (*i.e.*, within the context of the absolute priorities) using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the program narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Although no page limit is required, applicants are encouraged to confine the program narrative to no more than 50 pages.

3. *Submission Dates and Times: Applications Available:* March 8, 2005.

Deadline for Notice of Intent to Apply: April 7, 2005.

Date of Pre-Application Meeting: March 11, 2005 (webcast).

The Department intends to hold a live webcast to permit potential applicants to pose questions about this grant competition and other technology grant competitions being held by OII. Following the live presentation, the webcast will be archived and remain online until the application deadline date. Interested applicants should link to the following site to participate in or access the web cast: *http://www.kidzonline.org/tepwebcast.* You may submit your intent to participate in the webcast to *tepwebcast@ed.gov.*

Deadline for Transmittal of Applications: May 9, 2005.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 6, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Star Schools program—CFDA Number 84.203G must be submitted electronically using the Grants.gov Apply site. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Star Schools program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that your application is submitted timely to the Grants.gov system.

• To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Donald Fork, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W219, Washington, DC 20202–5900. FAX: (202) 205–5720.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.203G), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.203G), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.203G), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. These selection criteria apply to the absolute priorities and allowable activities only. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion. The maximum number of points an application may earn based on Competitive Preference Priority 1 and the selection criteria is 125 points.

The *Notes* we have included after certain of the criteria are guidance to help applicants in preparing their applications and are not required by statute or regulation. The criteria are as follows:

(a) *Need for the project* (20 points). The Secretary considers the need for the proposed project. In determining the need, the Secretary considers the following factors:

(1) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(2) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(3) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Note: Applicants should provide information concerning the current gap in the quality and quantity of curriculum-based and scientifically based reading, mathematics, science or foreign language research (as applied to the specific absolute priority identified) for the targeted population and propose strategies designed to close that gap. Furthermore, applicants should describe how scientifically based research will be linked to the project and how academic content will be incorporated into the proposed activity to encourage success in school for low-income children. In responding to the priorities, applicants should note that low-income children are a target population under this program. For example, under Absolute Priority 1, applicants should identify the current status of SES programs that are using emerging mobile technologies and describe the gaps in such services for students attending schools in urban and rural communities. Under Absolute Priority 2, applicants should discuss the status and nature including the quality and quantity of online content currently used in elementary and middle schools including virtual schools, charter schools and virtual charter schools serving elementary and middle school students, particularly low-income children. Under Absolute Priority 2, applicants should discuss the extent of existing research on educational gaming and simulations applications to enhance academic achievement and their expectations for use with low-income children.

(b) *Quality of the project design* (25 Points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

Note: Applicants should include a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and a description of how appropriate methodological tools will be used to assess the impact of the proposed activities on enhancing the reading, mathematics, science or foreign language achievement of the targeted audience as measured against rigorous academic standards.

(c) Quality of project personnel (10 Points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of key project personnel.

(2) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources* (10 Points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(e) *Quality of the management plan* (10 Points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(f) *Quality of the project evaluation* (25 Points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote 25–30% of the grant funds to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved

application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants approved for funding under this competition may be required to attend a one- or two-day Grants Administration meeting in Washington, DC during the first year of the grant. In addition, applicants should budget for one Project Directors meeting to be held in Washington, DC in each subsequent year of the grant. The cost of attending these meetings may be paid from Star Schools program grant funds or other resources.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department is currently developing measures that will be designed to yield information on the effectiveness of grant-supported activities. If funded, applicants will be expected to participate in collecting and reporting data for these measures. We will notify grantees of the performance measures once they are developed.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Donald Fork or Jean Tolliver, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5900. Telephone: (202) 205–5633 (Donald Fork) or (301) 925–8402 (Jean Tolliver) or by e-mail: *Donald.Fork@ed.gov or Jean.Tolliver@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 3, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–4441 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals with Disabilities-Steppingstones of Technology Innovation for Students with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327A.

Note: This notice includes one priority with two phases, and funding information for each phase of the competition.

DATES: *Applications Available:* March 9, 2005.

Deadline for Transmittal of Applications: See chart in the Award Information section in this notice.

Deadline for Intergovernmental Review: See chart in the Award Information section in this notice.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $3,000,000.

Funding information regarding each phase of the priority is listed in the chart (chart) in Section II. Award Information in this notice.

Maximum Award: The Secretary does not intend to fund a Phase 1 application that proposes a budget exceeding $200,000 for a single budget period of 12 months or a Phase 2 application that proposes a budget exceeding $300,000 for a single budget period of 12 months.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Students With Disabilities

Applicants must—

(a) Describe a technology-based approach for improving the results of early intervention, or preschool, elementary, middle school, or high school education for children with disabilities. The technology-based approach must be an innovative combination of a new technology and additional materials and methodologies that enable the technology to improve educational or early intervention results for children with disabilities;

(b) Present a justification, based on scientifically rigorous research or theory that supports the potential effectiveness of the technology-based approach for improving the results of education or early intervention for children with disabilities. Results studied under this priority must focus on child outcomes, rather than on parent or professional outcomes. Child outcomes can include improved academic or pre-academic

skills, improved behavioral or social functioning, improved functional performance, *etc.*, provided that valid and reliable measurement instruments are employed. Technology-based approaches intended for use by professionals or parents are not appropriate for funding under this priority unless child-level benefits are clearly demonstrated. Technology-based approaches for professional development will not be funded under this priority;

(c) Provide a detailed plan for conducting work in one of the following two phases:

(1) Phase 1—Development: Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with children with disabilities. Activities may include development, adaptation, and refinement of technology, materials, or methodologies. Activities must include formative evaluation of usability and feasibility. The primary product of Phase 1 should be a promising technology-based approach that is suitable for field-based evaluation of effectiveness in improving results for children with disabilities.

(2) Phase 2—Research on Effectiveness: Projects funded under Phase 2 must select a promising technology-based approach that has been developed and tested in a manner consistent with Phase 1, and subject the approach to rigorous field-based research to determine effectiveness in educational or early intervention settings. Approaches studied in Phase 2 may have been developed with previous funding under this priority or with funding from other sources. Phase 2 is primarily intended to produce sound research-based evidence that the approach can improve educational or early intervention results for children with disabilities in a defined range of real world contexts.

Phase 2 research is intended to pose a causal question and should employ randomized assignment to treatment and comparison conditions, unless a strong justification is made for why a randomized trial is not possible. In this case, the applicant must employ alternatives that substantially minimize selection bias or allow it to be modeled. These alternatives include appropriately structured regression-discontinuity designs and natural experiments in which naturally occurring circumstances or institutions (perhaps unintentionally) divide people into treatment and comparison groups in a manner akin to purposeful random assignment. Applicants proposing to use an alternative system must, first, make a compelling case that randomization is not possible and, second, describe in detail how the procedures will result in substantially minimizing the effects of selection bias on estimates of effect size. Choice of randomizing unit or units (*e.g.*, students, classrooms, schools) must be grounded in a theoretical framework. Observational, survey, or qualitative methodologies may complement experimental methodologies to assist in the identification of factors that may explain the effectiveness or ineffectiveness of the approach. Applications should provide research designs that permit the identification and assessment of factors impacting the fidelity of implementation. Mediating and moderating variables that are both measured in the practice or model condition and are likely to affect outcomes in the comparison condition should be measured in the comparison condition (*e.g.*, student time-on-task, teacher experience and time in position).

Phase 2 research must be of sufficient power to provide convincing evidence of the effectiveness or ineffectiveness of the technology-based approach under study, at least within a defined range of settings. Applicants should provide documentation that available sample sizes, methodologies, and treatment effects are likely to result in conclusive findings regarding effectiveness of the technology based approach.

(d) Provide a plan for forming collaborative relationships with vendors and/or other dissemination or marketing resources to ensure that the technology-based approach is widely available if sufficient evidence of effectiveness has been obtained. Applicants should document the availability and/or participation of dissemination or marketing resources. Applicants are encouraged to plan these collaborative relationships early in their projects, even in Phase 1, but should refrain from widespread dissemination to practitioners until evidence of effectiveness has been obtained.

(e) Budget for an annual two-day Project Directors' meeting in Washington, DC, and another annual two-day trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority to share information, and discuss findings and methods of dissemination.

(f) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility. If the project produces instructional materials for dissemination, it must produce them in accessible formats, including complying with the National Instructional Materials Accessibility Standard (NIMAS) standards for textual materials.

Within this absolute priority, we intend to fund at least two projects led by a project director or principal investigator in the initial phase of his or her career. For purposes of this priority, the initial phase of an individual's career is considered to be the first three years after completing and graduating from a doctoral program (*i.e.*, for FY 2005 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 2001–2002 academic year). To qualify for this consideration, the applicant must explicitly state and document that the project director or principal investigator is in the initial phase of his or her career. At least 50 percent of the initial career researcher's time must be devoted to the project.

Within this absolute priority, we also intend to fund at least two projects focusing on technology-based approaches for children with disabilities, ages birth to age 3.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,000,000.

Maximum Award: The Secretary does not intend to fund a Phase 1 application that proposes a budget exceeding $200,000 for a single budget period of 12 months or a Phase 2 application that proposes a budget exceeding $300,000 for a single budget period of 12 months.

STEPPINGSTONES OF TECHNOLOGY INNOVATION FOR STUDENTS WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2005

CFDA number and name	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.327A—Steppingstones of Technology Innovation for Students With Disabilities:						
Phase 1—Development	May 6, 2005	July 5, 2005	$1,200,000	$100,000–$200,000	$200,000	6
Phase 2—Research on Effectiveness	May 6, 2005	July 5, 2005	1,800,000	200,000–300,000	300,000	6

Project Period: Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months unless a compelling rationale is provided for funding up to 36 months.

Note: The Department of Education is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of the IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* March 9, 2005.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery, For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2005. Steppingstones of Technology Innovation for Students with Disabilities—CFDA Number 84.327A is one of the competitions included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov. You may access the electronic grant application for the Steppingstones of Technology Innovation for Students with Disabilities—CFDA Number 84.327A competition at: *http://www.grants.gov.* You must search for the downloadable application package

for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.
- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.
- To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.327A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The

GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the Technology and Media Services to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects are of high quality and are relevant to the needs of children with disabilities). Data on these measures will be collected from the projects funded under this competition.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

For Further Information Contact: Dave Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 4078, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7427.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 2, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–4440 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Secondary Transition Technical Assistance Center; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326J.

DATES: *Applications Available:* March 9, 2005.

Deadline for Transmittal of Applications: April 22, 2005.

Deadline for Intergovernmental Review: June 21, 2005.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), public charter schools that are LEAs under State law, institutions of higher education (IHEs), other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

Estimated Available Funds: $5,200,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $800,000 for a single budget period of 12 months for year one of the project period, and $1,100,000 for a single budget period of 12 months for years two through five of the project period.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program promotes academic achievement and improves results for children with disabilities by supporting technical assistance, model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (*see* sections 663 and 681(d) of the Individuals With Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities—Secondary Transition Technical Assistance Center

Background

The secondary transition of students with disabilities is a complex process for youth, their families, and school personnel. IDEA requires transition planning for students at age 16, including a description of their postsecondary goals and needed transition services in their Individualized Education Programs. Adding to the complexity, transition planning and services require a multi-agency approach to address the multiple needs of youth with disabilities as they move from high school to further education, employment, and where appropriate, independent living and adult services.

Although recent findings of the National Longitudinal Transition Study-2 (2004) and data from States' Annual Performance Reports indicate that the experiences of students with disabilities have significantly improved over the past decade, students in some disability categories, such as emotional disturbance, continue to experience poor academic and social outcomes. The U.S. Bureau of Labor Statistics indicates that in 2002, only 31 percent of civilian non-institutionalized youth with disabilities, ages 18–24, were employed, compared to 85 percent of those without a disability. More extensive efforts, therefore, are needed to improve transitions from high school to postsecondary education, employment, independent living, and adult services. Efforts must begin in the early years of schooling to help students make a successful transition to meaningful employment and financial independence (Center on Education Policy, 2002). To ensure full

implementation of IDEA and to help youth with disabilities and their families achieve desired postschool outcomes, the Secondary Transition Technical Assistance Center (Center) will help States build capacity to support and improve transition planning, services, and outcomes for youth with disabilities.

This Center will disseminate information and provide technical assistance on research-based practices as identified by sources such as the What Works Clearinghouse (WWC) (*http://www.whatworks.ed.gov*) with an emphasis on building and sustaining State-level infrastructures of support and building district-level demonstrations of effective transition methods for youth with disabilities. The goal of this Center is to promote efficient and effective large-scale implementation and sustainability of research-based interventions and models.

Priority: This priority supports the improvement of transition planning, services, and outcomes for youth with disabilities through a center that will focus on disseminating information and providing technical assistance. The Center's planning activities must include, but are not limited to, the following:

(a) Develop a strategic plan for technical assistance and dissemination in the first two months after award. This plan must be submitted to the Office of Special Education Programs (OSEP) for approval and must be updated and approved annually. The plan must identify each activity necessary to advance the implementation of transition-related actions in the States and demonstrate the strategic relationship of these actions to improved outcomes for youth with disabilities.

(b) Meet with the OSEP project officer and other appropriate Federal staff in Washington, DC within the first two months of the project to clarify project activities and further develop the strategic plan.

The Center's knowledge development activities must include, but are not limited to, the following:

(a) Conduct an analysis of IDEA Part B State Annual Performance Reports and other sources of information to determine the current status of transition planning strategies and identify any practices and strategies that support improved performance or create barriers.

(b) Identify effective and promising practices that improve transition planning, services, and outcomes for youth with disabilities by consulting sources such as the WWC, by commissioning the WWC to conduct reviews of relevant research if such reviews have not already been done, and, if necessary, by conducting its own reviews of research studies using standards consistent with those of WWC. The Center must consult with other appropriate technical assistance providers across the Department of Education and other federal agencies to incorporate effective strategies for improving the performance of students with disabilities in broader improvement efforts. The Center must also work to ensure that its efforts are coordinated with other reform/school improvement initiatives at the district and local school level.

The Center's technical assistance and dissemination activities must include, but are not limited to, the following:

(a) Maintain, in collaboration with the proposed new Center on Access to the General Education Curriculum for High School Students with Disabilities, a user-friendly Web site with relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

(b) Work directly with States and a limited number of school districts, selected in collaboration with the Center on Access to the General Education Curriculum for High School Students with Disabilities, to: (1) Improve integrated and systemic implementation of interventions, such as self-determination curriculum and career development activities, and strategies, such as concurrent enrollment, mentorships, internships, culturally sensitive approaches, and combined funding streams; (2) establish and maintain an evaluation system based on a standard protocol to measure progress of implementation in States; and (3) produce reports on trends and patterns and other pertinent topics as requested by OSEP.

(c) Provide technical assistance on effective systems of support.

(d) Foster integrated approaches to transition planning and services.

(e) Provide leadership and other technical assistance activities regarding research-based transition strategies and supports.

(f) Develop and implement a plan for building a cadre of trainers through regional capacity building institutes and other meetings as requested by OSEP. At a minimum, the Center must hold trainer institutes every year of the project.

(g) Prepare and disseminate reports and documents on secondary transition interventions, strategies, and supports including publications in peer-reviewed journals.

(h) Develop and apply strategies for the dissemination of information to State-specific audiences including students, teachers, rehabilitation counselors, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations, and agencies.

(i) Develop partnerships with relevant programs, agencies, and organizations to assist with implementing the goals of the New Freedom Initiative (NFI) and promoting equal access to full participation in American society. (See the NFI at the following Web site: *http://www.hhs.gov/newfreedom/eo13217.html*) Partners are not limited to but must include a minimum of the following entities, national teacher organizations, school administrators, teacher trainers, guidance counselors, parent and disability organizations, national postsecondary support organizations, business coalitions, and key Federal agencies, including the Rehabilitation Services Administration, the National Institute on Disability and Rehabilitation Research, the Department of Labor, and other agencies that work to improve access to public accommodations, commercial facilities, information technology, telecommunications services, and housing.

(j) Submit for approval a proposal describing the content and purpose of any new paper or electronic product, prior to its development, to the document review board of OSEP's Dissemination Center.

(k) Provide OSEP-specified technical assistance to States. This effort must include participation in: (1) Collaborative Web-based technical assistance activities; (2) OSEP-sponsored Communities of Practice; and (3) direct technical assistance to OSEP-specified States through partnerships among OSEP, other centers, and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the annual project continuation award (Technical assistance to OSEP-specified States averages approximately $40,000 per year.)

The Center must also—

(a) Maintain communication with the OSEP project officer through monthly phone conversations and e-mail communication as needed. The Center must submit annual performance reports and provide additional written

materials as needed for the OSEP project officer to monitor the Center's work.

(b) Establish, maintain, and meet at least annually with an advisory committee consisting of individuals with disabilities, parents, educators, researchers, and other appropriate individuals to review and advise on the Center's activities and plans.

(c) Maintain communication and collaboration with other relevant OSERS-funded projects.

(g) Fund, as project assistants, two doctoral students per year who have concentrations in special education, educational leadership, rehabilitation, or other relevant, transition-related areas.

(h) Conduct evaluations of its specific activities and of the overall impact of its work. The Center must report its evaluation findings annually to the OSEP project officer.

(i) Budget for annual attendance at two-day Technical Assistance Project Director's meeting and at least two one-day planning meetings in Washington, DC. The Center must also budget to attend three one-day meetings such as Department briefings, Department-sponsored conferences, and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which will conduct its review in Washington, DC during the last half of the project's second year. Projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved transition outcomes for youth with disabilities.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $5,200,000.

Maximum Award: The Secretary does not intend to fund an application that proposes a budget exceeding $800,000 for a single budget period of 12 months for year one of the project period, and $1,100,000 for a single budget period of 12 months for years two through five of the project period.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, public charter schools that are LEAs under State law, IHEs, other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.326J.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 9, 2005.

Deadline for Transmittal of Applications: April 22, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6.

Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 21, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2005. Secondary Transition Technical Assistance Center—CFDA Number 84.326J is one of the competitions included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

You may access the electronic grant application for the Secondary Transition Technical Assistance Center—CFDA Number 84.326J competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.
- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.
- To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326J), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center "Stop 4260, Attention: (CFDA Number 84.326J), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326J), 550 12th

Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program. The measures will focus on: the extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Once the measures are developed, we will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Simon-Burroughs, U.S. Department of Education, 400 Maryland Avenue, SW., room 4151, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7525.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 2, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–4442 Filed 3–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Monday, March 28, 2005 1 p.m.–5:15 p.m.; Tuesday, March 29, 2005 8:30 a.m.–4 p.m.

ADDRESSES: North Augusta Community Center, 101 Brookside Avenue, North Augusta, SC 29801.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, March 28, 2005

1 p.m. Combined Committee Session
5:15 p.m. Adjourn

Tuesday, March 29, 2005

8:30 a.m. Approval of Minutes, Agency Updates
9 a.m. Public Comment Session
9:10 a.m. Chair and Facilitator Update
9:40 a.m. Nuclear Materials Committee Report
11:50 a.m. Public Comments
12 p.m. Lunch Break
1 p.m. Strategic & Legacy Management Committee Report
2:30 p.m. Facilities Disposition & Site Remediation Committee Report
3 p.m. Waste Management Committee Report
3:40 p.m. Administrative Committee Report

3:50 p.m. Public Comments
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, March 28, 2005.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC on March 2, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–4458 Filed 3–7–05; 8:45 am]

BILLING CODE 6560–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–1004–000, ER04–1004–001, ER04–1004–002, and ER04–1004–003]

Alpena Power Generation, L.L.C.; Notice of Issuance of Order

March 2, 2005.

Alpena Power Generation, L.L.C. (Alpena) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy, capacity and ancillary services at market-based rates. Alpena also requested waiver of various Commission regulations. In particular, Alpena requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Alpena.

On March 1, 2005, the Commission granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Alpena should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is March 31, 2005.

Absent a request to be heard in opposition by the deadline above, Alpena is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Alpena, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Alpena's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–956 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–197–000]

ANR Pipeline Company; Notice of Tariff Filing

March 2, 2005.

Take notice that on February 25, 2005, ANR Pipeline Company (ANR), tendered for filing and approval, Seventeenth Revised Sheet No. 190, FERC Gas Tariff Second Revised Volume No. 1, to become effective March 31, 2005.

ANR states that the tariff sheet is being filed to reflect the removal of a terminated non-conforming agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–948 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP94–2–014]

Columbia Gas Transmission Corporation; Notice of Refund Report

March 2, 2005.

Take notice that on February 22, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing its Refund Report made to comply with the April 17, 1995 Settlement in Docket No. GP94–02, *et al.*, as approved by the Commission on June 15, 1995, *Columbia Gas Transmission Corp.*, 71 FERC ¶ 61,337 (1995).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on March 9, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–957 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–011]

Dauphin Island Gathering Partners; Notice of Negotiated Rates

March 2, 2005.

Take notice that on February 25, 2005, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed below to become effective March 27, 2005:

Twentieth Revised Sheet No. 9
Fifth Revised Sheet No. 359

Dauphin Island states that these tariff sheets reflect changes to its statement of negotiated rates.

Dauphin Island states that copies of the filing are being served on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–964 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–034]

Enbridge Pipelines (KPC); Notice of Compliance Filing

March 2, 2005.

Take notice that on February 22, 2005, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective for the locked-in period of December 2, 1997 through November 8, 2002 (locked-in period), and a refund report specifying the refunds made and the interest paid to the customers of Enbridge KPC for the locked-in period.

Enbridge KPC states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on January 21, 2005. *Enbridge Pipelines (KPC)*, 110 FERC ¶ 61,038 (2005).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on March 15, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–955 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–10–000]

Energy Transfer Fuel LP; Notice of Petition for Rate Approval

March 2, 2005.

Take notice that on February 18, 2005, Energy Transfer Fuel LP (ET Fuel) filed, pursuant to section 284.123(b)(2) of the Commission's regulations, a petition requesting approval of proposed rates for interruptible transmission service performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). ET Fuel proposes an effective date of February 18, 2005.

ET Fuel states that it is an intrastate pipeline company providing services through its facilities located in Texas.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–962 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–196–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 18, 2005, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective March 21, 2005:

Sixth Revised Sheet No. 650
Fifth Revised Sheet No. 651
Fifth Revised Sheet No. 652
Fifth Revised Sheet No. 653
Sixth Revised Sheet No. 654

FGT states that this filing is made pursuant to the three year review provisions of FGT's Tariff which sets forth procedures to review, classify and establish exempt uses as shown on the referenced tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–947 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–070]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

March 2, 2005.

Take notice that on February 28, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, Eighteenth Revised Sheet No. 15, to become effective March 1, 2005.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to

evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–938 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–189–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 17, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheet, to become effective March 21, 2005:

First Revised Sheet No. 214

GTN states that this tariff sheet is being submitted to modify the Right of First Refusal provisions of GTN's Transportation General Terms and Conditions.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–940 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–195–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 18, 2005, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective March 20, 2005:

Sixth Revised Sheet No. 8A
Second Revised Sheet No. 9A
Seventh Revised Sheet No. 11
Seventh Revised Sheet No. 13
Third Revised Sheet No. 13A
Seventh Revised Sheet No. 22
Twelfth Revised Sheet No. 40
Thirteenth Revised Sheet No. 41

Great Lakes states that these tariff sheets are being filed to address areas of discretion within Great Lakes' tariff. Great Lakes states that none of the proposed changes will affect any of Great Lakes' currently effective rates and charges.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date

need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–946 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–190–000]

North Baja Pipeline, LLC; Notice of Petition for Limited Case-Specific Waiver

March 2, 2005.

Take notice that on February 17, 2005, North Baja Pipeline, LLC (NBP), Coral Energy Resources, L.P. (Coral) and Energia Azteca X, S.de R.L. de C.V. (EAX) tendered for filing a joint petition for a limited case-specific waiver.

NBP, Coral and EAX state that they are requesting a very limited waiver of the Commission's capacity release regulations in order to allow an assignment of a portion of EAX's firm capacity and its negotiated rate contract to Coral.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in on or before the date as indicate below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time on March 9, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–941 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–191–000]

North Baja Pipeline, LLC; Notice of Petition for Limited Case-Specific Waiver

March 2, 2005.

Take notice that on February 17, 2005, North Baja Pipeline, LLC (NBP), Coral Energy Resources, L.P. (Coral) and Energia de Baja California, S. de R. L. de C.V. (EBC) tendered for filing a joint petition for a limited case-specific waiver.

NBP, Coral and EBC state that they are requesting a very limited waiver of the Commission's capacity release regulations in order to allow an assignment of a portion of EBC's firm capacity and its negotiated rate contract to Coral.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in on or before the date as indicate below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on March 9, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–942 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–193–000]

North Baja Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 18, 2005, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the

following tariff sheets, to become effective March 21, 2005:

First Revised Sheet No. 232
First Revised Sheet No. 233

NBP states that these tariff sheets are being submitted to add evergreen language to NBP's FTS–1 Form of Service Agreement.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–944 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–198–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 25, 2005, Northern Natural Gas Company (Northern), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective April 1, 2005:

20 Revised Sheet No. 54
19 Revised Sheet No. 63
18 Revised Sheet No. 64

Northern states that the revised tariff sheets are being filed in accordance with section 53A of Northern's Tariff. Northern further states that this filing establishes the market area fuel rates to be effective April 1, 2005, based on actual data for the seven-month period April 1, 2004, through October 31, 2004.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–949 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–398–013, RP04–155–005, RP04–280–001, and RP04–94–002]

Northern Natural Gas Company; Notice of Compliance Filing

March 2, 2005.

Take notice that on February 24, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2005:

71 Revised Sheet No. 50
72 Revised Sheet No. 51
35 Revised Sheet No. 52
70 Revised Sheet No. 53
19 Revised Sheet No. 54
19 Revised Sheet No. 56
27 Revised Sheet No. 59
11 Revised Sheet No. 59A
30 Revised Sheet No. 60
10 Revised Sheet No. 60A
18 Revised Sheet No. 63
17 Revised Sheet No. 64

Northern states that the purpose of the filing is to file paginated tariff sheets that contain the provisions of the pro forma tariff sheets filed with the Systenm Levelized Account (SLA) Settlement on November 24, 2004, as supplemented on December 1, 2004, which resolved certain issues in Northern's rate case proceedings in Docket Nos. RP03–398–000 and RP04–155–000 with respect to Northern's system levelized account and related imbalance issues, and all issues in Docket Nos. RP04–280–000 and RP04–94–000. The Commission approved the SLA Settlement on February 14, 2005. The filing also includes an Appendix A listing the effective dates of certain tariff sheets filed as part of the SLA Settlement that were already paginated.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–954 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–017]

Overthrust Pipeline Company; Notice of Refund Report

March 2, 2005.

Take notice that on February 28, 2005, Overthrust Pipeline Company tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 2004. Overthrust states that it is filing the refund report pursuant to a Commission Order issued May 21, 1991, "Order Approving Settlement with Modifications" in Docket Nos. RP85–60–000 and –002.

Overthrust states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on March 9, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–952 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–157–001]

Saltville Gas Storage Company L.L.C.; Notice of Negotiated Rate Filing

March 2, 2005.

Take notice that on February 22, 2005, Saltville Gas Storage Company L.L.C. (Saltville) tendered for filing negotiated rate transactions: A Firm Storage Service Agreement with Carolina Power & Light Company (CP&L) for Summer service pursuant to Saltville's Rate Schedule FSS; a Firm Storage Service Agreement with CP&L pursuant to Saltville's Rate Schedule FSS; a Firm Storage Service Agreement with Elk River Public Utility District (Elk River) pursuant to Saltville's Rate Schedule FSS; a Firm Storage Service Agreement with Elk River pursuant to Saltville's Rate Schedule FSS; a Firm Storage Service Agreement with NUI Energy Brokers, Inc. (NUIEB) pursuant to Saltville's Rate Schedule FSS; a Firm Storage Service Agreement with Washington Gas Light Company (WGL) pursuant to Saltville's Rate Schedule FSS; an Interruptible Loan Service Agreement with Constellation Energy Commodities Group, Inc. (Constellation) pursuant to Saltville's Rate Schedule ILS; an Interruptible Storage Service Agreement with Constellation pursuant to Saltville's Rate Schedule ISS; an Interruptible Storage Service Agreement with Duke Energy Marketing America, L.L.C. (DEMA) pursuant to Saltville's Rate Schedule ISS; and an Interruptible Storage Service Agreement with Eagle Energy Partners I, L.P. (Eagle) pursuant to Saltville's Rate Schedule ISS (collectively, the Service Agreements).

Saltville states that the purpose of this filing is to implement negotiated rate agreements for services rendered by its Saltville, Virginia gas storage facility. Saltville requests an effective date of January 1, 2005 for the firm Service Agreements and an effective date of November 22, 2004 for the interruptible Service Agreements as detailed in its filing. In addition, Saltville requests that the Commission grant any authorizations and waivers of the Commission's regulations that are necessary to permit the service agreements to be made effective as proposed.

Saltville states that copies of the filing were mailed to all affected customers of Saltville and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that

document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–939 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–523–003]

Southern Natural Gas Company; Notice of Motion To Place Suspended Rates AMD Tariff Sheets Into Effect

March 2, 2005.

Take notice that on February 28, 2005, Southern Natural Gas Company (Southern) tendered for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, effective March 1, 2005:

Substitute Sixty-Fourth Revised Sheet No.14
Substitute Eighty-Fifth Revised Sheet No. 15
Substitute Sixty-Fourth Revised Sheet No. 16
Substitute Eighty-Fifth Revised Sheet No. 17
Substitute Forty-Eighth Revised Sheet No. 18
Substitute Seventh Revised Sheet No. 20
Substitute Sixth Revised Sheet No. 21
Substitute Fifth Revised Sheet No. 25

Southern states that pursuant to section 154.206 of the Commission's Regulations, it moves to place the rates and tariff sheets suspended by Commission until March 1, 2005 into effect on March 1, 2005, as substituted and described in Southern's filing.

Southern further states that the substitute sheets enclosed in Appendix A to its filing modify the suspended sheets to remove the cost of facilities not in service by the end of the test period.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–953 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–194–000]

Trailblazer Pipeline Company; Notice of Crediting Report

March 2, 2005.

Take notice that on February 18, 2005, Trailblazer Pipeline Company (Trailblazer) tendered for filing its revenue crediting report for the quarter October 1, 2004 through December 31, 2004 pursuant to section 40.10 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 9, 2005

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–945 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–192–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 18, 2005, Viking Gas Transmission Company (Viking) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective April 1, 2005:

Twelfth Revised Sheet No. 5B.

Viking states that the purpose of this filing is to make Viking's semi-annual adjustment to its Fuel and Loss Retention Percentages (FLRP) in accordance with section 154.403 of the Commission's Rules and Regulations, 18 CFR 154.403 (2003) and section 26 of the General Terms and Conditions of Viking's FERC Gas Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–943 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–199–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 28, 2005, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, with an effective date of March 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–950 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–200–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2005.

Take notice that on February 28, 2005, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, with an effective date of April 1, 2005.

Williston Basin states that the revised tariff sheets reflect revisions to the Company's fuel reimbursement percentages for gatherings, storage and transportation services, and to the Company's electric power reimbursement rates for storage and transportation services, pursuant to Williston Basin's Fuel and Electric Power Reimbursement Adjustment Provisions contained in section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–951 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–53–000, et al.]

Indigo Generation LLC, et al.; Electric Rate and Corporate Filings

March 1, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Indigo Generation LLC; Larkspur Energy LLC; Wildflower Energy, LP; Wildflower Development LLC; Wildflower Generating Partners II LLC; Mitsubishi International Corporation

[Docket No. EC05–53–000]

Take notice that on February 18, 2005, Indigo Generation LLC (Indigo Generation), Larkspur Energy LLC (Larkspur Energy), Wildflower Energy, LP, Wildflower Development LLC, Wildflower Generating Partners II LLC, and Mitsubishi International Corporation (collectively, the Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities. Applicants state that the proposed disposition of jurisdictional facilities will occur in connection with the sale by Wildflower Development LLC to its affiliate, Mitsubishi International Corporation, of an interest in Wildflower Generating Partners II LLC, which holds an ownership interest directly in Wildflower Energy, LP, and indirectly in Indigo Generation and Larkspur Energy. Indigo Generation and Larkspur Energy own and operate two gas-fired, simple-cycle, electric generating facilities in Southern California.

Comment Date: 5 p.m. Eastern Time on March 11, 2005.

2. Windy Dog—I LLC

[Docket No. EG05–43–000]

Take notice that on February 28, 2005, Windy Dog—I LLC, submitted an amendment to the application for determination of exempt wholesale generator status filed on February 10, 2005 in the above-referenced proceeding.

Comment Date: 5 p.m. Eastern Time on March 21, 2005.

3. PJM Interconnection, L.L.C.

[Docket No. EL03–236–005]

Take notice that on February 24, 2005, PJM Interconnection, L.L.C. (PJM) in compliance with the Commission's order in *PJM Interconnection, L.L.C.,* 110 FERC ¶ 61,053 (2005) (Rehearing Order), submitted amendments to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to: (1) Eliminate the requirement that generating units proposed for deactivation can be required to operate for reliability past a reasonable notice period, (2) to eliminate the blanket exemption for post-1996 generating units from offer capping; and (3) require that certain agreements establishing offer caps using a formula rate are to be filed with the Commission for informational purposes only. Consistent with the Rehearing Order, PJM requests an effective date of January 26, 2005, for the compliance amendments.

PJM states that copies of the filing were served upon all PJM members, each entity designated on the official service list complied by the Secretary in this proceeding, and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

4. Alliant Energy Corporate Services, Inc.

[Docket Nos. ER99–230–008, ER03–762–008, EL05–5–002]

Take notice that on February 18, 2005, Alliant Energy Corporate Services, Inc. submitted for filing its mitigation proposal in compliance with the requirements of the Commission's order issued December 20, 2004 in *Alliant Energy Corporate Services, Inc.,* 109 FERC ¶ 61,289 (2004).

Comment Date: 5 p.m. Eastern Time on March 11, 2005.

5. California Electric Marketing, LLC

[Docket No. ER01–2690–004]

Take notice that on February 25, 2005, California Electric Marketing, LLC., (CalEM), in response to the Commission's deficiency letter issued January 25, 2005, submitted an amendment to its triennial updated market analysis filed September 21, 2004 and amended on November 1, 2004 and November 17, 2004.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

6. J. Aron & Company, Power Receivable Finance, LLC

[Docket Nos. ER02–237–003, ER03–1151–003]

Take notice that on February 25, 2005, J. Aron & Company and Power Receivable Finance, LLC (together, Applicants) filed with the Federal Energy Regulatory Commission an errata to the consolidated triennial updated market analysis submitted on December 30, 2004 in Docket Nos. ER02–237–002 and ER03–1151–003.

Applicants state that copies of the filing were served on parties on the official service lists in the above-captioned proceedings.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

7. Florida Power & Light Company—New England Division

[Docket No. ER04–714–003]

Take notice that on February 25, 2005, Florida Power & Light Company—New England Division submitted a compliance filing pursuant to the Commission's order issued January 26, 2005 in Docket No. ER04–714–000, 110 FERC ¶ 61,064 (2005).

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

8. New York Independent System Operator, Inc.

[Docket No. ER04–943–002]

Take notice that on February 24, 2005, the New York Independent System Operator, Inc. (NYISO) filed compliance revisions to its open access transmission tariff. NYISO states that these revisions implement provisions of a filing approved by the Commission in these proceedings by order issued November 3, 2004. The NYISO has requested an effective date of December 1, 2004 for the revised tariff sheets.

The NYISO states that it has served a copy of this filing on all parties designated on the official service list maintained by the Commission in this proceeding. The NYISO further states that it will electronically serve a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York Public Service Commission and on the New Jersey Board of Public Utilities. The NYISO states it will serve the Pennsylvania Public Utility Commission with a hard copy of this filing, as requested by that agency.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

9. New York Independent System Operator, Inc.

[Docket No. ER04–1144–003]

Take notice that on February 25, 2005 the New York Independent System Operator, Inc. (NYISO) filed tariff amendments in compliance with the Commission's order issued December 28, 2004 in Docket Nos. ER04–1144–000 and 001, 109 FERC ¶ 61,372 (2004).

NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

10. Midwest Independent Transmission System Operator, Inc.; American Transmission Company LLC

[Docket No. ER04–1160–003]

Take notice that on February 25, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company LLC (ATCLLC) tendered for filing revisions to the Midwest ISO Open Access Transmission tariff in compliance with the Commission's February 16, 2005 Order in Docket Nos. ER04–1160–000 and 001, 110 FERC ¶ 61,164 (2005). Midwest ISO and ATCLLC request an effective date of October 30, 2004.

Midwest ISO and ATCLLC state that copies of the filing have been served on all parties on the official service list in this proceeding. Midwest ISO further states that it has electronically served a copy of this filing, upon all Midwest ISO members, member representatives of transmission owners and non-transmission owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

11. Klondike Wind Power II LLC

[Docket No. ER05–332–001]

Take notice that on February 24, 2005, Klondike Wind Power II LLC (Klondike II) submitted a compliance filing pursuant to the order issued February 10, 2005, *Klondike Wind Power II LLC,* 110 FERC ¶ 61, 105 (2005).

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

12. Elk River Windfarm LLC

[Docket No. ER05–365–001]

Take notice that on February 24, 2005, Elk River Windfarm LLC (Elk River) submitted a compliance filing pursuant to the order issued February 10, 2005, *Elk River Windfarm LLC,* 110 FERC ¶ 61,106 (2005).

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

13. Powerex Corp

[Docket No. ER05–484–001]

Take notice that on February 25, 2005, Powerex Corp. (Powerex) submitted for filing a Certificate of Concurrence with respect to the January 24, 2005 Puget Sound Energy, Inc., filing of the Agreement for a Temporary Puget Sound Area and Northern Intertie Redispatch Pilot Program in Docket No. ER05–484–000.

Powerex states that copies of the filing have been provided to Bonneville Power Administration, Puget Sound Energy, the City of Seattle, Public Utility District No. 1 of Snohomish County, and Intalco Aluminum Corporation.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

14. Virginia Electric and Power Company

[Docket No. ER05–581–001]

Take notice that on February 24, 2005, Virginia Electric and Power Company, (Dominion Virginia Power) tendered for filing an amendment to its February 15, 2005 filing in Docket No. ER05–581–000.

Dominion Virginia Power states that copies of the filing letter were served upon customers under Dominion Virginia Power's open access transmission tariff, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

15. Florida Power & Light Company

[Docket No. ER05–641–000]

Take notice that on February 24, 2005, Florida Power & Light Company (FPL) tendered for filing a fully executed agreement for interconnection among FPL, Broward Waste Energy Company, Limited Partnership (now Wheelabrator North Broward Inc.) (BWEC), and Bio-Energy Partners (BEP), dated December 19, 1988 (Agreement), and a fully executed Amendment No. 1 to the Agreement among FPL, BWEC and BEP, dated February 22, 2005. An effective date of January 1, 2005 is requested.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

16. Marina Energy, LLC

[Docket No. ER05–642–000]

Take notice that on February 24, 2005, Marina Energy, LLC (Marina) tendered for filing an agreement for the sale of capacity and energy to South Jersey Energy Company (SJE) pursuant to Marina's wholesale power market-based sales tariff. Marina requests an effective date of February 2, 2005.

Marina states that copies of the filing have been served upon SJE and the New Jersey Board of Public Utilities.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

17. PacifiCorp

[Docket No. ER05–643–000]

Take notice that on February 24, 2005, PacifiCorp tendered for filing a generation interconnection agreement between PacifiCorp and Uinta County Wind Farm LLC (Uinta). PacifiCorp also filed a notice of termination of the Uinta interconnection agreement.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

18. PSEG Energy Resources & Trade LLC, PSEG Fossil LLC

[Docket No. ER05–644–000]

Take notice that on February 24, 2005, PSEG Energy Resources & Trade LLC (PSEG ER&T) and PSEG Fossil LLC (PSEG Fossil) (collectively, PSEG Companies) submitted for filing a cost of service recovery rate tariff for reliability services to be provided by PSEG ER&T

to PJM Interconnection, L.L.C. PSEG Companies state that the tariff provides the charges associated with the provision of reliability services by PSEG ER&T to PJM from two generation plants in New Jersey. PSEG Companies request an effective date of February 25, 2005.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

19. American Transmission Company LLC

[Docket No. ER05–645–000]

Take notice that on February 24, 2005, the American Transmission Company LLC (ATCLLC) tendered for filing a distribution-transmission interconnection agreement between ATCLLC and Black Earth Electric Utilities, as local distribution company. ATCLLC requests an effective date of February 14, 2005.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

20. American Transmission Company LLC

[Docket No. ER05–646–000]

Take notice that on February 24, 2005, the American Transmission Company LLC (ATCLLC) tendered for filing a distribution-transmission interconnection agreement between ATCLLC and Hartford Electric, as local distribution company. ATCLLC requests an effective date of February 14, 2005.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

21. PacifiCorp

[Docket No. ER05–647–000]

Take notice that on February 25, 2005, PacifiCorp tendered for filing revisions to section 17.7 of its open access transmission tariff, FERC Electric Tariff, Fifth Revised Volume No. 11 to adopt the Commission's *pro forma* section 17.7 language.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission. PacifiCorp further states that its existing transmission customers were notified by e-mail.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

22. FPL Energy Seabrook, LLC

[Docket No. ER05–648–000]

Take notice that on February 25, 2005 FPL Energy Seabrook, LLC submitted a request to increase prior authorization to sell energy, capacity and ancillary services at market-based rates.

FPL Energy Seabrook LLC states that copies of the filing were served upon the Florida Public Service Commission.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

23. South Carolina Electric & Gas Company

[Docket No. ER05–649–000]

Take notice that on February 25, 2005, South Carolina Electric & Gas Company filed amended tariff sheets to the *pro forma* standard large generator interconnection procedures and standard large generator interconnection agreement set out in Order No. 2003–B, *Standardization of Interconnection Agreements and Procedures,* 109 FERC ¶ 61,287 (2004).

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

24. Lighthouse Energy Trading Company, Inc.

[Docket Nos. ER05–655–000, ER01–174–002]

Take notice that on February 25, 2005, Lighthouse Energy Trading Company, Inc. tendered for filing a triennial updated market power study. In addition, Lighthouse filed to amend its tariff to: (1) Allow it to sell ancillary services at wholesale at market-based rates and to reassign transmission capacity; (2) seek prior Commission approval before sales to any affiliated franchised public utilities; (3) include the Market Behavior Rules in its market-based rate tariff; and (4) include a tariff provision committing Lighthouse to abide by the change in status reporting requirements recently adopted by the Commission in Order No. 652.

Comment Date: 5 p.m. Eastern Time on March 18, 2005.

25. Calpine King City Cogen, LLC

[Docket No. QF85–735–006]

Take notice that on February 24, 2005, Calpine King City Cogen, LLC, 50 W. San Fernando Street, San Jose, California 95113, submitted an amendment to its application for recertification of a facility as a qualifying cogeneration facility filed on November 16, 2004.

Comment Date: 5 p.m. Eastern Time on March 28, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–937 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–090]

Appalachian Power Company; Notice of Availability of Draft Environmental Assessment

March 2, 2005.

A draft environmental assessment (DEA) is available for public review. The DEA analyzes the environmental impacts of a Shoreline Management Plan (SMP) filed for the Smith Mountain Lake Pumped Storage Project. The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia. The project is operated by Appalachian Power Company, a part of American Electric Power.

The DEA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Commission staff concludes that approving the SMP with modifications would not constitute a major Federal action significantly affecting the quality of the human environment. The DEA is available for review at the Commission

or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Anyone may file comments on the DEA. The public as well as Federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 45 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the project number, P–2210–090, to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If you have any questions regarding this notice, please call Heather Campbell at (202) 502–6182.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–959 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Exemption Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 2, 2005.

Take notice that the following hydroelectric exemption application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption of a Major Hydropower Project 5 MW or Less.

b. *Project:* West Valley A&B Hydro Project No. 12053–001.

c. *Date Filed:* July 18, 2003.

d. *Applicant:* Mr. Nicholas Josten.

e. *Location:* On the South Fork of the Pit River in Modoc County, California. The project would be located on approximated 31 acres of federal lands, managed by Forest Service and Bureau of Land Management.

f. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

g. *Applicant Contact:* Mr. Nicholas Josten, 2742 St Charles Ave, Idaho Falls, ID 83404.

h. *FERC Contact:* Susan O'Brien, (202) 502–8449 or *susan.obrien@ferc.gov.*

i. *Deadline for filing motions to intervene and protests:* May 2, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

j. This application has been accepted for filing, but is not ready for environmental analysis at this time.

k. The proposed project would consist of two developments, West Valley A and West Valley Alternative B–1. Alternative B–2 has been deleted from the proposed project (applicant's response to deficiencies, filed October 25, 2004).

West Valley A run-of river development would have a capacity of 1.0 MW and consists of: (1) An existing concrete diversion structure; (2) an existing intake structure; (3) 11,600 feet of open canal; (4) a proposed concrete overflow structure; (5) a proposed 2,800 feet of new canal; (6) a proposed penstock; (7) a proposed powerhouse; (8) a proposed tailrace pipe; (9) a proposed transmission line; and (10) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,300,000 kWh.

West Valley Alternative B–1 run-of-river development would have a capacity of 1.36 MW and consists of: (1) The existing West Valley Dam and outlet works; (2) a new bypass valve attached to the existing dam outlet pipe; (3) a proposed penstock; (4) a proposed powerhouse; (5) a proposed tailrace canal; (6) a proposed transmission line; and (7) appurtenant facilities. The applicant estimates that the total average annual generation would be 4,730,000 kWh.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

n. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document: April 2005

Scoping Meetings and Site Visit: May 2005

Scoping Comments due: June 2005

Notice that application is ready for environmental analysis: June 2005

Notice of the availability of the EA: October 2005

Ready for Commission decision on the application: January 2006

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–958 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 2, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license.

b. *Project No.:* 2677–017.

c. *Date Filed:* January 26, 2005.

d. *Applicant:* City of Kaukauna, Wisconsin, acting through its enterprise fund Kaukauna Utilities (KU).

e. *Name of Project:* Badger-Rapide Croche.

f. *Location:* The project is located on the Fox River, in Outagamie County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mike Pedersen, Generation Superintendent, Kaukauna Utilities, 777 Island Street, P.O. Box 1777, Kaukauna, WI 54130–7077, (920) 462–0220, and Arie DeWaal, Project Manager, Mead & Hunt, Inc., 6501 Watts Road, Madison, WI 53719, (608) 273–6380.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for Filing Comments and or Motions:* April 18, 2005.

All Documents (Original and Eight Copies) Should Be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2677–017) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* The licensee requests that the license be amended to accelerate the expiration date of the license. The current expiration date of the license is December 31, 2018. The licensee requests the Commission to issue an order accelerating the expiration date of the license to not less than 5 years and 90 days from the date of the Commission order. The Badger-Rapide Croche Project consists of three developments: Old Badger, New Badger, and Rapide Croche. The Badger developments have experienced deterioration over the years. The 2.0-megawatt (MW) Old Badger powerhouse was built in 1908. The 3.6-MW New Badger powerhouse was built in 1929. The licensee intends to file an application for a new license proposing to rebuild the New Badger powerhouse, and to increase its installed capacity to 7 MW, and to decommission the Old Badger powerhouse due to its advanced state of deterioration. No modifications would be proposed for the existing 2.4-MW Rapide Croche powerhouse. Therefore, the licensee wishes to retire the existing license early and relicense the project for a new powerhouse to replace the existing Old/New Badger powerhouses. If the Commission grants the request for acceleration, the Commission will deem the request to be a notice of intent to file an application for a new license.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the street address for KU in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–960 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM05–7–000, AD04–13–000]

Potential New Wholesale Transmission Services; Assessing the State of Wind Energy in Wholesale Electricity Markets; Notice of Draft Agenda for Technical Workshop

March 2, 2005.

As announced in the Notice of Technical Workshop issued on February 1, 2005, the staffs of Bonneville Power Administration (BPA) and the Western Electricity Coordinating Council (WECC) will participate with the staff of the Federal Energy Regulatory Commission (FERC) at a workshop on March 16–17, 2005. The workshop will be held at the Doubletree Hotel & Executive Meeting Center Portland-Lloyd Center, 1000 NE. Multnomah, Portland, Oregon 97232. The workshop

is scheduled to begin at 9 a.m. and end at approximately 5 p.m. (PST) each day.

The goal of the workshop is to work with market participants to develop clear definitions for additional wholesale electric transmission services, *e.g.*, conditional firm transmission service, develop applicable pro forma tariff language that could be included in public utilities' open access transmission tariffs and address attendant issues.

Attachment A of this Notice contains the draft agenda for the workshop. Attachment B contains a table prepared by Commission staff that identifies and briefly describes the new transmission services proposed by other entities. Attachment C contains a proposal for a BPA "Conditional-Firm Product." Panelists are strongly encouraged to coordinate among themselves prior to the workshop to minimize overlap in the information presented at the workshop by using the information attached to this Notice.

The Commission will solicit comments related to the workshop to be filed in the captioned docket by April 13, 2005. The comments will be available for review in the Commission's e-Library. The public will have the opportunity to file reply comments in response to these comments by April 29, 2005.

The conference workshop is open for the public to attend, and preregistration is not required; on-site attendees may simply register on the day of the event.

Capitol Connection offers the opportunity for remote listening of the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on "FERC." If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Jignasa Gadani at 202–502–8608, *jignasa.gadani@ferc.gov*.

Linda Mitry,

Deputy Secretary.

Attachment A

Technical Workshop on Additional Wholesale Electric Transmission Services Under the Order No. 888 Open Access Pro Forma Tariff

Day One

9 a.m.–9:30 a.m.: Opening Session.

- Stephen J. Wright, Administrator, Bonneville Power Administration.
- Senior Staff Member, Federal Energy Regulatory Commission.

Note: While the agenda often references the conditional transmission services contained in Attachment B, this is not meant to preclude discussion of the other similar transmission services.

9:30 a.m.–10:30 a.m.: Identifying and Addressing Customer Needs.

Panelists will discuss the need for transmission service options that are different from those available in the Order 888 pro forma open access transmission tariff (OATT). Questions intended to be addressed include:

- Are there provisions of the current pro forma OATT that are inadequate in terms of service and rate flexibility? If so, elaborate.
- Do current tariff provisions limit the potential (or practicality) of certain business models?
- How can new tariff services balance the needs and rights of existing and new customers, without introducing cross subsidies?
- How can conditional firm transmission service facilitate the financing of new generation?
- What are the elements of a new transmission service option that would be critical to facilitating reasonable debt or project financing?

10:30 a.m.–12 p.m.: Preview of the New Services.

Using Attachment B of this Notice, *Table of Existing/Proposed Transmission Services* and Attachment C as a reference, panelists will describe the transmission services they propose to offer as part of a pro forma OATT and any other services they have developed to meet customer needs. Panelists should address the conceptual aspects of the services. Questions to be addressed include:

- Explain the elements of the proposed transmission services.
- Can the different proposals be reconciled to create one standard service?
- How do these services address customer needs as stated in the first panel? Are additional services needed?
- What other characteristics should be included in the services?

12 p.m.–1 p.m.: Lunch.

1 p.m.–2:30 p.m.: Arranging for Service.

Panelists will describe and discuss the process in which a customer will arrange for service. Questions intended to be addressed include:

- Should Conditional Firm service be offered to all customers on a non-discriminatory basis?
- What is the minimum term of the services: is it one hour with no maximum term, similar to point-to-point?
- Will customers designate receipt and delivery points and "reserve" capacity over specified periods?
- Should Conditional Firm service be required to be offered as a standard service under the OATT, or should Conditional Firm offerings be at the discretion of the Transmission Owner?
- Should Conditional Firm service only be offered when a customer's request for long-term firm point-to-point service cannot be met?
- How would the transmission queue be affected with the addition of the new service?
- Should deposits be identical to those for firm point-to-point service?
- Should a potential Conditional Firm Customer fund incremental studies to determine what Conditional Firm capacity may be available?
- How would a transmission customer arrange and schedule for this service through OASIS?

2:30 p.m.–2:45 p.m.: Break.

2:45 p.m.–4:30 p.m.: Service Availability.

Panelists will describe and discuss how a transmission provider will determine the amount of capacity available for Conditional Firm service in an open and transparent manner. Questions to be addressed include:

- What system studies must be performed to determine the availability of Conditional Firm service?
- How is the level of expected curtailment determined?
- Should the level of expected curtailment be fixed or should it grow, for example, with demand growth?
- Should there be a limit on the availability of Conditional Firm service when expected curtailment reaches some threshold (e.g., 5 percent, 10 percent, 50 percent?).
- Should Conditional Firm service be offered in tranches (e.g. 98 percent firm, 95 percent firm, etc.) or should all Conditional Firm service be subject to the same curtailment exposure?
- How will transmission planners alter the modeling of their systems, if at all, to account for Conditional Firm service?

4:30 p.m.–5 p.m.: Re-cap Consensus Items and Highlight Action Items for Day 2 of Workshop.

Day Two

9 a.m.–9:30 a.m.: Recap of Workshop Day 1.

9:30 a.m.–11 a.m.: Curtailment Priority.

Panelists will describe and discuss the specific details that characterize the new services. Questions intended to be addressed include:

- Presently, under the OATT, all firm service is curtailed on a pro rata basis. Should Conditional Firm service be curtailed after non-firm point-to-point and short-term firm, but before long-term firm point-to-point?
- Does this service require distinct rules for curtailment that can only be addressed through individual contracts? If so, why?
- How will curtailment beyond the level specified in the contract be addressed?
- How are curtailments implemented over multiple paths where the hours of availability are different for each path?
- Do all Conditional Firm service customers have the same curtailment priority? If not, explain the need for differing priorities.
- What is the effect of Conditional Firm service on the availability of short-term firm service? Would the Commission need to revise the provisions for short-term firm service to accommodate Conditional Firm?
- Should Conditional Firm service be required to be offered as a standard service

under the OATT, or should Conditional Firm offerings be at the discretion of the Transmission Owner?

• Should there be a requirement that a Conditional Firm customer must take firm service if it becomes available after it has arranged for Conditional Firm service?

• If transmission upgrades are installed as part of new firm service requests, would Conditional Firm customers be required to step up to firm and participate in funding those upgrades?

• In the case of transmission upgrades, would a Conditional Firm customer be subject to the same "higher of" standard of the FERC's transmission pricing policy?

• How will system growth affect the integrity of the Conditional Firm service?

11 a.m.–12:30 p.m.: Impact on Existing Customers and Reliability.

Panelists will describe and discuss the potential impact that implementation of Conditional Firm service will have on existing customers. Panelists will also address potential reliability impacts associated with the implementation of Conditional Firm service. Questions intended to be addressed include:

• What should a transmission provider do to ensure that current firm customers retain the same level of service?

• Will a Conditional Firm service customer ever be curtailed on a pro rata basis with long-term firm customers?

• What is the curtailment priority of the new service with respect to secondary network service and short-term firm service?

• Are there any potential reliability impacts due to this new service?

12:30 p.m.–1:30 p.m.: Lunch.

1:30 p.m.–2:30 p.m.: What Should a Customer Pay?

Panelists will discuss how the rates for Conditional Firm service should be determined. Questions intended to be addressed include:

• Should the rates for Conditional Firm service be lower than that of firm service to reflect the lower quality of service?

• Will the implementation of Conditional Firm impact how the rates are presently calculated? Will they result in deriving new billing determinants? Should the revenue from Conditional Firm service be credited against the transmission revenue requirement?

• What are the potential revenue effects of these new services?

• How do we design the rates for Conditional Firm service that would prevent subsidization by traditional transmission customers?

• What are the cost obligations of Conditional Firm customers if the transmission provider builds new facilities to alleviate congestion across a path?

• What should be the rules for allocating costs to the Conditional Firm service category?

2:30 p.m.–4 p.m.: How it All Fits Together, Including What Other Parts of the Tariff Must be Revised.

Panelists will discuss how the Conditional Firm service will function in relation to the existing terms and conditions of the OATT. In addition, panelists will discuss potential modifications to existing tariff provisions that must be made to implement Conditional Firm service. Questions to be addressed include:

• What other sections of the OATT must be modified to accommodate Conditional Firm service?

• Do transmission providers consider Conditional Firm transmission service a new tariff provision or a variant of point-to-point service?

• Where will the proposed service fit into the existing tariff, i.e., will a new service section be needed?

• Should Conditional Firm service be regional, transmission operator specific, or generally applicable under FERC's *pro forma* tariff?

4 p.m.–5 p.m.: Recap Consensus Items/Tasks Accomplished and Listing Outstanding Issues/Questions.

During this part of the workshop participants and moderators will:

• Recap solutions/tasks accomplished.

• Develop lists of questions and issues requiring further work.

• Agree on roles and responsibilities to develop possible solutions on questions and issues that requiring further work at the end of the Workshop as well as the filing of these in the proceeding for the Workshop.

Attachment B

TABLE OF EXISTING/PROPOSED TRANSMISSION SERVICES [1]

	BPA—conditional firm	PacifiCorp—partial firm	RMATS—conditional firm	RMATS—priority non-firm
Nature of Service	Conditional Firm—The service is Firm for a number of years but limited during certain months, weeks, days, and hours. Determined during application procedures. Guarantee certain levels of service.	Partial Interim Service—The service is Firm but available only a portion of a day, week, month, or year. Determined during application procedures.	Conditional Firm—Offered Firm during defined period of year and Conditional Firm for balance of year. Determined during application process. Curtailment hours during month will be designated in an Appendix.	Non-Firm PTP—Right of First Refusal to any service that may become available.
Eligible Customer	Available to customers when TP determines insufficient ATC exists to meet customer's full request. Must be in existing queue.	Available to customers when TP determines insufficient ATC exists to meet customer's full request.	Available to LTF PTP customers when TP determines insufficient ATC exists to meet full request of traditional LTF PTP.	Available to any party.
Completed Application	Customer must first submit an application for LTF.	Customer must submit an application for Partial Interim Service.	Offered to customers who submit a LTF application.	Not Stated.
Type of Service	PTP only	PTP only	PTP only	PTP only.
Service Availability	Not a standard OATT product. Limited number of offers based on historic usage data and studies of proposed conditions.	Not a standard OATT product. A customer cannot come in and specifically request this service. Service is only available if a customer comes in requesting Firm PTP Transmission Service and the full amount is not available.	Available when ATC is insufficient for full amount of request of traditional Firm PTP.	Offered when there is insufficient ATC in most hours of the year.
Determination of Available Periods.	Not yet resolved, but will likely be based on a level of probability to be determined.	Not Stated	Not Stated	Not Stated.
Curtailment	Not stated	Not Stated	Curtailed after all Non-Firm but prior to traditional Firm Service.	Curtailed after redirects from secondary points; hour/daily/weekly/monthly, Firm, but prior to network service from secondary non-network resources, and Firm Service. Subject to curtailment for reasons of reliability or to relieve a constraint.
Rates	OATT rate or the OATT rate reduced by the same percentage as the reduction in capacity.	Percentage of OATT rate	Priced relative to LTF to reflect higher potential for curtailment.	Based on proportionate use of system.
Term	Same as LTF	Not Stated	Same as LTF	1–10 years.
Impact on existing LTF PTP Customers.	None	Not Stated	None	None.
Queue	Customers will remain in queue for capacity to meet full capacity requests.	Not Stated	Customer would retain original queue status.	Customers would retain original queue status.
Impact of STF on CF	Sale of STF will not degrade CF. CF upgraded to Firm prior to offering to STF.		Not Stated	None.
Impact on ATC	Same as LTF. Affects the amount of available ATC for LTF, STF and NF.	Not Explicitly Stated	Not Explicitly Stated	Not Explicitly Stated.
Reduction to Capacity	Can be made to pre-schedule. In real time treated same as LTF PTP.	Not Stated	Not Stated	Not Stated.
Rollover Rights	Yes, but if customer refuses extra capacity at a later date, removed from queue and will not have Rollover Rights.	Not Stated	Not stated	Not Stated.

TABLE OF EXISTING/PROPOSED TRANSMISSION SERVICES [1]—Continued

	BPA—conditional firm	PacifiCorp—partial firm	RMATS—conditional firm	RMATS—priority non-firm
Assignment/Deposits/Deferrals/Redirect Rights.	Same as long term procedures set forth in OATT.	Not Stated	Not Stated	Not Stated.

[1] CF—Conditional Firm.
PTP—Point to Point.
LTF—Long Term Firm.
STF—Short Term Firm.
NF—Non-Firm.

Attachment C

Proposal for a Conditional-Firm Product With Bonneville Power Administration's Transmission Business Line

Background

BPA's transmission system inventory is nearing zero, particularly on some constrained flowgates. Posted ATC indicates that on many flowgates there is limited long-term firm Available Transfer Capability (ATC) remaining. However, data from planning and operations shows that congested flowgates are at peak capacity for only a limited number of hours each year. We propose that the TBL offer a new transmission product, referred to here as the "Conditional-Firm" (CF) product, which could optimize use of the existing transmission system and the ability to obtain transmission service as well as provide customers more flexibility.

Rationale

There is a need for additional ATC for generators and utilities to be able to engage in long-term contracts to serve growing Northwest loads. The CF product would offer transmission service that would have more certainty than non-firm service, but would not be required to be available for the full year assuming all lines in service. (Current long-term firm service does allow for some outages throughout the year.) Many generators and utilities feel they could work with a transmission product with limited risk to transmission capacity availability. Intermittent generators like wind, do not always need the full transmission capacity of their contracts and would be less impacted by small incremental risks to capacity availability and therefore more likely to purchase CF. Generators and utilities are not comfortable signing twenty-year contracts for non-firm transmission for new resources with the risks inherent in transmitting that power strictly via non-firm transmission service. It is also difficult to get funding for new generators without transmission certainty. Since additional transmission lines are unlikely to be built soon to serve generators in many locations, customers have requested that BPA offer innovative products like CF that make more efficient use of the transmission system over constrained paths and allow new generators to get their power to market.

A significant number of utilities and generators need to be able to finalize their contracts in the near future. For renewable generators this is especially true since their costs depend on the Federal Production Tax Credit (PTC). The PTC has been extended through 2005. Further extensions beyond 2005 are anticipated, but still unclear. A CF product defined by the end of 2005 and implemented in 2006 could provide a bridge until such time as more ATC is available from BPA via new transmission line construction or expiring contracts.

Proposed Conditional-Firm Product

TBL needs to develop a new type of long-term transmission service that provides for as many months of firm service as possible during the year, combined with a certain number of hours identified for potential unavailability of capacity over a set number of months, weeks, or days.

The amount of capacity that would not be available and may require reductions to capacity availability is yet to be determined.

The CF product would provide a year round, long-term transmission product that would guarantee a certain level of availability of capacity and therefore identified number of potential hours of reductions to capacity availability. It could be "less firm than firm" but "more firm than non-firm" in months that firm ATC is not available.

Elements of the Conditional Firm Product

- This CF product would be available for PTP service using the existing long-term firm transmission service queue. Customers would have to ask for long-term firm service and be in the existing queue. If the requested long-term firm service is not available but there is some CF available over the flowgates requested, then an offer of CF will be made to the customer.
- This product would provide firm service for a number of identified years within which certain months, weeks, or days would be identified where capacity may not be available and could be cut or limited. Within each year, the months where capacity is available and no additional reductions to capacity availability are needed beyond those associated with standard long-term firm PTP service is needed, will be treated identically to any other PTP service agreement.
- A specific number of hours would be identified per year of service that may not have capacity available and could be curtailed. This identified limit would not be exceeded. The number of potential hours that could be potentially curtailed would be based on a particular level of probability (to be determined) and no greater than this identified occurrence. This may limit the numbers of offers for this product based on probability level selected and based on historic data and future modeling results. Example: If 5% of the year was the level identified, the number of hours of capacity not available and that could be curtailed could be as great as 438 hours per year. There's still the question of how to calculate the number of curtailable hours over several flow gates. We propose calculating the given probability level over each flowgate and adding them together. This will be a conservative estimate and lessen the risk of impacting other firm PTP contracts. (We are currently working to determine what this level will be for the CF Product.)
- If service is scheduled (in real time), the Customer will receive the CF product similar to any other firm service. Reductions to capacity availability can only be made in pre-schedule. In real time, the CF Agreement will be treated identically to any other PTP Agreement; there will be no reductions prior to other firm contracts in real-time. If CF service is not available on pre-schedule and a CF customer is curtailed, but then firm service becomes available, the CF Customers service will be restored on a pro-rata basis after the existing long-term firm PTP customers have had their transmission rights restored.
- This firm product could be the same Tariff rate as the current long-term firm service product or a new proposed Tariff rate, to be determined. For example, if the long-term PTP rate is used, the Customer could be charged on a probability basis, *i.e.* would be charged for 98 or 95% of PTP for a 2% or 5% reduction to capacity availability right. There will be times that Customers may not be curtailed up to the limit put in the CF contract but Bonneville is securing the right.
- This Product will not degrade existing long-term firm Customer rights or service.
- The number of reductions to capacity availability would be identified as a limit to everyone receiving this service. This would be done when the Agreement offered is signed and would not change for the duration of the Agreement. Any reductions after the limit is reached would be done on a pro rata basis along with all other firm Agreements.
- Assignments, deposits, deferrals and Redirects would be the same as existing Tariff provisions allow, but would have to take into account the reduction to capacity availability associated with the CF contract.
- A Limited number of offers will be available for this product based on the reduction of capacity availability probability. The limit would be determined by TBL based on historic usage data and studies of projected future conditions.

A CF product would be offered only to a customer who has submitted a request for long-term firm service that cannot be filled due to lack of ATC on one or more flowgates. Given this requirement, the CF product that is offered to customers should be as close to long-term firm as possible. And those offered a CF product should remain in the queue to be upgraded to year round firm service should it become available. If a CF contract holder is offered the firm service they requested at a later date and they refuse the offer, the CF customer will be removed from the queue. In this case, the CF contract holder will keep their CF contract for its term and they will not be given roll over rights for a future CF contract. This policy is the same as that offered to customers purchasing partial or Seasonal Partial firm service.

Other ways this product should be treated as firm service are:

- Ability to do firm and non-firm redirects in the same way as firm service.
- Similar OATT Section 22 Reservation Priority rights as currently allowed.
- Available for the same length of service term allowed for long-term firm service.
- Same de minimus rule as defined in Bonneville's current ATC Methodology.
- Sale of this product affects amount of ATC available for LTF, STF, and NT service in the same way as firm. (The product should be modeled as firm even during months where there is no ATC available. In this case ATC would look negative on some paths and should limit availability of STF and non-firm for other parties.)
- Same long-term request procedures and deposits required as identified in the OATT.
- Same standards for managing the queue and granting requests.
- Same Extension of Commencement of Service Rights.
- And same Deferral of Service Rights.

Additional Conditions

It is critical that new sales of STF transmission service not degrade the value of the conditional firm transmission product. All CF contract amounts will be treated as firm obligations when determining the amounts of STF and nonfirm transmission available for future periods. The renewable generators propose that CF customers be upgraded to firm service during conditional months when firm service is determined available on a monthly, weekly, daily or hourly basis. Once CF customers are upgraded to firm, additional STF could then be sold during the same time frame and without gaining the reduction in capacity availability priority over CF customers. If there is more than one conditional-firm customer impacting a constrained path, and the available STF on that path is less than the combination of CF customer requests, the available STF must be allocated among those customers in a fair and reasonable way.

Customers offered new CF Agreements will be provided clear guidance on the risk of reductions in the capacity availability based on historic transmission usage data.

Price

Renewable generators and other independent power producers who have expressed interest in this product believe that the price should reflect the fact that customers of conditional-firm are more likely to experience reductions in capacity availability than customers with firm transmission. Given this increased curtailment potential, there is an expectation on the renewable generator's part that the resulting cost would be less than a full year of firm transmission. In order to avoid the need for a rate case, the renewable generators propose a pricing structure that uses current TBL transmission rates. The proposal is that CF customers pay firm transmission rates for the percentage of the year that they are guaranteed to receive firm transmission. For example, if a customer is offered a CF product that will be firm 95% of the year, this customer will pay 95% of the cost of a year of PTP service. We invite other opinions and suggestion on this pricing issue.

[FR Doc. E5–963 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–1–000]

Principles for Efficient and Reliable Reactive Power; Notice of Technical Conference

March 2, 2005.

As announced in a Notice of Technical Conference issued on January 31, 2005, in the above referenced proceeding, a technical conference will be held on March 8, 2005, from approximately 9 a.m. until 5 p.m. (EST), in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend, and registration is not required. Commissioners are expected to participate. Attached is the agenda for the conference.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

FERC conferences are accessible under Section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the conference, please contact Derek Bandera at (202) 502–8031 (*Derek.bandera@ferc.gov*) or Sarah McKinley at (202) 502–8004 (*sarah.mckinley@ferc.gov*).

Linda Mitry,

Deputy Secretary.

Reactive Power Conference

March 8, 2005—Agenda

9 a.m.—Opening Remarks
Richard O'Neill, Federal Energy Regulatory Commission
9:15 a.m.—Panel I—Reliability and Technical Issues
Panelists:
Donald Benjamin, NERC
Philip Fedora, Northeast Power Coordinating Council
Michael Connolly, CenterPoint Energy
Ronald Snead, Cinergy Services (MISO Transmission Owners)
Michael Calimano, New York ISO
Anjan Bose, Washington State University
Robert O'Connell, Williams Power Company, Inc.
Terry Winter, American Superconductor
Eric John, ABB Inc.
11:15 a.m.—Panel II—Short-Term Reactive Power Issues
Panelists:
Dennis Bethel, American Electric Power
Allen Mosher, American Public Power Association
David Bertagnolli, ISO New England
Steve Wofford, Constellation Energy Commodities Group, Inc.
John Lucas, Southern Company
John Simpson, Reliant Energy, Inc.
Scott Helyer, Tenaska, Inc.
1 p.m.—Lunch Break
2 p.m.—Panel III—Prospective Reactive Power Solutions
Panelists:
Fernando Alvarado, IEEE–USA Energy Policy Committee
Michael Calviou, National Grid USA
Mayer Sasson, Consolidated Edison of New York
Steven Naumann, Exelon Corporation
David Clarke, Navigant Consulting, Inc.
Harry Terhune, American Transmission Company LLC
Robert D'Aquila, GE Energy
Kris Zadlo, Calpine
Andy Ott, PJM Interconnection, L.L.C.
4 p.m.—Adjourn

[FR Doc. E5–965 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL04–3–000]

Natural Gas Interchangeability; Notice Seeking Comments

March 2, 2005.

On February 28, 2005, the Natural Gas Council filed two reports in the captioned docket: *White Paper on Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure and White Paper on Natural Gas Interchangeability and Non-Combustion End Use:* Representatives of the Natural Gas Council summarized the reports at the Commission's March 2 open meeting. The Commission has posted these reports on its Web site at *http://www.ferc.gov* and is soliciting public comment on them. In addition, the reports are accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and are available for review in the Commission's Public Reference Room in Washington, DC. The Commission will use the reports and comments received to inform its decisions as to how it should address issues of natural gas quality and natural gas interchangeability.

Comments should be filed no later than thirty days from the date of this Notice, as indicated by the comment date below. The Commission encourages electronic submission of comments in lieu of paper using the "eFiling" link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of their comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Note that also there is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 1, 2005.

Linda L. Mitry,

Deputy Secretary.

[FR Doc. E5–961 Filed 3–7–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number OECA–2005–0003, FRL–7881–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; NESHAP for Miscellaneous Metal Parts and Products, EPA ICR Number 2056.02, OMB Control Number 2060–0486

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following existing, approved, continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for the purpose of renewing the ICR. This ICR is scheduled to expire on August 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection described below.

DATES: Comments must be submitted on or before May 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0003, to EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at (202) 564–6369, facsimile number (202) 564–0050, or via e-mail at *lazarus.leonard@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2005–0003, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Affected Entities: Entities potentially affected by this action are Miscellaneous Metal Parts and Products Surface Coating Operations.

Title: NESHAP for Miscellaneous Metal Parts and Products (40 CFR part 63, subpart MMMM).

Abstract: The respondents are subject to the recordkeeping and reporting requirements at 40 CFR part 63, subpart A—General Provisions, that apply to all NESHAP sources. These requirements include recordkeeping and reporting for startup, shutdown, malfunctions, and semiannual reporting. Exceptions to the General Provisions for this source category are delineated in the standard and include initial notifications to the Agency for new, reconstructed and existing affected entities, and notifications of compliance status.

The information must be collected in order for the Agency to determine compliance with the emission limitations in the standard. Responses to this collection of information are mandatory under the Clean Air Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid OMB control number. The OMB control numbers for EPA's standards are listed at 40 CFR part 9.

The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 1,590 with 180 responses per year. The annual industry recordkeeping and reporting burden for this collection of information was 139,380 hours. On the average, each respondent reported 0.11 times per year and 774 hours were spent preparing

each response. The operation and maintenance costs associated with continuous emission monitoring (CEM) equipment in the previous ICR was $3,600, and there were no costs associated with startup/shutdown of the CEM equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 24, 2005.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 05–4471 Filed 3–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7882–1]

Peer Consultation Workshop on Research Needs Related to the IRIS Draft Toxicological Review of Naphthalene

AGENCY: Environmental Protection Agency.

ACTION: Notice of peer consultation workshop.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that the Oak Ridge Institute of Science and Education (ORISE), Department of Energy, under an Interagency Agreement with EPA, will organize and conduct a workshop to seek expert opinion on the research needs related to the mode of action of the inhalation carcinogenicity of naphthalene. Meeting participants will be provided with the "Final Report on the External Peer Review for the IRIS Reassessment of the Inhalation Carcinogenicity of Naphthalene (August 2004)," the external review draft document entitled, "Toxicological Review of Naphthalene: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (NCEA–S–1707), and a list of recent naphthalene publications. Members of the public may attend as observers. EPA will consider the comments and recommendations from the expert panel in determining a future course of action for assessing potential health risks associated with naphthalene exposure.

DATES: The workshop will begin on April 7, 2005, at 9 a.m. and end at 4 p.m. To attend the meeting, register by April 1, 2005.

ADDRESSES: The workshop will be held at the Graduate School of Public Health, 130 DeSoto Street, Room 109 Parran Hall, University of Pittsburgh, Pittsburgh, PA 15261. Under an Interagency Agreement between EPA and the Department of Energy, the Oak Ridge Institute of Science and Education (ORISE) is organizing, convening, and conducting the workshop. To attend the meeting, register by April 1, 2005, by contacting ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 241–5784 or (865) 241–3168 (facsimile). Interested parties may also register on-line at: *http://www.orau.gov/naphthalene*. Space is limited, and reservations will be accepted on a first-come, first-served basis.

The documents related to the workshop, "Final Report on the External Peer Review for the IRIS Reassessment of the Inhalation Carcinogenicity of Naphthalene (August 2004)", "Draft Toxicological Review of Naphthalene: In Support of Summary Information on the Integrated Risk Information System (IRIS) (NCEA–S–1707)," and "List of Recent Naphthalene Literature," are available in limited paper copies by contacting the IRIS Hotline at (202) 566–1676 or (202) 566–1749 (facsimile), *hotline@iris.gov* (e-mail). If you are requesting paper copies, please provide your name, mailing address, and the document title and number, if applicable. Copies are not available from ORISE.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics should be directed to Leslie Shapard, ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 241–5784 or (865) 241–3168 (facsimile), *shapardl@orau.gov* (e-mail).

If you have questions about the workshop documents, contact Lynn Flowers, IRIS Staff, National Center for Environmental Assessment, 1200 Pennsylvania Avenue, NW. (8601 D), Washington, DC 20460; telephone: 202–564–1537; facsimile: 202–565–0075; *flowers.lynn@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Integrated Risk Information System (IRIS)

IRIS is a database that contains information on the potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

EPA's IRIS program is developing a health assessment on naphthalene carcinogenicity. A draft assessment was peer reviewed in July, 2004. One of the topics discussed at the peer review workshop was the need for further research to elucidate naphthalene's carcinogenic mode of action. The Agency has decided to hold a peer consultation workshop on this topic before determining a course of action on the IRIS assessment of naphthalene. This action provides public notice of the workshop.

EPA's E-Docket

EPA has established an official public docket for this action under Docket ID No. ORD–2005–0008. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket.

Dated March 2, 2005.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 05–4472 Filed 3–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. ORD–2005–0009; FRL–7882–6]

Board of Scientific Counselors, Drinking Water Subcommittee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), announces two meetings of the Board of Scientific Counselors (BOSC) Drinking Water Subcommittee.

DATES: One teleconference call meeting will be held on Wednesday, March 23, 2005, from 12 noon to 2 p.m.. A face-to-face meeting will be held beginning Tuesday, March 29 (8:30 a.m. to 5 p.m.), continuing on Wednesday, March 30, 2005 (8:30 a.m. to 5 p.m.), and concluding on Thursday, March 31, 2005 (8:30 a.m. to 2 p.m.). All times noted are Eastern Standard Time. Meetings may adjourn early if all business is completed.

ADDRESSES: Conference calls: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the teleconference meeting from Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Face-to-Face Meeting: The face-to-face meeting will be held at the U.S. EPA, Andrew W. Breidenbach Environmental Research Center, 26 W. Martin Luther King Dr., Cincinnati, OH 45268.

Document Availability

Draft agendas for the meetings are available from Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for the draft agendas will be accepted up to 2 business days prior to each conference call/meeting date. The draft agendas also can be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Any member of the public interested in making an oral presentation at the conference call or at the face-to-face meeting may contact Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for making oral presentations will be accepted up to 2 business days prior to each conference call/meeting date. In general, each individual making an oral presentation will be limited to a total of three minutes.

Submitting Comments

Written comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of this section. Written comments will be accepted up to 2 business days prior to each conference call/meeting date.

FOR FURTHER INFORMATION CONTACT: Edie Coates, Designated Federal Officer, Environmental Protection Agency, Office of Research and Development, Mail Code B105–03, Research Triangle Park, NC 27711; telephone (919) 541–3508; fax (919) 541–3335; e-mail *coates.edie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

This notice announces two meetings of the BOSC Drinking Water Subcommittee. The purpose of the meetings are to evaluate EPA's Drinking Water Research Program. Proposed agenda items for the conference call include, but are not limited to: Charge questions, objective of program reviews, and background on the U.S. EPA's Drinking Water Research Program. Proposed agenda items for the face-to-face meeting include, but are not limited to: Presentations by key EPA staff involved in the Drinking Water Research Program, poster sessions on ORD's Drinking Water research, and preparation of the draft report. The conference call and the face-to-face meeting are open to the public.

Information on Services for the Handicapped: Individuals requiring special accommodations at this meeting should contact Edie Coates, Designated Federal Officer, at (919) 541–3508 at least five business days prior to the meeting so that appropriate arrangements can be made to facilitate their participation.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD–2005–0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents are available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agendas may be viewed at the Board of Scientific Counselors, Drinking Water Meetings Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the

appropriate docket identification number (ORD–2005–0009).

For those wishing to make public comments, it is important to note that EPA's policy is that comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks mailed or delivered to the docket will be transferred to EPA's electronic public docket. Written public comments mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (ORD–2005–0009) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and it allows EPA to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket/,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, *www.epa.gov,* select "Information Sources," "Dockets," and "EDOCKET." Once in the system, select "search," and then key in Docket ID No. ORD–2005–0009. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD–2005–0009. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM mailed to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in Word, WordPerfect or rich text files. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. ORD–2005–0009.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD–2005–0009 (**Note:** This is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: March 3, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05–4584 Filed 3–7–05; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 10, 2004, from 8 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- February 10, 2005 (Open)

B. Reports

- Farm Credit System Building Association Quarterly Report

C. New Business—Regulations

- Receivership Repudiation Authorities—Proposed Rule
- Borrowers Rights—Final Rule

Closed Session*

- OSMO Quarterly Report

Dated: March 3, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–4572 Filed 3–4–05; 11:17 am]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 24, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 7, 2005. If you anticipate that you will be submitting PRA 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: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0062.

Title: Application for Authorization to Construct New or Make Changes to an Instructional Television Fixed Service and/or Response Station(s), or to Assign or Transfer Such Station(s).

Form No.: FCC Form 330.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and state, local, or tribal government.

Number of Respondents: 500.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: $750,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The FCC Form 330 is used to apply for authority to construct a new or make changes in an Instructional Television Fixed (ITFS) or response station and low power relay station, or for consent to license assignment or transfer of control. The Commission is now revising this form to request additional information to complete the Universal Licensing System (ULS) data elements since ITFS has been implemented into ULS. Additional information such as the licensee's e-mail address, fax number, contact's e-mail address and fax number will be added to the form. The Commission also clarified some data elements, instructions and corrected mailing addresses and web sites.

The information is used by FCC staff to ensure that the applicant is legally, technically and otherwise qualified to become a licensee. ITFS applicants/licensees will need this information to perform the necessary analyses of the potential for harmful interference to their facility.

OMB Control No.: 3060–0391.

Title: Program to Monitor the Impacts of the Universal Service Support Mechanisms, CC Docket Nos. 98–202 and 96–45.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 210 respondents; 1,456 responses.

Estimated Time Per Response: 40 minutes (.666 hours).

Frequency of Response: Annual reporting requirement and third party disclosure requirement.

Total Annual Burden: 971 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection is being submitted to the OMB as a revision. The revision is due to separations reform in which the dial equipment minutes reporting categories have been eliminated. Thus, only the interstate access minutes remain to be reported reducing the overall time required for each respondent to report their required data. This information is collected by the National Exchange Carriers Association (NECA). NECA acts as the access billing agent for most small companies, and requests the data from the other companies. Prior to 2002, the data collected were: Local, intrastate toll, and interstate dial equipment minutes, interstate dial equipment minute factors, and interstate access minutes. We estimate that it should take no more than 40 minutes per study area. This is an annual report.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4507 Filed 3–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 1, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington DC 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0665.

OMB Approval date: December 10, 2004.

Expiration Date: December 31, 2007.

Title: Section 64.707, Public Dissemination of Information by Providers of Operator Services.

Form No.: N/A.

Estimated Annual Burden: 436 responses; 1,744 total annual burden hours; 4 hours average per response.

Needs and Uses: As required by 47 U.S.C. 226(d)(4)(b), 47 CFR 64.707 provides that operator service providers must regularly publish and make available upon request from consumers written materials that describe any changes in operator services and choices available to consumers. Consumers use

the information to increase their knowledge of the choices available to them in the operator services marketplace.

OMB Control No.: 3060–0973.

OMB Approval date: December 10, 2004.

Expiration Date: December 31, 2007.

Title: Section 64.1120(e)—Sale or Transfer of Subscriber Base to Another Carrier, CC Dockets 00–257 and 94–129.

Form No.: N/A.

Estimated Annual Burden: 75 responses; 450 total annual burden hours; 6 hours average per response.

Needs and Uses: Pursuant to 47 CFR 64.1120(e), an acquiring carrier will self-certify to the Commission, in advance of the transfer, that the carrier will comply with the required procedrues, including giving advance notice to the affected subscribers in a manner that ensures the protection of their interests. By streamlining the carrier changes rules, the Commission will continue to protect consumers' interests and, at the same time, will ensure that its rules do not inavertently inhibit routine business transactions.

On July 16, 2004, the Commission released a First Order on Reconsideration and Fourth Order on Reconsideration which made a minor modification to 47 CFR 64.1120(e)(3)(iii).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4508 Filed 3–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2694]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 28, 2005.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by March 23, 2005. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Florida Cable Telecommunications Association. Inc., Cox Communications Gulf Coast, L.L.C., *et al.* vs. Gulf Power Company (EB Docket No. 04–381).

Number of Petitions Filed: 1.

Subject: In the Matter of Carrier Current Systems, including Broadband over Power Line Systems (ET Docket No. 03–104). Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Lines Systems (ET Docket No. 04–37).

Number of Petitions Filed: 17.

Subject: In the Matter of Children's Television Obligations of Digital Television Broadcasters (MM Docket No. 00–167).

Number of Petitions Filed: 16.

Subject: In the Matter of the Amendment of the FM Table of Allotments (Sells, Wilcox, and Davis-Monthan Air Force Base, Arizona) (MB Docket No. 02–376, RM–10617, RM 10690).

Number of Petitions Filed: 1.

Subject: In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (WT Docket No. 03–128).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4509 Filed 3–7–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 22, 2005.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Jeffrey Dinklage, Wisner, Nebraska; to acquire additional voting shares of D & H Investments Corporation, Cherokee, Iowa, and thereby indirectly acquire shares of Valley Bank & Trust, Cherokee, Iowa.

Board of Governors of the Federal Reserve System, March 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4454 Filed 3–7–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*. Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 2005.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Exchange National Bancshares, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Bank 10, Belton, Missouri.

2. First National Security Company, DeQueen, Arkansas; to acquire 100 percent of the voting shares of First Community Banking Corporation, Hot Springs, Arkansas, and thereby indirectly acquire First National Bank, Hot Springs, Arkansas; First National Bank in Mena, Mena, Arkansas; and First National Bank, Mount Ida, Arkansas.

Board of Governors of the Federal Reserve System, March 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4456 Filed 3–7–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of February 1-2, 2005

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on February 1-2, 2005.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 2-1/2 percent.

By order of the Federal Open Market Committee, February 28, 2005.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 05–4455 Field 3–7–05; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee meeting on February 1-2, 2005, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Limited Competition for Supplemental Grants for Centers for Education and Research (CERTs)

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of availability of fund for limited competitive supplements.

SUMMARY: This notice informs the research community that the Agency for Healthcare Research and Quality (AHRQ) is requesting applications for competitive supplemental grants from the seven Centers for Education and Research on Therapeutics (CERTs) for which it provided funding in fiscal year 2004.

The purpose of the competitive supplements is to provide funds for existing CERTs research centers to build on and to expand their research work and expertise with respect to comparative effectiveness research specifically to carry out short term projects that will address research gaps in priority subject areas identified and published pursuant to section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA). Since the inception of the CERTs program in 1999, the CERTs research centers have gathered significant data regarding therapeutics, refined research methodologies, and developed collaborative research resources. They are therefore uniquely prepared and suited to efficiently carry out pharmaco-epidemiology and methodological studies related to comparative effectiveness research that is pertinent to developing therapeutic evidence identified as being of high interest to the Medicare, Medicaid or SCHIP programs. For this reason, this solicitation will be for a limited competition among CERTs grantees.

DATES: The receipt date for the competitive supplemental grant applications is April 7, 2005. AHRQ will inform the current grantees directly regarding application procedures and format.

ADDRESSES: Submission of the applications should be sent to: Dr. Gerald Calderone, Office of Extramural Research, Education, and Priority Populations, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Phone: (301) 427–1548, Fax: (301) 427–1561, E-mail: *gcaldero@ahrq.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Scott R. Smith, Center for Outcomes and Evidence, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Phone: (301) 427–1511, Fax: (301) 427–1520, E-mail: *ssmith@ahrq.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 1013 of the MMA directs the Secretary of the Department of health and Human Services (DHHS), acting through the Director of AHRQ, to support research to address priorities identified by the Medicare, Medicaid, and SCHIP programs and other concerned stakeholders, regarding improvement of health care outcomes, comparative clinical effectiveness, and appropriateness of health care items and services (including prescription drugs) either provided or possibly not currently covered under these programs; and strategies for improving program efficiency and effectiveness with attention to the ways in which health care items and services are organized, managed. and delivered under these programs.

Pursuant to this section 1013, which may also be found at 42 U.S.C. 229b–7, DHHS published, on December 15, 2004, an initial priority list of ten conditions with respect to which research mandated under this section is to be promptly undertaken. The ten conditions are:

- Ischemic heart disease
- Cancer
- Chronic obstructive pulmonary disease/asthma
- Stroke, including control of hypertension
- Arthritis and non-traumatic joint disorders
- Diabetes mellitus
- Dementia, including Alzheimer's disease
- Pneumonia
- Peptic ulcer/dyspepsia
- Depression and other mood disorders

The Centers for Education and Research on Therapeutics (CERTs) program was first developed by AHRQ in accordance with a Congressional authorization in the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) to carry out or support research that would provide objective information on drugs, biologics, and medical devices. Just months after the first CERTs grants were awarded, the CERTs program was incorporated into the AHRQ Reauthorization Act of 1999 (Pub. L. 106–129); its objectives: to increase

awareness of the benefits and risks of new, existing, or combined uses of therapeutics through education and research and to reduce costs. The CERTs were to disseminate their findings to inform, among others, insurers and government agencies, patients and consumers. Under 42 U.S.C. 299b–1(b). CERTs grantees were to gather, develop and provide evidence related to comparative effectiveness, cost effectiveness and safety of therapeutics. Thus, the mission and work of the CERTs is consistent with and addresses identified priority research requirements of the MMA section 1013. Accordingly, the expedite the conduct of priority research related to health care services and items including prescription drugs, as mandated by section 1013, AHRQ is seeking to carry out the initial work on a competitive basis with the benefit of the existing collaborative organizational frameworks and therapeutics expertise and specialization developed by CERTs with prior AHRQ support.

Review

AHRQ will consider requests from current CERTs research center grantees to develop short term supplemental research projects specifically gathering, summarizing and assessing available therapeutics evidence with respect to subjects identified as priorities pursuant to MMA section 1013 or formulating and/or addressing methodological issues pertinent to the production of evidence that is needed with research to these priority subject areas. *See http://www.medicare.gov/MedicareReform/researchtopics.asp.* These competitive applications for supplemental grant awards will undergo scientific and technical review using regular AHRQ peer review processes. In addition to criteria set forth in 42 CFR part 67, subpart A, § 67.15(c), the peer review evaluations and recommendations, in particular, will be based on adherence to the agenda and priorities established in accordance with section 1013 of the MMA.

Each center may submit a single application for supplemental support of a research project that address clinical or methodological issues pertaining to a knowledge gap regarding the comparative effectiveness of therapeutics for one or more of the ten priority clinical areas of interest to the Medicare, Medicaid and SCHIP programs. Requests are to be limited to projects that can be completed in 12 months or less. Although each CERTs Research Center may be the primary applicant on any one application, AHRQ encourages partnerships between existing CERTs. The actual number of applications that will be funded is dependent on the number of high quality applications.

Dated: February 24, 2005

Carolyn M. Clancy,

Director.

[FR Doc. 05–4444 Filed 3–7–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the ICD–9–CM Coordination and Maintenance Committee

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting.

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Time and Date: 9 a.m.–4 p.m., March 31–April 1, 2005.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 2005 calendar year cycle on Thursday and Friday March 31–April 1, 2005. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters to be Discussed: Agenda items include:

Sleep disorders
Epilepsy
Transfusion related lung injury (TRALI)
Failed hearing screening
Myelitis
Macrophage activation syndrome
Subtalar joint arthroereisis
360 degree spinal fusion
Implantation of interspinous process decompression device
Hip arthroplasty "bearing surfaces
External fracture fixation devices
Endovascular implantation of graft in thoracic aorta Infusion of liquid radioisotope
Radiofrequency Total Occlusion Crossing System
ICD–10–Procedure Coding System (PCS) update Addenda

Contact Person for Additional Information: Amy Blum, Medical Systems Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Room C4–07–07, Baltimore, Maryland 21244 telephone (410) 786–1542 (procedures).

Notice: Because of increased security requirements,(CMS) has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show an official form of picture I.D., (such as a drivers license), and sign-in at the security desk upon entering the building.

Those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the March 31–April 1, 2005 meeting must submit their name and organization by March 29, 2005 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend. Register to attend the meeting on-line at: *http://cms.hhs.gov/events.*

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 2, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–4428 Filed 3–7–05; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Allergenic Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 7, 2005, from 8:30 a.m. to 4 p.m.

Location: Holiday Inn Select, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Gail Dapolito or Jane Brown, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 7, 2005, the committee will discuss a proposed strategy for the reclassification of Class IIIA allergenic products. The committee will also receive an update of the FDA Critical Path Initiative.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 31, 2005. Oral presentations from the public will be scheduled between approximately 11:15 a.m. and 12:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 31, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 2, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–4484 Filed 3–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Resources and Services Administration (HRSA); Request for Public Comment on a HRSA Commissioned Report: Newborn Screening: Toward a Uniform Screening Panel and System

SUMMARY: The changing dynamics of emerging technology, and the complexity of genetics require an assessment of the state of the art in newborn screening and a perspective on the future directions such programs should take. In 1999, the American Academy of Pediatrics Newborn Screening Task Force recommended that "HRSA should engage in a national process involving government, professionals, and consumers to advance the recommendations of this Task Force and assist in the development and implementation of nationally recognized newborn screening system standards and policies." In response to this need, pursuant to 42 U.S.C. 701(a)(2), the Maternal and Child Health Bureau (MCHB) of HRSA commissioned the American College of Medical Genetics (ACMG) to conduct an analysis of the scientific literature on the effectiveness of newborn screening and gather expert opinion to delineate the best evidence for screening specified conditions and develop recommendations focused on newborn screening, including but not limited to the development of a uniform condition panel. It was expected that the analytical endeavor and subsequent recommendations be based on the best scientific evidence and analysis of that evidence. ACMG was specifically asked to develop recommendations to address:

- A uniform condition panel (including implementation methodology);
- Model policies and procedures for State newborn screening programs (with consideration of a national model);
- Model minimum standards for State newborn screening programs (with consideration of national oversight);
- A model decision matrix for consideration of State newborn screening program expansion; and
- The value of a national process for quality assurance and oversight.

The ACMG report is a response to the HRSA/MCHB request. The ACMG report, Newborn Screening: Toward a Uniform Screening Panel and System is available at *http://mchb.hrsa.gov/screening.*

In the report, 29 conditions were identified as primary targets or core panel conditions for screening; an additional 25 conditions were listed as conditions that could be identified in the course of screening for core panel conditions. Many of these 25 additional conditions are included in the differential diagnosis of the conditions including in the primary target list. With additional screening, an improvement in the infrastructure for appropriate follow-up and management throughout the lives of children who have been identified as having one of these rare conditions will be needed. A cost analysis for the State of California indicates newborn screening is beneficial to patients and may have some net costs or net savings over time depending on assumptions of expected lifetime costs of medical care.

HRSA is now seeking public comments on the report and its recommendations.

DATES: The public is encouraged to submit written comments on the report and its recommendations within 60 days of publication of this **Federal Register** notice.

ADDRESSES: The following mailing address should be used: Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, 18A–19, Rockville, MD 20857. HRSA/MCHB's facsimile number is 301–443–8604. Comments can also be sent via e-mail to *screening@hrsa.hhs.gov*. All public comments received will be available for public inspection at MCHB/HRSA's office between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Questions about this request for public comment can be directed to Dr. Michele Lloyd-Puryear, MD, PhD, by e-mail (*screening@hrsa.hhs.gov*). The report will be posted on HRSA/MCHB's Web site at *http://mchb.hrsa.gov/screening.*

Dated: March 2, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–4481 Filed 3–7–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Professions Preparatory, Health Professions Pregraduate and Indian Health Professions Scholarship Programs; Correction

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on January 19, 2005. The document contained one error.

FOR FURTHER INFORMATION CONTACT: Mr. Jess Brien, Chief, Scholarship Branch, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; telephone 301–443–6197. (This is not a toll-free number.)

Correction

In the **Federal Register** of January 19, 2005, in FR Doc. 05–1030, on page 3046, in the second column, correct the Application Review Date to read April 18–April 22, 2005.

Dated: February 28, 2005.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 05–4479 Filed 3–7–05; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: April 6–8, 2005.

Time: 7 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20892, (301) 496–7413.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4498 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Sepsis and CAP: Partnerships for Diagnostics Development.

Date: March 21–22, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Stefani T. Rudnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *srudnick@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Hepatitis C Cooeprative Research Centers.

Date: March 23–25, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–2766, *gm145a@nih.gov.*

Name of Committee: National Institutes of Allergy and Infectious Diseases Special Emphasis Panel Novel HIV Therapeutics: Integrated Preclinical/Clinical Program (IPCP).

Date: March 23–25, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Adminsitrator, Scientific Review Program, Divison of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, 301–496–2606, *tshahan@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Disorders of Therapeutic Immunosuppression.

Date: March 23, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3147, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Duane Price, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6700B, Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550; *dprice@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Emphasis Panel "Animal Models for the Prevention and Treatment of Hepatitis B and Hepatitis C."

Date: March 24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lucy A. Ward, DVM, Scientific Review Administrator, Scientific Review Program, Division of Extramual Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3117, Bethesda, MD 20892–7616, (301) 496–2550; *lw275a@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel IPCP.

Date: March 31, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2606; *tshahan@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: March 1, 2005.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4487 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn Research Center Program.

Date: March 29, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Brian R. Pike PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (301) 594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4489 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee, Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Exploratory Center Grants for hESC Research.

Date: March 29–30, 2005.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4490 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group Acquired Immunodeficiency Syndrome Research Review Committee, AIDS Research Review Committee.

Date: March 23–24, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3130, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–7966, *rb169n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4491 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications. the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Functional Development of the Mammary Gland.

Date: March 28, 2005.

Time: 9:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4492 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: March 28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4493 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mental Retardation & Developmental Disability Research Center.

Date: March 30–31, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Phoenix Park Hotel, 520 North Capital Street NW., Washington, DC 20001.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4494 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Postmortem Brain Bank Resource.

Date: March 28, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of

Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4495 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD(31) RFA AA05–003 Structural Interventions, Alcohol Use, and Risk of HIV/AIDS.

Date: March 21, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4496 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee, Health Sciences Research Review Subcommittee.

Date: March 10–11, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4497 Filed 3–8–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD (30)—R21 and U01 Grant Applications.

Date: March 28, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA—Fishers Building, 5635 Fishers Lane, 3045, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4499 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, R13 Conference Grant Review.

Date: March 29, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research & Training, Nat. Institute of Environmental Hlth. Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National institutes of Health, HHS).

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4501 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Predictive Validity of Preschool Symptoms.

Date: March 9, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912; *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Musculoskeletal Tissue Engineering.

Date: March 17–18, 2005.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean Dow Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743; *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Motor Function, Speech and Rehabilitation.

Date: March 18, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, (301) 435–2309; *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Biomarkers.

Date: March 22, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *petrakoe@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP Review of Macromolecular Structure and Motion Program Project Application.

Date: March 24, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis Redo.

Date: March 24, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rolf Menzel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Functional G Protein Pathways in Platelet Activation.

Date: March 25, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioinformatics Approach to Protein Phosphorylation.

Date: March 28, 2005.

Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stress and Neuroendocrine Responses.
Date: March 29, 2005.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *shirleym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis.
Date: March 29, 2005.
Time: 2:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Non-Human Visual Processing.
Date: March 29, 2005.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: March 1, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4500 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: Novel Isosteric Thalidomide Analogs With Enhanced TNF-α Inhibitory Activity

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), announces that the Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application No. 60/504,724 filed September 17, 2003, entitled "Thalidomide Analogs" (DHHS Reference E–189–2003/0–US–01) and PCT Application No. PCT/US2004/030506 filed September 17, 2004, entitled "Thalidomide Analogs" (DHHS Ref. E–189–2003/0–PCT–02) to Phase 2 Discovery, Inc. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be United States, Denmark, Italy, Ireland, United Kingdom, Germany, France, Sweden, Switzerland, Spain, Czech Republic, Greece, Russia, Australia, Japan, Taiwan, Singapore, China, Argentina and Brazil, and the field of use may be limited to development and sale of a pharmaceutical product useful in treating Amyotrophic Lateral Sclerosis (ALS) and Attention Deficit Hyperactivity Disorder (ADHD).

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before May 9, 2005 will be considered.

ADDRESSES: Requests for copies of the patent and/or patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Mojdeh Bahar, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 435–2950; Facsimile: (301) 402–0220; E-mail: *baharm@od.nih.gov*.

SUPPLEMENTARY INFORMATION: Inflammatory processes associated with the over-production of cytokines, particularly of tumor necrosis factor-alpha (TNF-α), accompany numerous neurodegenerative diseases, such as Alzheimer's disease and ALS, in addition to numerous common systemic conditions, such as rheumatoid arthritis, septic shock, graft-versus-host disease, Crohn's disease and erythema nodosum leprosum (ENL). TNF-α has been validated as a drug target with the development of the inhibitors Enbril and Remicade as prescription medications for rheumatoid arthritis. Both, however, are large macromolecules that are expensive to produce, require direct intravenous or subcutaneous injection, and have negligible brain access. The classical orally active drug, thalidomide (N-α-phthalimidoglutarimide), a glutamic acid derivative, is being increasingly used in the clinical management of a wide spectrum of immunologically-mediated, infectious diseases, and cancers. Its clinical value in treating ENL derives from its TNF-α inhibitory activity. Specifically, it inhibits TNF-α protein expression at the post-transcriptional level by facilitating turnover of the mRNA. More recent research has shown similar inhibitory action of COX2 protein expression. These actions are mediated post-transcriptionally via AU-rich elements found in the 3′ untranslated regions (3′–UTRs) of each mRNA. Thalidomide's anti-angiogenesis activity derives from its inhibitory actions on basic fibroblast growth factor (bFGF) and vascular endothelial growth factor (VEGF). The agent, additionally, acts as an inhibitor of the transcription factor, NFkB and a co-stimulator of both CD8+ and CD4+ T cells. However, the action of thalidomide to lower TNF-α levels and inhibit angiogenesis is not particularly potent, and it therefore represents an interesting lead compound for medicinal chemistry.

Novel structural modification of thalidomide led to the discovery of original and potent isosteric analogues. The present invention relates to thalidomide analogues and, in particular, thiothalidomides (sulfur-containing thalidomide analogues), methods of synthesizing the analogues, and methods for using the analogues to modulate TNF-α and angiogenesis activities in a subject. Disclosed analogues potently inhibited TNF-α secretion, compared to thalidomide, via post-transcriptional mechanisms that decreased TNF-α mRNA stability via its 3′–UTR. Actions to inhibit angiogenesis were determined in widely accepted *ex vivo* assays.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days

from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 28, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–4488 Filed 3–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Border and Transportation Security Directorate; Notice of 30-Day Information Collection Under Review for United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT)

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Notice; 30-day notice of information collection under review.

SUMMARY: The Department of Homeland Security, Border and Transportation Security Directorate, DHS has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 5, 2004, at 69 FR 479, allowing for a 60-day public comment period. No comments were received by DHS on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: You may submit comments, identified by DHS–2005–0013 by one of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *Claire.miller@dhs.gov.* Include DHS–2005–0013 in the subject line of the message.
- Fax: (202) 298–5060.
- Mail: Office of Management and Budget, Attn: Desk Officer for Homeland Security, Room 10235, Washington, DC 20503.
- Hand Delivery/Courier: Office of Management and Budget, Attn: Desk Officer for Homeland Security, Room 10235, Washington, DC 20503.

Instructions: All submissions received must include the agency name and DHS–2005–0013) for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Border and Transportation Security Directorate, DHS.

Title: United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT).

OMB No.: 1600–0006.

Frequency: On occasion.

Affected Public: Individual aliens. Non-immigrant visa holders who seek admission to the United States at air and sea ports of entry and designated departure locations.

Estimated Number of Respondents: From January 5, 2004, to January 5, 2005, the number of nonimmigrant visa-holders required to provide biometrics at the air and sea ports of entry is anticipated to be approximately 24 million, comprised of approximately 19.3 million air travelers and 4.5 million sea travelers.

Estimated Time per Response: The average processing time per person for who biometrics will be collected is approximately one minute and fifteen seconds at entry, with 15 seconds being the additional time added for biometric collection over and above the normal inspection processing time. The average additional processing time upon exit is estimated at one minute per person. There are no additional fees for traveling aliens to pay.

Total Burden Hours: Approximately 100,800.

Total Cost Burden: None.

Description: The biometric information to be collected is for nonimmigrant visa holders who seek admission to the United States at the air and sea ports of entry and certain departure locations. The collection of information is necessary for the Department to continue its compliance with the mandates in section 303 of the Border Security Act, 8 U.S.C. 1732 and sections 403(c) and 414(b) of the USA PATRIOT Act, 8 U.S.C. 1365a note and 1379, for biometric verification of the identities of alien travelers and authentication of their biometric travel documents through the use of machine readers installed at all ports of entry. The arrival and departure inspection procedures are authorized by 8. U.S.C. 1225 and 1185.

Dated: March 3, 2005.

Mark Emery,

Deputy, Chief Information Officer.

[FR Doc. 05–4475 Filed 3–7–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of a Current Public Collection of Information; TSA Customer Comment Card

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on currently approved information collection requirement abstracted below that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by May 9, 2005.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Ms. Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

1652–0030; TSA Customer Comment Card. This collection continues a voluntary program for airport passengers to provide feedback to the TSA regarding their experiences with TSA security procedures. This collection of information allows the TSA to determine customer concerns about security procedures and policies. TSA published a notice requesting emergency clearance from OMB (02/10/05; 70 FR 7115) and received emergency approval (OMB Control No. 1652–0030) for a three-month collection that expires on 5/31/05.

TSA will make available to airports a Customer Comment Card, which will collect feedback and, if the passenger desires, contact information so that TSA staff can respond to the passenger's comment. For passengers who deposit their cards in the designated drop-boxes, TSA airport staff will collect the cards, categorize comments, enter the results into an online system for reporting, and respond to passengers as necessary. Passengers also have the option to mail the cards directly to TSA. The TSA Contact Center will continue to be available for passengers to make comments independently of airport involvement. The TSA Contact Center is available by accessing the TSA Customer Service section of the "Travelers and Consumers" link on our Web site at *http://www.tsa.gov/public/*; by telephone toll-free at 1–866–289–9673; or by E-mailing us at *TSA-ContactCenter@dhs.gov*.

TSA estimates the number of respondents to be 1,783,800, with an estimated annual burden hours of 150,880 hours.

Issued in Arlington, Virginia, on March 3, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–4402 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review; Screener Medical Questionnaire

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 22, 2004, 69 FR 67933.

DATES: Send your comments by April 7, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Transportation Security Screener Medical Questionnaire.

Type of Request: New Collection.

OMB Control Number: Not yet assigned.

Form(s): Screener Medical Questionnaire.

Affected Public: Candidates under employment consideration for Transportation Security Screener positions.

Abstract: This collection of information will assist the agency in ensuring that candidates under employment consideration for Transportation Security Screener positions meet the qualification standards to successfully perform the functions of the positions. Information is collected through a medical questionnaire. TSA deems this collection necessary to evaluate a candidate's aptitude and physical abilities, including color perception, visual and aural acuity, physical coordination and motor skills to be able to: (a) Distinguish on screening equipment monitors the appropriate imaging standard; (b) distinguish each color displayed on every type of screening equipment and explain what each color signifies; (c) hear and respond to the spoken voice and to audible alarms in an active checkpoint environment; (d) perform physical searches by efficiently and thoroughly manipulating and handling baggage containers, and other objects; (e) perform pat-downs or hand-held metal detector searches of individuals with sufficient dexterity and capacity to thoroughly conduct the procedures over an individual's entire body; and (f) demonstrate a daily fitness for duty without impairment due to illegal drugs,

sleep deprivation, medication, or alcohol.

Number of Respondents: 38,052 annually.

Estimated Annual Burden Hours: 11,430 hours.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on March 3, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–4403 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–14]

Notice of Submission of Proposed Information Collection to OMB; Application for Approval as FHA Title I/II Lender/GNMA Mortgage-Backed Securities Issuer

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to consolidate the two currently approved information collections for Application for Approval as FHA Title I/II Lender/GNMA Mortgage-Backed Securities Issuer and the Annual Financial Statements from Title I/II Nonsupervised Mortgagees/Loan Correspondents.

DATES: *Comments Due Date:* April 7, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0005) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for Approval as FHA Title I/II Lender/GNMA Mortgage-Backed Securities Issuer.

OMB Approval Number: 2502–0005.

Form Numbers: HUD–11701, HUD–11701–A, HUD–11701–B, HUD–11701–C, HUD–11701–D, HUD–11701–E, HUD–92001–B, and HUD–56005.

Description of the Need for the Information and Its Proposed Use: This information is required for approval of FHA Title I lenders and Title II mortgagees and for issuers of Ginnie Mae mortgage-backed securities. Additional information is then required of all FHA approved Title I lenders and Title II mortgagees to: (1) Maintain their approval (annual Recertification); (2) add/delete branches; (3) pay additional fees to FHA for annual Recertification, new branches, and business conversions; (4) report business changes of lender or mortgagee including structure, addresses, and principal owners and officers; (5) report non-compliances detected by lender and mortgagee quality control plans; and (6) voluntarily terminate FHA approval. HUD is requesting approval to consolidate the two currently approved information collections for Application for Approval as FHA Title I/II Lender/GNMA Mortgage-Backed Securities Issuer and the Annual Financial Statements from Title I/II Nonsupervised Mortgagees/Loan Correspondents.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	13,500	41,150		0.7		28,298

Total Estimated Burden Hours: 28,298.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 2, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 05–4395 Filed 3–7–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–07]

Notice of HUD–Held Multifamily and Healthcare Loan Sale (MHLS 2005–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2005–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder Information Package (BIP) was made available to qualified bidders on February 14, 2005. Bids for the loans must be submitted on the bid date, which is currently scheduled for March 16, 2005. HUD anticipates that awards will be made on or before March 18, 2005. Closings are expected to take place from March 23, 2005 through March 31, 2005.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm*. The executed documents must be mailed and faxed to KEMA Advisors, Inc., HUD's transaction specialist for the sale, at 1400 K Street, NW., Suite 950, Attention: MHLS 2005–1 Sale Coordinator, Fax: 202–464–3047.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3369 or Gregory Bolton, Senior Attorney, Office of Insured Housing, Multifamily Division, Room 9230; telephone 202–708–0614, extension 5245. Hearing-or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2005–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing and nonperforming mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2005–1. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between March 23, 2005 and March 31, 2005.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2005–1. Qualified bidders will be able to access loan information at a due diligence facility or remotely via a high speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2005–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations, 24 CFR 290.30 *et seq.*, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2005–1:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, part 24;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2005–1;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2005–1;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2005–1;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before March 2, 2005, audited financial statements for 1998 through 2004 for a project securing a Mortgage Loan; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before February 16, 2005.

In addition, any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to March 2, 2005, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the 2-year period prior to March 2, 2005. Also ineligible to bid on any Mortgage Loan are: (a) any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2005–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2005–1, including, but not limited to, the identity of any bidder and their bid price or bid percentage for any pool of loans or individual loan within a pool of loans, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2005–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2005–1, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: February 25, 2005.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 05–4394 Filed 3–7–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before April 7, 2005.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Permit No. TE–097611

Applicant: Beverly Shade, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for Mexican long-nosed bat (*Leptonycteris nivalis*), Barton Springs salamander (*Eurycea sosorum*), and Texas blind salamander (*Typhlomolge rathbuni*) within Texas. Additionally, applicant requests authorization to survey for and collect the following species within Texas: *Batrisodes venyivi* (Helotes mold beetle), *Cicurina baronia* (Robber Baron Cave meshweaver), *Cicurina madla* (Madla's cave meshweaver), *Cicurina venii* (Braken Bat Cave meshweaver), *Cicurina vespera* (Government Canyon Bat Cave meshweaver), *Neoleptoneta microps* (Government Canyon Bat Cave spider), *Neoleptoneta myopica* (Tooth Cave spider), *Rhadine exilis* (ground beetle, no common name), *Rhadine infernalis* (ground beetle, no common name), *Rhadine persephone* (Tooth Cave ground beetle), *Tartarocreagris texana* (Tooth Cave pseudoscorpion), *Texamaurops reddelli* (Kretschmarr Cave mold beetle), *Texella cokendolpheri* (Cokendolpher cave harvestman), *Texella reddelli* (Bee Creek Cave harvestman), and *Texella reyesi* (Bone Cave harvestman).

Permit No. TE–097612

Applicant: Robert Beatson, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and nest monitoring for cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within Arizona.

Permit No. TE–098049

Applicant: National Park Service, Padre Island National Seashore, Corpus Christi, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: black-capped vireo (*Vireo atricapillus*), brown pelican (*Pelecanus occidentalis*),

northern aplomado falcon (*Falco femoralis septentrionalis*), and piping plover (*Charadrius melodus*).

Permit No. TE–099263

Applicant: Robert Root, Albuquerque, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for black-footed ferret (*Mustela nigripes*) and southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, New Mexico, and Texas.

Permit No. TE–021881

Applicant: TRC Co., Inc., Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the following species within Arizona, New Mexico, and Texas: Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*), jaguar (*Panthera onca*), jaguarundi (*Herpailurus yagouaroundi cacomitli*), Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*), ocelot (*Leopardus pardalis*), Sonoran pronghorn (*Antilocapra americana sonoriensis*), Attwater's greater prairie-chicken (*tympanuchus cupido attwateri*), black-capped vireo (*Vireo atricapilla*), brown pelican (*Pelecanus occidentalis*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), California condor (*Gymnogyps californianus*), Eskimo curlew (Numenius borealis), golden-cheeked warbler (*Dendroica chrysoparia*), interior least tern (*Sterna antillarum*), masked bobwhite (*Colinus virginianus ridgwayi*), northern aplomado falcon (*Falco femoralis septentrionalis*), red-cockaded woodpecker (*Picoides borealis*), southwestern willow flycatcher (*Empidonax traillii extimus*), whooping crane (*Grus americana*), and Yuma clapper rail (*Rallus longirostris yumanensis*).

Permit No. TE–099276

Applicant: Marron & Associates, Albuquerque, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona.

Permit No. TE–099278

Applicant: Fred Phillips Consulting, LLC, Flagstaff, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit No. TE–100419

Applicant: Lucy Dueck, Aiken, South Carolina.

Applicant requests a new permit for research and recovery purposes to survey for and collect *Spiranthes delitescens* (Canelo hills ladies'-tresses) within Arizona and *Spiranthes parksii* (Navasota ladies'-tresses) within Texas.

Permit No. TE–086562

Applicant: Jeriann L. Howard, Bluff, Utah.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, New Mexico, and Utah.

Permit No. TE–100568

Applicant: Texas Department of Transportation, Fort Worth, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.

Permit No. TE–100567

Applicant: Texas Department of Transportation, San Antonio, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: jaguarondi (*Herpailurus yagouaroundi cacomitli*), ocelot (*Leopardus pardalis*), Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri*), black-capped vireo (*Vireo atricapilla*), brown pelican (*Pelecanus occidentalis*), golden-cheeked warbler (*Dendroica chrysoparia*), interior least tern (*Sterna antillarum*), northern aplomado falcon (*Falco femoralis septentrionalis*), red-cockaded woodpecker (*Picoides borealis*), Concho water snake (*Nerodia paucimaculata*), Houston toad (*Bufo houstonensis*), fountain darter (*Etheostoma fonticola*), and San Marcos gambusia (*Gambusia georgei*). Additionally, applicant requests authorization to survey for and collect the following species within Texas: *Batrisodes texanus* (Coffin Cave mold beetle), *Batrisodes venyivi* (Helotes mold beetle), *Cicurina baronia* (Robber Baron Cave meshweaver), *Cicurina madla* (Madla's cave meshweaver), *Cicurina venii* (Braken Bat Cave meshweaver), *Cicurina vespera* (Government Canyon Bat Cave meshweaver), *Neoleptoneta microps* (Government Canyon Bat Cave spider), *Neoleptoneta myopica* (Tooth Cave spider), *Rhadine exilis* (ground beetle, no common name), *Rhadine infernalis* (ground beetle, no common name), *Rhadine persephone* (Tooth Cave ground beetle), *Tartarocreagris texana* (Tooth Cave pseudoscorpion), *Texamaurops reddelli* (Kretschmarr Cave mold beetle), *Texella cokendolpheri* (Cokendolpher cave harvestman), *Texella reddelli* (Bee Creek Cave harvestman), and *Texella reyesi* (Bone Cave harvestman), *Ancistrocactus tobuschii* (Tobusch fishhook cactus), *Phlox nivalis ssp. texensis* (Texas trailing phlox), *Styrax texana* (Texas snowbells).

Permit No. TE–100566

Applicant: Texas Department of Transportation, Corpus Christi, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: jaguarundi (*Herpailurus yagouaroundi cacomitli*), ocelot (*Leopardus pardalis*), Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri*), brown pelican (*Pelecanus occidentalis*), interior least tern (*Sterna antillarum*), and piping plover (*Charadrius melodus*).

Permit No. TE–100565

Applicant: Jack Woody, Rio Rancho, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit No. TE–009792

Applicant: The Arboretum at Flagstaff, Flagstaff, Arizona.

Applicant requests an amendment to an existing permit to allow survey and collection of *Astragalus cremnophylax var. cremnophylax* (Sentry milk-vetch) and *Pediocactus bradyi* (Brady pincushion cactus) within Arizona.

Permit No. TE–100564

Applicant: Laura Green, Tempe, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within Arizona.

Permit No. TE–055419

Applicant: Turner Biological Consulting, Tuscola, Texas.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the following species within New Mexico, Oklahoma, and Texas: jaguar (*Panthera onca*), Mexican long-nosed bat (*Leptonycteris nivalis*), Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri*), black-capped Vireo (*Vireo atricapilla*), brown pelican (*Pelecanus occidentalis*), golden-cheeked warbler (*Dendroica chrysoparia*), interior least tern (*Sterna antillarum*), northern aplomado falcon (*Falco femoralis septentrionalis*), piping plover (*Charadrius melodus*), red-cockaded woodpecker (*Picoides borealis*), southwestern willow flycatcher (*Empidonax traillii extimus*), whooping crane (*Grus Americana*), Big Bend gambusia (*Gambusia gaigei*), Clear Creek gambusia (*Gambusia heterochir*), Comanche Springs pupfish (*Cyprinodon elegans*), Leon Springs pupfish (*Cyprinodon bovinus*), Pecos gambusia (*Gambusia nobilis*), and San Marcos gambusia (*Gambusia georgei*). Additionally, applicant requests authorization to survey for and collect the following species within New Mexico, Oklahoma, and Texas: *Ancistrocactus tobuschii* (Tobush fishhook cactus), *Astrophytum asterias* (star cactus), *Callirhoe scabriuscula* (Texas poppy mallow), *Coryphantha minima* (Nellie cory cactus), *Coryphantha ramillosa* (bunched cory cactus), *Coryphantha sneedii var. sneedii* (Sneed pincushion cactus), *Cryptantha crassipes* (Terlingua Creek cat's eye), *Echinocereus chisoensis var. chisoensis* (Chisos Mountain hedgehog cactus), *Echinocereus reichenbachii var. albertii* (black lace cactus), *Echinocereus viridiflorus var. davisii* (Davis green pitaya), *Echinomastus mariposensis* (Lloyd's Mariposa cactus), *Helianthus paradoxus* (Pecos sunflower), *Quercus hinkleyi* (Hinkley oak), and *Zizania texana* (Texas wild-rice).

Permit No. TE–835139

Applicant: Hawks Aloft, Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to allow presence/absence surveys and nest monitoring activities for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit No. TE–100579

Applicant: Salt River Project Agricultural Improvement and Power District, Tempe, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct habitat manipulation and monitoring, presence/absence surveys, nest searches, and nest monitoring for the southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona.

Authority: 16 U.S.C. 1531, *et seq.*

Dated: February 18, 2005.

Joy E. Nicholopoulos,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 05–4443 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the development of the Shadow Wood Subdivision in Brevard County, Fl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: John Massaro (Applicant) requests an incidental take permit (ITP) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates take of the Florida scrub-jay (*Aphelocoma coerulescens*) and eastern indigo snake (*Drymarchon corais couperi*) incidental to construction of a mixed residential and commercial use subdivision with supporting infrastructure in Brevard County, Florida. Construction and its associated infrastructure would destroy about 9.67 acres of foraging, sheltering, and possibly nesting habitat for the scrub-jay that is also possibly used by the indigo snake. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of the EA and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 60 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before May 9, 2005.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE089883–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Michael Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 113.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE089883–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the

administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other subspecies of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development, and subsequent fire protection, has resulted in habitat degradation, loss and fragmentation which have adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by substantial urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, a major portion of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

A family of scrub-jays have been observed on the project site. They are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in central Brevard County. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays are unlikely to persist in urban settings, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

There is little information available about the status of the indigo snake in Florida and Brevard County. Like the scrub jay, this species habitat has been reduced in amount, degraded and fragmented from commercial, residential, and agricultural development. It may potentially use essentially all of the habitats found in the Project area. It has not been observed onsite but the Applicant desires to cover the indigo snake in the incidental take permit.

Construction of the Project's infrastructure and facilities will result in harm to scrub-jays and possibly to the indigo snake incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction will reduce the availability of foraging, sheltering, and possible nesting habitat for one family of scrub-jays and habitat for any indigo snakes that occur on the site. Development would take place within Section 31, Township 26 South, Range 37 East, Brevard County, Florida.

The Applicant does not propose to implement significant on-site minimization measures to reduce take of the scrub-jay or indigo snake. The proposed Project encompasses about 34.6 acres and the footprint of the homes, buildings, infrastructure and landscaping preclude retention of scrub-jay and indigo snake habitat. On-site minimization may not be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

The Applicant proposes to mitigate for the loss of 9.67 acres of scrub-jay habitat by purchasing 19.34 acres of scrub-jay habitat, establishing a management fund, and donating it to Brevard County for ownership and management. The acquisition and management of this land would also provide suitable habitat for the indigo snake.

As stated above, the Service has made a preliminary determination that the issuance of the Permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: February 24, 2005.

Sam D. Hamilton,

Regional Director.

[FR Doc. 05–4427 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–E]

Powder River Regional Coal Team Activities, Notice of Public Meeting in Gillette, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) has scheduled a public meeting for April 27, 2005, to review current and proposed activities in the Powder River Coal Region and to review pending coal lease applications (LBA).

DATES: The RCT meeting will begin at 9 a.m. MDT on April 27, 2005. The meeting is open to the public.

ADDRESSES: The meeting will be held at the City Council Chambers, 201 East 5th Street, Gillette, Wyoming 82718.

FOR FURTHER INFORMATION CONTACT: Robert Janssen, Regional Coal Coordinator, Bureau of Land Management (BLM) Wyoming State Office, Division of Minerals and Lands, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, telephone 307–775–6206 or Rebecca Spurgin, Regional Coal Coordinator, BLM Montana State Office, Division of Resources, 5001 Southgate Drive, Billings, Montana 59101, telephone 406–896–5080.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to discuss pending coal LBAs in the Powder River Basin. Specific coal lease applications and other matters for the RCT to consider include:

1. *Maysdorf LBA.* This LBA, filed by Cordero Mining Company under the name of Mt. Logan, was discussed at the meeting held in May 2002. The applicant significantly reduced the size

of the LBA in November of 2004. The LBA now includes approximately 2,219 acres and 230 million tons of Federal coal. The RCT will be updated on the new tract and the processing schedule for the Maysdorf LBA.

2. *West Extension-Eagle Butte LBA.* This LBA, filed by Foundation Coal West, Inc., was discussed at the meeting held in May 2002. It is adjacent to the Eagle Butte Mine and includes approximately 1,397 acres and 231 million tons of Federal coal. This LBA was also reduced in size by the applicant. The RCT will be updated on the new tract and the processing schedule for the West Extension-Eagle Butte LBA.

3. *Belle Ayr LBA.* This new LBA, filed by Foundation Coal West, Inc., is adjacent to the Belle Ayr mine. Approximately 1,578.74 acres and 200.0 million tons of Federal coal are involved. The original Belle Ayr LBA was filed in July 2000 and a portion of the original application was subsequently offered for sale. The bid was rejected for not meeting fair market value. At the RCT meeting in 2002, the team instructed the applicant to submit a new application if they were still interested in leasing this tract. RAG submitted a new application in July 2004. The RCT needs to consider the processing schedule for the Belle Ayr LBA.

4. Decker Coal Company has indicated to the Montana BLM State Office that they will be submitting a coal lease application prior to the scheduled April 27, 2005, RCT meeting. The F-Section Extension would be mined in conjunction with their current operations at Decker Coal Mine, located in South-Central Montana. Specific details regarding the acreage and Federal coal tons being applied for will be presented at the upcoming RCT meeting.

5. Spring Creek Coal Company (SCCC) contacted the Montana BLM State Office in December 2004 to discuss a lease application that would add reserves to their leased Federal and State Carbone tracts. SCCC has indicated that they will submit an application for the Spring Creek Expansion Tract, which includes approximately 1,181.3 acres and 111.6 million Federal coal tons. These reserves would be mined in conjunction with their existing Spring Creek Coal Mine, located in South-Central Montana.

6. The BLM is doing a coal review study in the Powder River Basin. This study includes coal development forecasts and an evaluation of cumulative effects. The results of this review will be used in the preparation of coal related National Environmental Policy Act documents in the Powder River coal region. The RCT will be updated on the progress and results of this study.

7. The BLM received an application from Peabody Energy Company for a coal lease exchange for leased Federal coal in the Gold Mine Draw Alluvial Valley Floor area. The RCT will be updated on the parcels of land being considered for exchange, the public interest determination, and other actions pertaining to this exchange.

8. Update on BLM land use planning efforts in the Powder River Basin of Wyoming and Montana.

9. Other Coal Lease Applications and issues that may arise prior to the meeting. The RCT may generate recommendation(s) for any or all of these topics and other topics that may arise prior to the meeting date.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin region. Any party interested in providing comments or data related to the above pending applications may do so in writing to the State Director (910), BLM Wyoming State Office, P.O. Box 1828, Cheyenne, WY 82003, no later than April 15, 2005, or by addressing the RCT with concerns, in person, at the meeting on April 27, 2005.

Draft Agenda for Regional Coal Team (RCT) Meeting

1. Introduction of RCT members and guests.
2. Approval of the Minutes of the May 30, 2002, RCT meeting held in Casper, WY.
3. Coal activity since last RCT meeting.
4. Industry Presentations on Lease Applications:

—Cordero Mining Company, Maysdorf LBA
—Foundation Coal West, Inc., West Extension-Eagle Butte LBA
—Foundation Coal West, Inc., Belle Ayr LBA
—Decker Coal Company, F-Section Extension
—Spring Creek Coal Company, Spring Creek Expansion

5. BLM presentation on Powder River Basin coal review study.
6. Peabody/BLM joint presentation on Gold Mine Draw lease exchange.
7. BLM land use planning efforts.
8. Other pending coal actions and other discussion items that may arise.
9. RCT Recommendations.

—Review and recommendation(s) on pending Lease Application(s) and Exchanges(s).

10. Discussion of the next meeting.
11. Adjourn.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 05–4420 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1430–ES; N–41567–38, N–74936, N–75715, N–75843, N–78352, N–78353,N—78354, N–79018]

Notice of Realty Action: Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The public land described in this Notice in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, BLM Lead Community Specialist, (702) 515–5054.

SUPPLEMENTARY INFORMATION: The following described public land in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*) and the implementing regulations at 43 CFR part 2740. The Clark County School District proposes to use the land for elementary and middle school sites.

N–41567–38—Elementary School

Mount Diablo Meridian

T. 19 S., R. 60 E., sec. 17: Lot 15, 10.3 acres—General location: Northeast of the intersection of Elkhorn Road and Fort Apache Road.

N–74936—Middle School

Mount Diablo Meridian

T. 22 S., R. 60 E., sec 25: E½SE4SW¼NW¼, NW¼SE¼SW¼NW¼, SW¼SE¼NW¼, SW¼SE¼SE¼NW¼, 20 acres—General location: North of the intersection of West Pyle Avenue and Lindell Road.

N–75715—Elementary School

Mount Diablo Meridian

T. 23 S., R. 61 E., sec 4: Lots 14 and 15, N½SW¼NE¼NE¼, 14.63 acres—General location: Southeast of the intersection of Starr Avenue and Placid Street.

N–75843—Elementary School

Mount Diablo Meridian

T. 19 S., R. 60 E., sec 12: Lots 3 and 5, 15.02 acres—General location: Southwest of the

intersection of Horse Drive and Bradley Road.

N–78352—Elementary School

Mount Diablo Meridian

T. 19 S., R. 59 E., sec 13: E½SW¼NW¼SE¼, SE¼NW¼SE¼, 15 acres—General location: Northwest of the intersection of Elkhorn Road and North Hualapai Way.

N–78353—Middle School

Mount Diablo Meridian

T. 19 S., R. 59 E., sec 13: E½NE¼SW¼, W½W½NW¼SE¼, 30 acres—General location: Northwest of the intersection of Elkhorn Road and North Hualapai Way.

N–78354—Elementary School

Mount Diablo Meridian

T. 19 S., R. 59 E., sec 24: SE¼SE¼NW¼, E½SW¼SE¼NW¼, 15 acres—General location: Northwest of the intersection of Deer Springs Way and Alpine Ridge Way.

N–79018—Elementary School

Mount Diablo Meridian

T. 22 S., R. 60 E., sec 18: S½S½NE¼NE¼SW¼, SE¼NE¼SW¼, 12.5 acres—General location: Northwest of the intersection of West Ford Avenue and Grand Canyon Drive.

Consisting of a total of 132.45 acres, more or less.

The land is not required for any Federal purpose. Conveyance is consistent with current Bureau planning for this area and would be in the public interest. The conveyance, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to: All valid and existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

On March 8, 2005, the above described public land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

Interested parties may submit comments regarding the proposed classification for conveyance of the lands to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130 until April 22, 2005.

Classification Comments: Interested parties may submit comments involving the suitability of the land for elementary and middle school sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for elementary and middle school sites. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective on May 9, 2005. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: January 31, 2005.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 05–4421 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–05–1232–EA–NV15]

Temporary Closure of Public Lands During Competitive Special Recreation Permitted Events: Nevada, Carson City Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of affected public lands in Lyon, Storey, Churchill, Carson, Douglas, Mineral, Washoe, Nye, and Esmeralda Counties.

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office, announces the temporary closure of selected public lands under its administration in Lyon, Storey, Churchill, Carson, Douglas, Mineral, Washoe and Nye Counties. By agreement with the Las Vegas and Battle Mountain Field Offices and the Tonopah Field Station, those lands affected by the Vegas to Reno and Nevada 1000 OHV Races in Nye and Esmeralda Counties are included in this closure. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

EFFECTIVE DATES: March through November 2005. Events may be canceled or rescheduled with short notice due to weather, sudden change in resource conditions, emergency actions, or at the discretion of the authorizing officer.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (775) 885–6161.

SUPPLEMENTARY INFORMATION: This notice applies to public lands directly affected by and adjacent to competitive special events for which a BLM Special Recreation Permit (SRP) has been authorized. Examples of events include: motorized Off Highway Vehicle (OHV) races, mountain bike races; horse endurance rides and dog trials. Race and ride events are conducted along dirt roads, trails, and washes approved for such use. One or more events occur monthly from March through November. Unless otherwise posted, race closure periods are from 6 a.m. race day until race finish or until the event has cleared between affected check point locations. Closures may occupy 2 to 24 hour periods. The general public will be advised of event and closure specifics via on-the-ground signage, public letters, e-mail, or local newspaper notices. The public may call to confirm or discuss closures at anytime prior to an announced event date. Locations commonly used for permitted events include, but are not limited to:

1. Lemmon Valley MX Area—Washoe Co., T.21N R.19E Sec. 8.

2. Hungry Valley Recreation Area—Washoe Co., T.21–23N R.20E.

3. Pine Nut Mountains—Carson, Douglas & Lyon Counties: T.11—16N R.20–24E.

4. Virginia City/Jumbo Areas—Storey and Washoe Counties: T.16–17N R.20—21E.

5. Yerington/Weeks Areas—Lyon Co.: T.12–16N R.23–27E.

6. Fallon Area (Including Sand Mtn.)—Churchill Co.: T.14–18N R.27–32E.

7. Hawthorne Area—Mineral County: T.5–14N R.31½—36E.

8. Vegas to Reno OHV Race Route: Nye, Esmeralda, Mineral, Churchill, and Lyon Counties: From Johnny to Dayton, Nevada—approximately 510 miles in the vicinity of Highway 95.

9. Nevada 1000 OHV Race: Nye, Esmeralda and Mineral Counties from Tonopah, Nevada. Approximately 250–300 miles per day.

Marking and effect of closure: BLM lands to be temporarily closed to public use include the width and length of those roads and trails identified as the race route or event area by colorful flagging, chalk arrows in the dirt and directional arrows attached to wooden stakes. The authorized applicants or their representatives are required to post warning signs, control access to, and clearly mark the event routes, common access roads and crossings during closure periods.

Recreational and other permitted use generally affected by a Temporary Closure include: road and trail uses, camping, shooting of any kind of weapon including paint ball, and public land exploration.

Spectator and support vehicles may be driven on open roads only. Spectators may observe the races from specified locations (such as designated pit and check point areas) as directed by event and agency officials.

Exceptions. Closure restrictions do not apply to race officials, medical/rescue, law enforcement, and agency personnel monitoring the events.

Authority: 43 CFR 8364.1 and 43 CFR, part 2930.

Penalties. Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: January 25, 2005.

Donald T. Hicks,

Manager, Carson City Field Office.

[FR Doc. 05–4422 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–DU]

Proposed Supplementary Rules Regarding Operation of Motorized Vehicles and Bicycles and Closure of Public Lands to Recreational Target Shooting

AGENCY: Bureau of Land Management; Royal Gorge Field Office, Interior.

ACTION: Proposed supplementary rules for public lands within El Paso, Fremont, Park and Teller Counties, Colorado.

SUMMARY: The Bureau of Land Management (BLM)'s Royal Gorge Field Office is proposing supplementary rules. The proposed supplementary rules would implement three decisions from the Gold Belt Travel Management Plan, approved August 18, 2004. These supplementary rules would apply to the public lands within the Gold Belt Travel Management Plan area under the management of the Royal Gorge Field Office, in El Paso, Fremont, Park, and Teller Counties, Colorado. The rules are needed in order to protect the area's natural resources and provide for public health and safety.

DATES: You should submit your comments by April 7, 2005. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Mail, personal, or messenger delivery: Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Cañon City, Colorado 81212.

Internet e-mail: *rgfo_comments@blm.co.gov* (Include "Attn: Gold Belt Plan").

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Manager, or Leah Quesenberry, Outdoor Recreation Planner, Royal Gorge Field Office, 3170 East Main Street, Cañon City, Colorado 81212, telephone (719) 269–8500. Individuals who use a telecommunications device for the deaf (TDD) may contact them individually through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, seven days a week.

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section, above. Comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4 p.m., Monday through Friday, except on Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

A "Notice of Intent to Prepare the Gold Belt Travel Management Plan (TMP) and Amend the Royal Gorge Resource Management Plan" was announced in the **Federal Register** on June 18, 2002 (Volume 67, Number 117, page 41442). The completion of the Gold Belt Travel Management Plan Environmental Assessment led to a 30-day public comment period, starting on January 15, 2004. Following analysis of the public comments, a decision on the Gold Belt TMP was issued on August 18, 2004. The decision restricts Off-Highway Vehicle use to designated roads and trails in the TMP area and includes the proposed supplementary rules.

III. Discussion of Supplementary Rules

These supplementary rules apply to the public lands within the Gold Belt Travel Management Plan area. This area consists of 138,600 acres of public lands within El Paso, Fremont, Park, and Teller Counties, Colorado, in the following described townships:

Colorado, Sixth Principal Meridian

T. 15 S., R. 70 W. through 72 W.
T. 16 S., R. 68 W. through 72 W.
T. 17 S., R. 68 W. through 72 W.
T. 18 S., R. 68 W. through 71 W.

These proposed supplementary rules would implement three decisions from the Gold Belt Travel Management Plan, approved August 18, 2004. They include:

(1) A supplementary rule limiting motorized travel for parking, camping, and retrieving game to a maximum of 100 feet from designated roads and trails in the Gold Belt Travel Management Plan area (138,600 acres of public lands).

(2) A supplementary rule restricting mountain bikes to designated roads and trails in the Gold Belt Travel Management Plan area (138,600 acres of public lands).

(3) The closure of approximately 13,200 acres public lands to recreational target shooting in the following areas: Garden Park Fossil Area (3,000 acres), the Shelf Road campgrounds and climbing area (2,900 acres), a one-quarter mile wide corridor along Phantom Canyon Road (4,200 acres), and Penrose Commons (3,100 acres). Licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife, are exempt from this closure.

BLM has determined that these rules are necessary to prevent damage to public lands and natural resources, reduce user conflicts, protect public safety, and reduce vandalism to public and private property.

The supplementary rules are proposed under the authority of 43 CFR 8341.1, 8364.1, and 8365.1–6.

This notice, with detailed maps, will be posted at the Royal Gorge Field Office.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These proposed supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose limitations on certain recreational activities on certain public lands to protect natural resources and human health and safety.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as: (1) Are the requirements in the proposed supplementary rules clearly stated? (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity? (3) Is the description of the proposed supplementary rules in the "Discussion of Supplementary Rules" section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM prepared an environmental assessment (EA) in support of the Gold Belt Travel Management Plan and found that the proposed supplementary rules implementing the plan decisions would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. BLM has placed the EA, Finding of No Significant Impact (FONSI), and Decision Record on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA, FONSI, and Decision Record do so in accordance with the "Public Comment Procedures" section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules should have no effect on business entities of whatever size. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These proposed supplementary rules are not a "major rule" as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on state, local or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The reasonable restrictions that

would be imposed by these supplementary rules would not deprive anyone of property or interfere with anyone's property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Government vehicles are expressly excluded from the effect of the vehicle restrictions. The shooting restrictions in the supplementary rules do not apply to hunting with a State hunting license. Therefore, in accordance with Executive Order 13132, BLM has determined that the proposed supplementary rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, we have found that these proposed supplementary rules do not include policies that have tribal implications. Formal consultation with 16 tribes was completed for the Gold Belt Travel Management Plan.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM has determined that the proposed supplementary rules will not have substantial direct effects on energy supply, distribution or use, including any shortfall in supply or price increase. The restrictions on vehicle use should have no substantial effect on fuel consumption, and no other provision in the supplementary rules has any relationship to energy supply, distribution, or use.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Leah Quesenberry, Outdoor Recreation Planner, Royal Gorge Field Office, Bureau of Land Management.

Supplementary Rules for the Gold Belt Travel Management Plan Area

Under 43 CFR 8341.1, 8364.1, and 8365.1–6, the Bureau of Land Management will enforce the following rules on the public lands within the Gold Belt Travel Management Plan area, Royal Gorge Field Office, Colorado. You must follow these rules:

Rules

1. In the Gold Belt Travel Management Plan area (138,600 acres of public land)—

a. You must not park a motorized vehicle farther than 100 feet from a designated road or trail;

b. You must not use a motorized vehicle for camping more than 100 feet from a designated road or trail;

c. You must not use a motorized vehicle for retrieving game more than 100 feet from a designated road and trail.

2. You must not ride mountain bikes other than on designated roads and trails on public lands in the Gold Belt Travel Management Plan area,

3. You must not engage in recreational target shooting on public lands in the following areas: Garden Park Fossil Area (3,000 acres), the Shelf Road campgrounds and climbing area (2,900 acres), a one-quarter mile wide corridor along Phantom Canyon Road (4,200 acres), and Penrose Commons (3,100 acres).

Exceptions

These supplementary rules do not apply to emergency, law enforcement, and Federal or other government vehicles while being used for official or other emergency purposes, or to any other vehicle use that is expressly authorized or otherwise officially approved by BLM. The prohibition of target shooting in rule 3 has no effect on hunting by licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 if you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Roy L. Masinton,

Field Manager.

[FR Doc. 05–4423 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–150–1220–PA]

Notice of Final Supplementary Rules for Public Lands in Colorado: Escalante Canyon Area of Critical Environmental Concern (ACEC), Escalante Potholes Recreation Area, and Escalante Bridge Boat Launch Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rules.

SUMMARY: The Bureau of Land Management's (BLM) Uncompahgre Field Office is implementing supplementary rules to regulate conduct on specific public lands within Escalante Canyon in Montrose and Delta Counties. The rules apply to the following Escalante Canyon recreation sites: Escalante Bridge boat launch site, Escalante Canyon Area of Critical Environmental Concern (ACEC), and the Potholes Recreation Area. BLM has determined these rules necessary to protect the area's natural resources and to provide for safe public recreation, public health, and reduce the potential for damage to sensitive resources including unique riparian areas and threatened and rare plant species and habitat.

EFFECTIVE DATE: The rules are effective March 8, 2005.

ADDRESSES: Bureau of Land Management, Uncompahgre Field Office, 2505 S. Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, Uncompahgre Field Office Manager, 2505 S. Townsend Avenue, Montrose, CO 81401, (970)

240–5315, or by e-mail: *Barbara_sharrow@co.blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Lands Affected

The identified public lands are in Colorado, Montrose and Delta Counties, under the management jurisdiction of the Bureau of Land Management. The Escalante boat launch site is located within sec. B, T. 15 S., R. 97 W., 6th Principal Meridian. The Escalante Canyon ACEC is located secs. 20–22 and 28–30, T. 51 N., R. 13 W., and secs 25 and 36, T. 51, R.14 W., New Mexico Principal Meridian. The Potholes Recreation Area is located within the ACEC at NE¼SW¼ Sec. 21, T. 51 N., R. 13 W.

The 1,895 acre Escalante ACEC was designated in the 1989 Uncompahgre Basin Resource Management Plan (RMP) to provide protection from surface disturbing activities for several listed plant species including the Unita hookless cactus (threatened, Grand Junction milkvetch (candidate), Delta lomatium (sensitive), and three unique plant associations. The State of Colorado, Natural Areas Program also designated the area as a Colorado State Natural Area in 1992 based on threatened and rare plants, unique plant communities and significant geologic interest. The Escalante boat ramp site is extremely limited due to natural topography, private land, and a railroad crossing and right -of -way. Overnight camping by boating groups at the small site is a safety hazard and inconvenience for other users trying to launch boats at the site. The Escalante Potholes site receives significant recreational use due to its scenic qualities and the presence of eroded potholes in Escalante Creek which are used for swimming. The practice of visitors diving and jumping from heights of 30–100 feet off surrounding cliffs into the holes has resulted in numerous accidents and at least 5 deaths over the last 12 years. In addition to jumping, visitors also cause significant resource damage to the area by cutting trees for bonfires, shooting or throwing glass bottles around the swimming and camping areas; leaving trash; and improperly disposing of human waste. Underage drinking and drug-related activity, particularly associated with overnight camping and bonfire parties, is increasing and adding to visitor safety concerns and BLM compliance problems. Complaints regarding the amount of public nudity at the site are increasing as are conflicts between various user groups. The BLM is currently installing recreation facilities at the Potholes to address sanitation problems, resource impacts, and restrict visitor use and parking to certain areas to increase safety and protect sensitive sites. Additional visitor use restrictions are needed to address the problems associated with unsafe jumping and diving, target shooting, broken glass safety concerns, damage to trees and sensitive plant communities from fire wood collecting, improper off-highway vehicle use, and unrestricted overnight camping.

II. Discussion of the Supplementary Rule

These supplementary rules are needed to address significant public safety concerns and resource protection issues resulting from increased public use and unsafe user conduct at popular recreation sites within Escalante Canyon and the Escalante Canyon ACEC. The rules would apply to the public lands located at the Escalante boat launch site, Escalante Canyon ACEC, and the Potholes Recreation Area at the legal descriptions provided above. A notice proposing these supplementary rules was published in the **Federal Register** on November 26, 2004 (69 FR 68975). We received no comments on the proposed supplementary rules, and therefore publish them unchanged as final supplementary rules.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not significant regulatory actions and not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. These supplementary rules contain rules of conduct for public use of a limited selection of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?
2. Does the supplementary rule contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment. The rules merely contain rules of conduct for public use of a limited selection of public lands to protect public health and safety and improve the protection of the resources. Although some uses, such as target shooting or overnight camping, will be prohibited at some of the site, all of the areas would still be open to other recreation uses. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely contain rules of conduct for public use of a limited selection of public lands. Therefore, BLM has determined under the RFA that this supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules are not "major" as defined under 5 U.S.C. 804(2). The supplementary rules merely contain rules of conduct for public use of a limited selection of public lands

and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does it have a significant or unique effect on State, local, or tribal governments or the private sector. The rules have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The supplementary rules merely contain rules of conduct for public use of a limited selection of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules do not represent a government action capable of interfering with Constitutionally-protected property rights. They merely contain rules of conduct for public use or a limited selection of public lands. The supplementary rules merely contain rules of conduct for public use of a limited selection of public lands and do not affect anyone's property rights. Therefore, the Department of the Interior has determined that these rules will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules do not come into conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these rules will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these supplementary rules do not include policies that have tribal implications. None of the lands included in these rules affect Indian lands or Indian Rights.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in these rules are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from these rules and are exempt from the Paperwork Reduction Act.

Authors

The principal author of these supplementary rules is Gunnison Gorge NCA Manager Karen Tucker.

Supplementary Rules

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following supplementary rules on public lands in the areas specified below.

Escalante Canyon ACEC:

a. Camping restricted to designated and signed campsites.

b. No target shooting or shooting of paintball weapons.

c. No cutting of live or dead trees.

d. No person shall use or possess to use as firewood, any materials containing nails, screws or other metal hardware to include, but not limited to, wood pallets and/or construction debris.

e. All campers, picnickers, and all other persons using public lands shall keep their sites free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

Escalante Potholes: The Escalante Potholes Recreation Site is designated as a day use only area with the following supplemental rules that all visitors must follow:

a. No diving and/or jumping from rocks, shore, or any other means into the water.

b. No discharge of firearms of any kind, including those used for target shooting or paintball weapons.

c. No glass containers for beverages, food, or other items.

d. No public nudity.

e. No overnight camping at swimming area; camping is allowed only in designated sites adjacent to Potholes area.

f. No cutting of live or dead trees.

g. No wood collecting.

h. No wood fires or bonfires.

i. No person shall use or possess to use as firewood, any materials containing nails, screws or other metal hardware to include, but not limited to, wood pallets and/or construction debris.

j. All picnickers, and all other persons using public lands shall keep their sites free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

Escalante Bridge Boat Launch Site: The Escalante Bridge Boat Launch Site is designated as a day use only area with the following supplemental rules that all visitors must follow:

a. No overnight camping.

b. No cutting of live or dead trees.

c. No wood collecting.

d. No wood fires or bonfires.

e. No discharge of firearms of any kind, including those used for target shooting or paintball weapons.

(f) No person shall use or possess to use as firewood, any materials containing nails, screws, or other metal hardware to include, but not limited to, wood pallets and/or construction debris.

(g) All campers, picnickers, and all other persons using public lands shall keep their sites free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and Sentencing Reform Act of 1984, as amended, 18 U.S.C. 3551, or 3571, if you violate these supplementary rules on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined up to $100,000 or imprisoned for no more than 12 months, or both.

Dated: January 26, 2005.

Ron Wenker,

Colorado State Director.

[FR Doc. 05–4425 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–04–1770–AL]

Notice of Emergency Temporary Closure of Certain Public Lands to Target Shooting, in Tehama County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency temporary closure.

SUMMARY: In accordance with title 43, Code of Federal Regulations, Section 8364.1 notice is hereby given that all the below listed land, administered by the Bureau of Land Management (BLM), is closed to the discharge of firearms for the purpose of target shooting. The closure encompasses the Sacramento River Bend Area of Critical Environmental Concern (ACEC) and nearby scattered parcels, as well as future public land encompassed by the below descriptions. This immediate closure is necessary to protect human health and safety in an area of increasing recreational use and population growth.

DATES: This closure is in effect from October 1, 2004 until December 31, 2005. A final determination for the closure will be made as part of the upcoming Bend ACEC Management Plan which is anticipated to be completed by the end of calendar year 2005.

ADDRESSES: Copies of the closure and map of the closed areas can be obtained at the BLM, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002, (530) 224–2100. BLM will also announce the closure through local media outlets by posting this notice with a map of the closed areas at key locations that provide access the closure area.

FOR FURTHER INFORMATION CONTACT: Steven W. Anderson, Field Manager, Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002.

SUPPLEMENTARY INFORMATION: In 1986 much of the ACEC vicinity was closed to target shooting through the Sacramento River Area Management Plan (SRAMP) and a subsequent **Federal Register** (1987). One small exception to the 1986 closure, the "Paynes Creek Shooting Area," was left open for shooting in the SRAMP but is also closed by this Closure due to a significant increase in recreational use in the Paynes Creek vicinity. The Sacramento River Bend management unit was designated as an ACEC through the Redding Resource Management Plan in 1993. Since 1993, land acquisitions have created a large consolidated block of public land which is ideally suited to pedestrian, equestrian and mountain bicycle uses. Additionally, the increasing population of the northern California area has put additional management pressures on the Sacramento River Bend ACEC. Hunting of legal game in legal season, and subject to state law, is unaffected by this closure.

The only area within the Sacramento River Bend ACEC that remains open to target shooting is T. 29N., R.2W, section 6, S½.

Closure Order

Section 1. Closed Lands

This closure affects all of the public lands located within:

T. 27N., R.2W, sections 4 and 8, M.D.M.
T. 28N., R.2W, sections 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 30, M.D.M.
T. 28N., R.3W, section 14 M.D.M. (Paynes Creek shooting area)
T. 29N., R.2W, sections 2, 3, 4, 5, 6 (N½ only), 7, 8, 18, 19, 30, 31, M.D.M.
T. 29N., R.3W, sections 1, 2, 3, 10, 11, 12, 13, 14, 23, 24, M.D.M.
T. 30N., R1W, section 30, M.D.M.
T. 30N., R.2W, sections 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, M.D.M.
A total of approximately 9,500 acres.

In a 1987 **Federal Register** notice the remainder of the ACEC was closed to target shooting. The previous closure remains in effect.

Section 2. Exceptions to Closures and Restriction Orders

This closure does not apply to the following:

- T. 29 N., R.2W, section 6, S½.
- Nothing in this closure is intended to affect legal hunting as consistent with California Department of Fish and Game regulations.

Section 3. Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360–7), if you violate these closures or restrictions on public lands within the boundaries established, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Section 4. Conditions for Ending Closures and Restrictions

A final determination for the closure will be made as part of the upcoming Bend ACEC Management Plan which is anticipated to be completed by the end of calendar year 2005. This management plan will include full public involvement during the planning process.

FOR FURTHER INFORMATION CONTACT: Steven W. Anderson, Field Manager, Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002.

Dated: September 9, 2004.

J. Anthony Danna,

Deputy State Director, Natural Resources, California State Office.

Editorial Note: This document was received by the Office of the Federal Register on March 3, 2005.

[FR Doc. 05–4415 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1220–AD]

Notice of Closure to Firearms Target Shooting on Public Lands in Yellowstone County Managed by the Billings Field Office, Bureau of Land Management; Montana, Implementation of Record of Decision for Environmental Assessment MT–010–03–08

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice closes certain public lands in Yellowstone County, Montana, to target shooting with firearms. This restriction is necessary for the management of actions, activities, and public use on certain public lands that may have, or are having, adverse impacts on persons using public lands, on property, and on resources located on public lands. Increasing levels of public use are creating conflicts between different user groups. Hikers, horseback riders, mountain bikers, wildlife observers, hunters, and target shooters all utilize the subject lands.

EFFECTIVE DATE: This restriction takes effect on April 7, 2005 and will remain in effect until it is amended or repealed.

ADDRESSES: You may mail or hand-deliver inquiries or suggestions or comments on the closure to Bureau of Land Management, Billings Field Office, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

FOR FURTHER INFORMATION CONTACT: Sandra S. Brooks, Field Manager, BLM,

Billings Field Office, P.O. Box 36800, 5001 Southgate Drive, Billings, MT 50107–6800, or call (406) 896–5013.

SUPPLEMENTARY INFORMATION: A complete copy of Environmental Assessment #*MT–010–03–08*, which supports this restriction, may be viewed at: *http://www.mt.blm.gov/bifo/ea/ShootingEA/FinalShootingEA.pdf.*

While hikers, horseback riders, mountain bicyclists and other users can schedule their use around published hunting seasons for safety reasons; they are not able to avoid random target shooting. Local conditions, including heavy timber and rough terrain, reduce visibility and increase the hazard to other users from target shooters. Recent incidents involving random target shooting have resulted in endangerment and injury to other users. To reduce the incidence of future conflicts, three areas of public land known as the Acton Area, 21-Mile Area, and Shepherd Ah-Nei, located north of Billings, Montana, are being closed to target shooting with firearms. These areas will remain open to hunting by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

This Restriction does not apply to other lands, specifically the "17–Mile" area located west of Highway 87, north of Billings, Montana, on the Crooked Creek Road.

Affected Lands: The affected lands are all public lands administered by the Billings Field Office, and include the following public lands:

Principal Meridian, Montana

That area of public lands commonly referred to as the "Acton Area" or "Acton Ah-Nei" located at:

T. 4 N., R. 25 E.,
Sect. 31, E½
T. 3 N, R. 25 E.,
Sect. 5, all;
Sect. 6, NE¼;
Sect. 7, N½; SE¼; E½; SW¼;
Sect. 8, all;
Sect. 9, all;
Sect. 17, all;
Sect. 20, N½ N½.

That area of public lands commonly referred to the "21-Mile Area" located at

T. 4 N., R. 25 E.,
Sect. 24, all.

That area of public lands commonly referred to the "Shepherd Area," or "Shepherd Ah Nei" located at:

T. 4 N., R. 27 E.,
Sect. 24, NE¼, S½;
Sect. 25, all;
Sect. 36, all;
T. 3 N., R. 27 E.,
Sect. 1, all;
T. 4 N., R. 28 E.,
Sect. 19, all;
Sect. 20, W½;
Sect. 30, W½, NW¼, N½, NE¼.
Sect. 31, all:
T. 3 N., R. 28 E.,
Sect. 6, S½, W¼NW¼, E½NE¼, E½W½NE¼, all in Yellowstone County, in the State of Montana

Restriction

1.0 Restriction of Target Shooting on Affected Public Lands.

The following is prohibited: Discharge of firearms for the purpose of target shooting.

2.0 Exceptions

(a) This restriction does not apply to the hunting of lawful game by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

(b) This restriction does not apply to archery marksmanship at fixed targets affixed to a backstop sufficient to stop and hold target or broad-head arrows.

(c) This restriction does not apply to special target shooting events, which may be authorized by the authorized officer under special permit.

Penalties: Violations of this restriction are punishable by a fine in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et seq.*), and/or imprisonment not to exceed 12 months for each offense. The authority for this closure is 43 CFR 8364.1(a).

Dated: January 14, 2005.

Eddie Bateson,

Acting Field Office Manager, Billings Field Office.

[FR Doc. 05–4424 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–1610–DQ–010J]

Call for Coal Resource and Other Resource Information for Public Lands in Daggett, Duchesne, and Uintah Counties, UT

AGENCY: Vernal Field Office, Bureau of Land Management, Vernal, Utah.

ACTION: Call for coal resource and other resource information.

SUMMARY: A Notice of Intent to prepare a Resource Management Plan for public lands and resources in Daggett, Duchesne and Uintah counties, Utah was published in the **Federal Register**, volume 66, No. 48, Monday, March 12, 2001. This supplements that notice with a call for coal resource and other resource information, as required in 43 CFR 3420.1.

DATES: The comment period will commence with the publication of this notice in the **Federal Register** and end 30 days after publication.

ADDRESSES: Non-proprietary written comments should be sent to Coal Comments, Bureau of Land Management, Vernal Field Office 170 South 500 East, Vernal, Utah 84078; Fax 435–781–4410. Comments, including names and street addresses of respondents, will be available for public review at the Vernal Field Office during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays and may be published as part of the Environmental Impact Statement. Proprietary data marked as confidential may be submitted only to James Kohler, Chief, Branch of Solid Minerals, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155. Data marked as confidential shall be treated in accordance with the laws and regulations governing confidentiality of such information.

FOR FURTHER INFORMATION CONTACT: Pete Sokolosky, geologist, BLM Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, phone: 435–891–4400, e-mail *Pete_Sokolosky@ut.blm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this call for coal information is to obtain any available coal resource data and any other resource information pertinent to applying the coal unsuitability criteria, and to identify any areas of interest for possible Federal coal leasing. The Resource Management Plan will identify areas acceptable for further consideration for leasing and estimate the amount of recoverable coal. Only those areas that have development potential may be identified as acceptable for further consideration for leasing. Coal companies, State and local governments and the general public are encouraged to submit information on coal geology, economic data and other development potential considerations. Where such information is determined to indicate developmental potential for an area, the area may be included in the land use planning evaluation for coal leasing. The BLM will use the unsuitability criteria and procedures outlined in 43 CFR part 3461 to assess where areas are unsuitable for all or certain stipulated methods of mining. Additionally, multiple use decisions that are not included in the unsuitability criteria may eliminate certain coal deposits from further consideration for leasing to protect other resource values and land uses that are locally, regionally or nationally important or unique. In making these multiple use decisions BLM will place particular emphasis on protecting the

following: Air and water quality, wetlands riparian areas and sole source aquifers; the Federal lands which, if leased, would adversely impact units of the National Park System, the National Wildlife Refuge System, the National Trail System, and the National Wild and Scenic Rivers System. Before adopting the resource management plan that makes an assessment of lands acceptable for further consideration for leasing, the BLM will consult with the state Governor and the state agency charged with the responsibility for maintaining the state's coal unsuitability program. Where tribal governments administer areas within or near the boundaries of the land use plan, the bureau shall consult with the appropriate tribal government.

Dated: November 16, 2004.

Sally Wisely,

State Director.

[FR Doc. 05–4426 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYW 152420]

Public Land Order No. 7628; Withdrawal of Public Land for the Pryor Mountain Wild Horse Range; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,960.10 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect wild horse and wildlife habitat, and watershed, recreation, cultural, and scenic values within the Pryor Mountain Wild Horse Range.

EFFECTIVE DATE: March 8, 2005.

FOR FURTHER INFORMATION CONTACT: Tom Carroll, Bureau of Land Management, Billings Field Office, 5001 Southgate Drive, Billings, Montana 59101, 406–896–5242.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (2000)), to protect wild horse and wildlife habitat, and watershed, recreation, cultural, and scenic values within the Pryor Mountain Wild Horse Range:

Sixth Principal Meridian, Wyoming

T. 58 N., R. 95 W.,
Sec. 19, lot 2 and SE¼NE¼;
Sec. 20, N½S½, SE¼SW¼, and S½SE¼;
Sec. 21, Southwest Diagonal Half SW¼;
Sec. 23, NE¼SW¼;
Sec. 26, SW¼NW¼ and W½SW¼;
Sec. 27, S½;
Sec. 28, NW¼NE¼, S½NE¼, and S½;
Sec. 29, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 33, NE¼ and NE¼NW¼;
Sec. 34, NW¼.

The area described contains 1,960.10 acres in Big Horn County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: February 11, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05–4419 Filed 3–7–05; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on February 1, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4201 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Technology Services, Inc., Peoria, IL; Advanced Assembly Automation Division, Dayton, OH; Automatic Feed Co., Napoleon, OH; Bardons & Oliver, Inc., Solon, OH; Bertsche Engineering Corp., Buffalo Grove, IL; Bosch Rexroth Corporation, Hoffman Estates, IL; Charmilles, Lincolnshire, IL; Drake Manufacturing Services, Warren, OH; Focus: HOPE, Detroit, MI; Flow International Corporation, Kent, WA; Gehring, L.P., Farmington Hills, MI; The Gleason Works, Rochester, NY; Hardinge Inc., Elmira, NY; Liquid Impact, LLC, Greenville, MI; Moore Tool Company, Bridgeport, CT; Nuvonyx, Inc., Bridgeton, MO; Positrol, Incorporated, Cincinnai, OH; Preco Industries, Inc., Lenexa, KS; PRIMA North America, Inc., Champlin, MN; Remmele Engineering, Inc., Big Lake, MN; Rimrock Automation, New Berlin, WI; Sunnen Products Company, St. Louis, MO; UNIST, Inc., Grand Rapids, MI; and Zagar Incorporated, Cleveland, OH have been added as parties to this venture. Also Acer America Corporation, Newbury Port, MA; Automated Precision Inc., Rockville, MD; Baxter Healthcare Corporation, Round Lake, IL; High Performance Manufacturing Consortium, Kitchener, Ontario, CANADA; Holagent Corporation, Gilroy, CA; Laser Imaging Systems, Punta Gorda, FL; RLW, Inc., State College, PA; TubalCain Company, Inc., New Braunfels, TX; Storage Technology, Louisville, CO; and Benchmark Electronics—Hudson Division, Hudson, NH have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 197, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on July 13, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 4, 2004 (69 FR 59269).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–4486 Filed 3–7–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Standards Consortium, Inc.

Notice is hereby given that, on February 9, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Standards Consortium, Inc. ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Knowledge Systems, Sugar Land, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and POSC intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on April 13, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 25, 2004 (69 FR 29756).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–4485 Filed 3–7–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Tuesday, March 8, 2005.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Discussion on Institutional Revocation Hearings by Video Conference.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: March 1, 2005.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 05–4558 Filed 3–4–05; 10:32 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Tuesday, March 8, 2005.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS TO BE CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately one case decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: March 1, 2005.

Rockne Chickinell,

General Counsel.

[FR Doc. 05–4559 Filed 3–4–05; 10:32 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "Veterans Supplement to the Current Population Survey (CPS)," to be conducted in August 2005. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before May 9, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for 65 years. Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. The Veterans supplement provides information on the labor force status of veterans with service-connected disabilities, veterans of the Persian Gulf era, Vietnam-theater veterans, and recently discharged

veterans. The supplement also provides information on veterans' participation in various transitioning and employment and training programs. The data collected through this supplement also will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the needs of our Nation's veteran population.

II. Current Action

Office of Management and Budget clearance is being sought for the Veterans Supplement to the CPS.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Affected Public: Households.

Total Respondents: 12,000.

Frequency: Biennially.

Total Responses: 12,000.

Average Time Per Response: Approximately 1 minute.

Estimated Total Burden Hours: 200 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 23rd day of February, 2005.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05–4430 Filed 3–7–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88, NRTL1–889, NRTL1–90, NRTL1–90, NRTL1–90, NRTL2–92, NRTL3–92, NRTL1–93, NRTL2–93, NRTL3–93, NRTL4–94, NRTL1–98, NRTL1–99, NRTL1–2001, NRTL2–2001]

Modify Scope of Recognition of NRTLs

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice modifies the scope of recognition of certain Nationally Recognized Testing Laboratories (NRTLs) primarily as a result of the withdrawal of certain test standards by the standards developing organizations.

EFFECTIVE DATE: March 8, 2005.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Changes

The Occupational Safety and Health Administration (OSHA) hereby gives notice of changes to the scope of recognition of the Nationally Recognized Testing Laboratories (NRTLs) listed below. Specifically, some of the test standards that OSHA currently includes in the scope of recognition of these NRTLs are no longer "appropriate test standards" primarily because they have been withdrawn or replaced. As a result, we are deleting them from the scope of recognition of each affected NRTL, as detailed below in this notice. The test standards to be removed for each NRTL are listed below under the heading "Withdrawn or Replaced Standards."

To substitute other test standards for those being removed, our policy permits NRTLs to request or OSHA to provide recognition for comparable test standards, *i.e.*, other appropriate test standards covering comparable product testing. If applicable, we list such test standards below for each NRTL under the heading "Comparable Replacement Standards." As indicated below, many test standards being deleted have no comparable replacement. However, if any NRTL or other party believes a comparable replacement standard does in fact exist, it may contact OSHA to bring this matter to our attention. If we concur, OSHA will add the standard to the scope of recognition of the affected NRTLs.

The modifications in this notice will be reflected in the listing of test standards shown in our informational Web page for each NRTL, which detail OSHA's official scope of recognition for the NRTL. These Web pages can be accessed at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

Brief Background on OSHA's NRTL Requirements

For those who may be unfamiliar with OSHA requirements concerning NRTLs, we provide the following information.

OSHA recognition of any NRTL signifies that the organization has met the legalrequirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safeaty testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testsing and certification.

In testing and certifying (*i.e.*, approving) such products, NRTLs must demonstrate that the products conform to "appropriate test standards." This term is defined under 29 CFR 1910.7(c) and essentially means consensus-based product safety test standards developed and maintained current by U.S.-based standards developing organizations (SDOs). Such test standards are not OSHA standards, which are general requirements that employers must meet, but, individually, specify technical safety requirements that a particular type of product must meet.

OSHA recognizes each NRTL for a particular scope of recognition, which includes a list of those product safety test standards that the NRTL may use in approving products. As a normal part of its operations, an SDO occasionally withdraws existing test standards or adopts replacement test standards. In such cases, OSHA can no longer consider the withdrawn or replaced standards as "appropriate," and as a result, the Agency can no longer recognize NRTLs for these standards.

Details of Scope Modifications

Canadian Standards Association (CSA)

(Docket No. NRTL2–92)

Withdrawn or Replaced Standards

ANSI Z21.12 Draft Hoods
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.61 Gas-Fired Toilets
ANSI Z83.6 Gas-Fired Infrared Heaters
UL 1418 Cathode-Ray Tubes
UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Communication Certification Laboratory (CCL)

(Docket No. NRTL1–90)

Withdrawn or Replaced Standards

UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment

Comparable Replacement Standards (if applicable)

None

Curtis-Straus LLC (CSL)

(Docket No. NRTL1–99)

Withdrawn or Replaced Standards

UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Entela, Inc. (ENT)

(Docket No. NRTL2–93)

Withdrawn or Replaced Standards

UL 1418 Cathode-Ray Tubes
UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

FM Global Technologies LLC (FMGT) [formerly Factory Mutual Research Corporation]

(Docket No. NRTL3–93)

Withdrawn or Replaced Standards

*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
***FM 7812 Industrial Trucks—LP-Gas
***FM 7816 Industrial Trucks—LP-Gas Dual Fuel
***FM 7820 Industrial Trucks—Electric

Comparable Replacement Standards (if applicable)

None

Intertek Testing Services NA, Inc. (ITSNA)

(Docket No. NRTL1–89)

Withdrawn or Replaced Standards

ANSI Z21.1b Household Cooking Gas Appliances
ANSI Z21.12 Draft Hoods
ANSI Z21.45 Flexible Connectors of Other than All-Metal Construction for Gas Appliances
ANSI Z21.61 Gas-Fired Toilets
ANSI Z83.6 Gas-Fired Infrared Heaters
**UL9 Fire Tests of Window Assemblies
UL 1418 Cathode-Ray Tubes
UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

MET Laboratories, Inc. (MET)

(Docket No. NRTL1–88)

Withdrawn or Replaced Standards

UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Equipment, Part 1: General Requirements for Safety

National Technical Systems, Inc. (NTS)

(Docket No. NRTL1–98)

Withdrawn or Replaced Standards

UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Equipment, Part 1: General Requirements for Safety

SGS U.S. Testing Company, Inc. (SGSUS)

(Docket No. NRTL2–90)

Withdrawn or Replaced Standards

UL 1418 Cathode-Ray Tubes
UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Southwest Research Institute (SWRI)

(Docket No. NRTL3–90)

Withdrawn or Replaced Standards

*UL 1950 Information Technology Equipment, Including Electrical Business Equipment

Comparable Replacement Standards (if applicable)

None

TUV America, Inc. (TUVAM)

(Docket No. NRTL2–2001)

Withdrawn or Replaced Standards

*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical, Part 1: General Requirements for Safety

TUV Product Services GmbH (TUVPSG)

(Docket No. NRTL1–2001)

Withdrawn or Replaced Standards

UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

TUV Rheinland of North America, Inc. (TUV)

(Docket No. NRTL3–92)

Withdrawn or Replaced Standards

UL 1418 Cathode-Ray Tubes
UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

Underwriters Laboratories Inc. (UL)

(Docket No. NRTL4–93)

Withdrawn or Replaced Standards

ANSI C57.12.57 Ventilated Dry-Type Network Transformers 2500 kVA and Below, Three-Phase
ANSI Z21.1b Household Cooking Gas Appliances
ANSI Z21.12 Draft Hoods
ANSI Z21.45 Flexible Connectors of Other

Than All-Metal Construction for Gas Appliances
ANSI Z21.61 Gas-Fired Toilets
ANSI Z83.6 Gas-Fired Infrared Heaters
**UL 9 Fire Tests of Window Assemblies
UL 297 Acetylene Generators, Portable Medium-Pressure
UL 1418 Cathode-Ray Tubes
UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3111–2–31 Hand-Held Probe Assemblies for Electrical Measurement and Test

Comparable Replacement Standards (if applicable)

UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 61010B–2–031 Electrical Equipment for Measurement, Control, and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test

Wyle Laboratories, Inc. (WL)

(Docket No. NRTL1–93)

Withdrawn or Replaced Standards

UL 1459 Telephone Equipment
*UL 1950 Information Technology Equipment, Including Electrical Business Equipment

Comparable Replacement Standards (if applicable)

None

*The comparable standard for UL 1950 is UL 60950, which has already been added to each applicable NRTL's recognition through a previous notice (67 FR 30975, 5/8/02).

**This standard is no longer applicable because there is no NRTL approval requirement for windows.

***The NRTL requested recognition for NFPA 505 as a comparable test standard. However, we determined that this standard is not an "appropriate test standard" because it pertains primarily to operation and maintenance, as opposed to testing, of powered industrial trucks.

In accordance with OSHA policy pertaining to recognition of replacement standards, the Agency only publishes one **Federal Register** notice to note the changes to the NRTL's scope of recognition. Changes to each NRTL's recognition are limited to those described in this notice. All other terms and conditions of each NRTL's

Signed in Washington, DC this 7th day of January, 2005.

Jonathan L. Snare,

Acting Assistant Secretary.

[FR Doc. 05–4431 Filed 3–7–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (05–037)]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathleen Shaeffer, Mail Suite 6M70, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Shaeffer, Acting NASA Reports Officer, (202) 358–1230.

Title: NASA Acquisition Process—Reports Required On Contracts Valued of Less Than $500K.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that enables monitoring of contracts valued at less than $500K. The collection is prescribed in the NASA Federal Acquisition Regulation Supplement and approved mission statements.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process—Reports Required Under Contracts With a Value of Less Than $500K.

OMB Number: 2700–0088.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 956.

Estimated Time Per Response: 28 hours.

Estimated Total Annual Burden Hours: 803,040.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: February 28, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–4512 Filed 3–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (05–036)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathleen Shaeffer, Mail Suite 6M70, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathleen Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail

Suite 6M70, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to ensure proper accounting of Federal funds and property provided under cooperative agreements with commercial firms.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: Cooperative Agreements with Commercial Firms.

OMB Number: 2700–0092.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 58.

Estimated Time Per Response: ranges from 20 minutes to 7 hours per response.

Estimated Total Annual Burden Hours: 3,488.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–4513 Filed 3–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–039)]

NASA Robotic and Human Lunar Exploration Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Robotic and Human Lunar Exploration Strategic Roadmap Committee.

DATES: Thursday, March 31, 2005, 8:30 a.m. to 5:30 p.m.; and Friday, April 1, 2005, 8 a.m. to 3 p.m.

ADDRESSES: University of Maryland Inn and Conference Center, 3501 University Blvd East, Adelphi, MD 20740.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Bauer, Advanced Planning and Integration Office, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0897.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Attendees will be requested to sign a register.

The agenda for the meeting includes the following topics:

- Lunar Surface Operations
- Roadmap Integration
- Actions from Previous Meeting
- Selected Lunar Topics
- Update of Planning Efforts
- Roadmap Objectives & Alternatives

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 05–4511 Filed 3–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice 05–038]

NASA Search for Earth-Like Planets Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Search for Earth-Like Planets Strategic Roadmap Committee.

DATES: Tuesday, March 29, 2005, 8:30 a.m. to 5 p.m., Wednesday, March 30, 2005, 8:30 a.m. to 5 p.m. Eastern Standard Time.

ADDRESSES: Nassau Inn, 10 Palmer Square, Princeton, New Jersey 08542.

FOR FURTHER INFORMATION CONTACT: Dr. Eric Smith, 202–358–2439.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

—Discussion scientific measurements required for roadmap success
—Discussion of key decision points in the roadmap
—Review of relevant capability roadmap material submitted to the NRC
—Review of draft roadmap materials

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 05–4510 Filed 3–7–05; 8:45 am]

BILLING CODE 7510–13X–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Presidential Libraries. NARA uses the Committee's recommendations on NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

DATES: March 30, 2005, from 10 a.m. to 2:30 p.m.

ADDRESSES: The National Archives Building, 700 Pennsylvania Avenue, NW., Archivist's Board Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Fawcett at 301–837–3250.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will be the Presidential Library program and a discussion of issues related to developing public awareness of Presidential Library programs.

The meeting will be open to the public.

Dated: March 2, 2005.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 05–4388 Filed 3–7–05; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Firstenergy Nuclear Operating Company; Perry Nuclear Power Plant, Unit 1; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee), to withdraw its April 26, 2004, application for a proposed amendment to Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio.

The proposed amendment would have revised the frequency of the Mode 5 Intermediate Range Monitoring Instrumentation CHANNEL FUNCTIONAL TEST contained in Technical Specification 3.3.1.1 from 7 days to 31 days.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 31, 2004 (69 FR 53109). However, by letter dated February 17, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 26, 2004, and the licensee's letter dated February 17, 2005, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of February 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 05–4400 Filed 3–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08778]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Molycorp, Inc.'s Facility in Washington, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Tom McLaughlin, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–5869; fax number: (301) 415–5398; e-mail: *tgm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of a license amendment to Molycorp, Inc. (Molycorp or licensee) for Materials License No. SMB–1393, to authorize an alternate decommissioning schedule for its facility in Washington, Pennsylvania. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of this proposed action is to allow the licensee to decommission its facility in a phased approach which will take longer than the two year period identified in the approved decommissioning plan (DP). 97Following an extensive supplemental characterization study, Molycorp found that there is a large volume of contaminated material in the subsurface. Molycorp will excavate the contaminated soils and transport them off-site to an NRC approved facility. Molycorp's proposed alternate decommissioning schedule shows that all decommissioning activities will be completed by the end of 2007. Molycorp's request is contained in a letter to NRC dated October 22, 2004.

An earlier, and more extensive, Environmental Assessment (EA) was prepared for License Amendment No. 5, in support of the NRC staff evaluation of Molycorp's final DP. The NRC staff determined that all steps in the proposed decommissioning could be accomplished in compliance with the NRC public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the staff concluded that approval of the decommissioning of the Molycorp Washington, PA, facility in accordance with the commitments in NRC license SMB–1393 and the final DP would not result in a significant adverse impact on the environment. The proposed action does not change the impacts analyzed in detail in the EA prepared for License Amendment No. 5.

If the NRC approves the license amendment, the authorization will be documented in an amendment to NRC License No. SMB–1393. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report in addition to the EA.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Molycorp's proposed alternate decommissioning schedule. The NRC staff has concluded that there will be no adverse environmental impacts associated with granting Molycorp an alternate decommissioning schedule. The impacts associated with this proposed action do not differ significantly from the impacts evaluated in the EA for approval of the DP in License Amendment No. 5. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agency-wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the documents related to this notice are: Molycorp's letter to NRC dated October 22, 2004, ML043090063; EA prepared for License Amendment No. 5, ML003735909; EA prepared for this action, ML050330004; Molycorp's final DP, ML010540178; **Federal Register** Notice for Amendment No. 7, ML050030165. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Any questions should be referred to Thomas McLaughlin, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington DC 20555, Mailstop T–7E18, telephone (301) 415–5869, fax (301) 415–5397.

Dated at Rockville, Maryland, this 18th day of February, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–4401 Filed 3–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste

Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on March 15, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, March 15, 2005—8:30 a.m.–10:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Richard K. Major (Telephone: (301) 415–7366) between 8 a.m. and 5:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 2, 2005.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 05–4399 Filed 3–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of March 7, 13, 21, 28, April 4, 11, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of March 7, 2005

Monday, March 7, 2005

9:55 a.m. Affirmation Session (Public Meeting).

a. Final Rule: Medical Use of Byproduct Material—Recognition of Specialty Boards.

10 a.m. Briefing on Office of Nuclear Material Safety and Safeguards Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Shamica Walker, (301) 415–5142).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of March 14, 2005—Tentative

Wednesday, March 16, 2005

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, (301) 415–7360).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of March 21, 2005—Tentative

There are no meetings scheduled for the Week of March 21, 2005.

Week of March 28, 2005—Tentative

Tuesday, March 29, 2005

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting) (Contact: Robert Caldwell, (301) 415–1243).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of April 4, 2005—Tentative

Tuesday, April 5, 2005

9:30 a.m. Briefing on Office of Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: Alix Dvorak, (301) 415–6601).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, April 6, 2005

9:30 a.m. Briefing on Status of New Site and Reactor Licensing (Public Meeting) (Contact: Steven Bloom, (301) 415–1313).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 7, 2005

1.30 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larksins, (301) 415–7360).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of April 11, 2005—Tentative

There are no meetings scheduled for the Week of April 11, 2005.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet

at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Agusut Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 3, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–4545 Filed 3–4–05; 9:27 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published on March 7, 2005].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday March 9, 2005 at 4 p.m.

CHANGE IN THE MEETING: Time change.

The Closed Meeting scheduled for Wednesday, March 9, 2005 at 4 p.m. has been changed to Wednesday, March 9, 2005 at 2 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: March 4, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–4576 Filed 3–4–05; 11:39 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51279; File No. SR–Amex–2004–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Revisions to Amex Rule 21, Appointment of Floor Officials

March 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On December 22, 2004, the Amex filed Amendment No. 1 to the proposed rule change.[3] On February 3, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 21, Appointment of Floor Officials, to modify the requirements for Exchange Officials who may be appointed as Senior Floor Officials.

Below is the amended text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Appointment of Floor Officials

Rule 21. (a) Senior Floor Officials.—Each governor of the Exchange who spends a substantial part of his time on the Floor shall serve as a Senior Floor Official. The Vice Chairman of the Board shall serve as the Senior Supervisory Officer on the Floor. If the Vice Chairman does not spend a substantial part of his time on the Floor, the Chairman subject to the approval of the Board, shall designate one of the governors serving as a Senior Floor Official to act as the Senior Supervisory Officer on the Floor. In the absence of the person designated as the Senior Supervisory Officer on the Floor, the Senior Floor Officials, according to an order of succession to be prescribed at the time of appointment, or the acting Senior Floor Official, as provided in paragraph (b) of this Rule, shall exercise the authority of the Senior Supervisory Officer on the Floor. In addition, the Chairman, or the Chief Executive Officer if delegated by the Chairman, subject to the approval of the Board, and in consultation with the Senior Supervisory Officer on the Floor, may appoint additional Senior Floor Officials from among the Exchange Officials (appointed pursuant to the provisions of Section 3 of Article II of the Constitution), who [have previously served as Governors of the Exchange pursuant to Section 1(a)(1)(iv) of Article II of the Constitution, and who continue to] spend a substantial part of their time on the Floor of the Exchange. *An Exchange Official who has been appointed as a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the Floor and require review or action by a Floor Governor or Senior Floor Official. An Exchange Official who has been appointed as a Senior Floor Official may not participate in meetings of the Exchange's Board of Governors unless the Board invites such person to attend its meetings.*

(b) No change

Commentary * * * No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated December 22, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex revised the text of the proposed rule.

[4] *See* Form 19b–4, dated February 3, 2005 ("Amendment No. 2"). In Amendment No. 2, the Amex further revised the text of the proposed rule.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A Floor Governor is an individual who serves on the Exchange's governing board who spends a substantial part of his or her time on the trading floor. Currently, there are three Floor Governors. Pursuant to Amex Rule 21, Floor Governors are automatically deemed to be Senior Floor Officials. In addition to Floor Governors, Exchange Officials who spend a substantial portion of their time on the trading floor and who previously served as a governor also may be appointed as a Senior Floor Official. Currently, one Exchange Official is designated as a Senior Floor Official.

Floor Officials are generally responsible for overseeing the orderly conduct of trading on the Floor, and the Exchange's rules require Floor Governors both to rule on situations that arise on the trading floor and to review decisions made by other Floor Officials.[5] The Exchange's rules also require Floor Governors or Senior Floor Officials to chair meetings of the Performance and Allocations Committees. The Amex represents that these supervisory obligations and committee assignments place a substantial burden on Floor Governors and the one Senior Floor Official, which will increase when the number of Floor Governors is reduced in connection with the sale of the Class B Interest in the Exchange.[6]

As previously noted, the Exchange's rules currently provide for the appointment of Senior Floor Officials from among Exchange Officials who are active on the trading floor and who previously served as governors of the Exchange. However, there is only one former governor active on the floor who is available to serve as a Senior Floor Official. After the completion of the sale of the Class B Interest, moreover, there likely will be only two Floor Governors at any one time. The Exchange, consequently, is proposing to modify the requirements for Exchange Officials who may be appointed as Senior Floor Officials to eliminate the requirement of prior service as a Governor. This will significantly expand the pool of persons able to chair meetings of the Allocations and Performance Committees, which meet well in excess of 100 times per year. The Exchange also proposes to amend Amex Rule 21 to provide that an Exchange Official who has been appointed as a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the trading floor and require review or action by a Floor Governor or Senior Floor Official.[7] The Amex believes that this change will facilitate the supervision of trading activity on the floor by expanding the number or persons who have the authority of a Floor Governor. The Exchange also proposes to modify Amex Rule 21 to clarify that Exchange Officials who are appointed as Senior Floor Officials are not members of the Exchange's Board of Governors and that these individuals have no right to attend meetings of the Board except to the extent that they are invited by the Board to participate in its meetings.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Amex neither solicited nor received written comments with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, as amended. or

(b) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

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[5] A number of Amex rules provide for Floor Governor or Senior Floor Official action or review with respect to matters that arise on the trading floor. These rules may change with future Amex rule changes. It is contemplated that Exchange Officials appointed as Senior Floor Officials would be able to act in place of Floor Governors with respect to these responsibilities if the proposed rule change is approved. The following is a list of Amex rules that call for action or review by Floor Governors or Senior Floor Officials: Rule 1 (Hours of Business), Rule 22 (Authority of Floor Officials), Rule 25 (Cabinet Trading of Equity and Derivative Securities), Rule 26 (Performance Committee), Rule 27 (Allocations Committee), Rule 118 (Trading in Nasdaq National Market Securities), Rule 119 (Indications, Openings and Reopenings), Rule 128A (Automatic Execution), Rule 170 (Registration and Functions of Specialists), Rule 590 (Minor Rule Violation Fine System), Rule 904 (Position Limits), Rule 918 (Trading Rotations, Halts and Suspensions), Rule 933 (Automatic Execution of Option Orders), Rule 959 (Accommodation Transactions), Rule 918C (Trading Rotations, Halts and Suspensions), Rule 933–ANTE (Automatic Matching and Execution of Options Orders).

[6] *See* Securities Exchange Act Release No. 50057 (July 22, 2004), 69 FR 45091 (July 28, 2004).

[7] An Exchange Official who makes a ruling on the floor would not be permitted to review such ruling while later acting as a Senior Floor Official or in place of a Floor Governor. Telephone conversation among William Floyd-Jones, Assistant General Counsel, Amex, Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission, and Geraldine Idrizi, Attorney, Division, Commission, on January 31, 2005.

[8] Article II, Section 3 of the Amex Constitution (The Board of Governors—Powers, Duties and Procedures) currently allows the Board to invite persons who are not members of the Board to participate in meetings of the Board. In relevant part, Article II, Section 3 provides: "The Board may invite a person, not a member thereof, to attend its meetings and to participate in its deliberations, but such person shall not have the right to vote."

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–Amex–2004–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–65 and should be submitted on or before March 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–935 Filed 3–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51285; File No. SR–Amex–2005–005]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Procedures for Handling ITS Commitments in the Auto-Ex System

March 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to add a commentary to Rule 128A to clarify its Auto-Ex procedures for Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts and National Market System Securities. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Rule 128A.

Automatic Execution

(a) through (j) No change.

* * * Commentary

.01 An Intermarket Trading System ("ITS") commitment shall be handled in the same manner as an order from the trading crowd in accordance with subsection (d)(i) of this Rule 128A, and, as a result, no contract for the execution of an ITS commitment shall be created, until the specialist begins to enter the acceptance of such ITS commitment into the order book.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to clarify the treatment of ITS commitments with respect to the Auto-Ex system. The new Commentary provides for consistent treatment of all orders that are not Auto-Ex Eligible Orders. On June 25, 2004, the Commission approved amendments to Amex Rule 128A,[5] which provides in paragraph (d)(i) that an order received from the "open outcry" auction market will not be deemed accepted until the specialist begins to enter the member's acceptance into the order book. The purpose of paragraph (d)(i) is to provide a mechanism for avoiding double liability on the part of the specialist when the specialist has matched an order in the crowd against the Amex published quote ("APQ") and an Auto-Ex Order executes against that quote before the specialist can begin to enter the previously accepted crowd order into the order book. Similarly, proposed Commentary .01 to Amex Rule 128A avoids double liability where an Auto-Ex Order takes an order on the book that establishes the APQ before the specialist begins to enter the acceptance of such ITS commitment into the order book. Pursuant to paragraph (j)(x) of Amex Rule 128A auto-execution will be unavailable during the period of time the specialist is in the process of executing the commitment.

The result of the Commentary would be to treat ITS commitments in the same manner as other on-floor orders. The Commentary will not otherwise change the rules of priority, parity and precedence and on-floor orders received after ITS commitments at the same price will yield priority to the ITS commitment.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5) of the Act[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and

[11] 11 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 49921 (June 25, 2004), 69 FR 40690 (July 6, 2004) (SR–Amex–2004–04).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(1) of Rule 19b–4 thereunder[9] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–005 and should be submitted on or before March 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–968 Filed 3–7–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51294; File No. SR–Amex–2005–009]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Require Members to Complete Systems Training

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex seeks to adopt new Amex Rule 51 to require its members to complete training in such systems as the Exchange may require and to amend its Minor Rule Violation Plan ("Plan") to allow the Exchange to issue minor fines for non-compliance with this newly proposed rule. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Amex Rule 51 to require member firms, members, and employees of member firms or members who presently spend a substantial part of their time on the floor of the Exchange to complete training in such systems as the Exchange may require, unless such training is waived by the Exchange. The Exchange also proposes to amend Part 1(g) of the Plan to allow for the prompt resolution of the failure to comply with newly proposed Amex Rule 51 through the issuance of minor fines.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Established in 1976, the Plan provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct sections: Part 1 ("General Rule Violations") which covers more substantive matters that, nonetheless, are deemed "minor" by Amex; Part 2 ("Floor Decorum") which covers Floor

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [4] in general and furthers the objectives of Section 6(b)(1) of the Act [5] in particular in that it is designed to enforce compliance by Amex members and persons associated with its members with the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received any comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–009 and should be submitted on or before March 29, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–970 Filed 3–7–05; 8:45 am]

BILLING CODE 8010–10–P

Decorum and operational matters; and Part 3 ("Reporting Violations") which covers the late submission of routine reports.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(1).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51282; File No. SR–CBOE–2004–82]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Exchange Rule 17.10(d)—Review of Decision Not To Initiate Charges

March 1, 2005.

On December 8, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Amend Exchange Rule 17.10(d), relating to the process for reviewing decisions not to initiate charges, to transfer from the President of the Exchange to the Exchange's Regulatory Oversight Committee ("ROC") the authority to review and refer to the Exchange's Board of Directors ("Board") decisions of the Business Conduct Committee ("BCC") to decline to authorize the issuance of a statement of charges that is recommended by Exchange staff; and (2) change the time frame in which to conduct such a review from 30 days to 45 days from the date the Exchange serves the subject of the proceedings with notice that the BCC will not initiate charges. The proposed rule change was published for comment in the **Federal Register** on January 12, 2005.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6(b) of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [6] because it is designed to enhance the independence of the Exchange's regulatory structure and processes by transferring from the President to the Exchange's ROC, which is composed solely of public directors and is charged with overseeing regulation, the authority to review and refer to the Board a decision by the BCC to not issue a statement of charges.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2004–82) be, and hereby is, approved.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50964 (January 5, 2005), 69 FR 2200.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51284; File No. SR–CHX–2004–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Stock Exchange, Incorporated to Trade the streetTRACKS® Gold Shares Pursuant to Unlisted Trading Privileges

March 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The proposal would permit the Exchange to trade the streetTRACKS® Gold Shares ("GLD" or "Shares") pursuant to unlisted trading privileges ("UTP"). The Shares represent units of fractional undivided beneficial interests in and ownership of the streetTRACKS® Gold Trust ("Trust"). The Commission previously has approved GLD for original listing and trading on the New York Stock Exchange ("NYSE").[3]

On January 31, 2005, CHX filed Amendment No. 1[4] and on February 23, 2005, CHX filed Amendment No. 2[5] to the proposal. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to trade GLD pursuant to UTP. The text of the proposed rule change is available on the Exchange's Web site (*http://www.chx.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to trade the streetTRACKS® Gold Shares (ticker symbol: GLD) pursuant to UTP. The value of each Share will correspond to a fixed amount of gold[6] and fluctuate with the spot price of gold. Purchasing Shares in the Trust provides investors a mechanism to participate in the gold market.

a. Description of the Gold Market

The global trade in gold consists of over-the-counter ("OTC") transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The global gold market consists of the following components, described briefly below.

(1) The OTC Market

The OTC market trades on a continuous basis 24 hours per day and accounts for most global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's "buy" and "sell" prices. According to the Trust's Registration Statement, the period of greatest liquidity in the gold market is typically when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York, and other centers coincides with futures and options trading on the Commodity Exchange Inc. ("COMEX"), a division of the New York Mercantile Exchange, Inc. ("NYMEX"). This period lasts for approximately four hours each New York business day morning.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association ("LBMA"), a trade association of participants in the London bullion market.

There are no authoritative published figures for overall worldwide volume in gold trading. There are certain published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five members offering clearing services.[7] The monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day.[8] COMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) ("NYSE Approval Order").

[4] In Amendment No. 1, CHX replaced the filing in its entirety to, among other things: (1) Add a description regarding gold market regulation; (2) address the category of entities that could act as Authorized Participants (as defined below) and information barriers requirements amongst such entities; (3) address the ability of Authorized Participants to separate Baskets (as defined below); (4) state when Shares may be redeemed; (5) clarify that last sale prices for the Shares are disseminated on a real-time basis; and (6) clarify that the Shares would trade until 4:15 p.m. Eastern Time.

[5] In Amendment No. 2, CHX replaced the filing in its entirety by amending the proposed rule text to: (1) Replace the phrase "member organization" with the word "Participant" to reflect the demutualization of CHX; (2) allow an Associated Person of a Participant Firm acting as a specialist in the Shares to act in a market-making capacity if the Associated Person obtains prior written consent from the Exchange that the Associated Person and the Participant have established information barriers sufficient to restrict the flow of privileged information between the Associated Person and the Specialist Participant; and (3) describe such information barriers.

[6] Initially, each Share will correspond to one-tenth of a troy ounce of gold. The amount of gold associated with each Share is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

[7] Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm*. The three measures published by LBMA are: volume, the amount of metal transferred on average each day measured in million of troy ounces; value, measured in U.S. dollars, using the monthly average London p.m. fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

[8] *See* NYSE Approval Order, 69 FR at 64614.

futures contracts was 4.9 million troy ounces per day.[9]

(2) Futures Exchanges

The most significant gold futures exchanges are COMEX and the Tokyo Commodity Exchange ("TOCOM").[10] Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. As a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

(3) Gold Market Regulation

There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur in some capacity. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority ("FSA"), as provided by the Financial Services and Markets Act 2000 ("FSM Act"). Under the FSM Act, all U.K.-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

Participants in the U.S. OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the United States, the Commodity Futures Trading Commission regulates futures market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices.

b. Trust Management and Structure

The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. The purpose of the Trust is to hold gold bullion. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Trust is not a registered investment company under the Investment Company Act of 1940 ("1940 Act") and is not required to register under the 1940 Act.

World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,[11] is the sponsor of the Trust ("Sponsor"). The Bank of New York is the trustee of the Trust ("Trustee"). HSBC Bank USA, an indirect wholly owned subsidiary of HSBC Holdings plc, is the custodian of the Trust ("Custodian"). State Street Global Markets LLC, a wholly owned subsidiary of State Street Corporation, is the Marketing Agent of the Trust ("Marketing Agent"). The Marketing Agent and Custodian are registered broker-dealers. The Custodian and Marketing Agent and their affiliates, and affiliates of the Trustee, may act as Authorized Participants or purchase or sell gold or the Shares for their own account as agent for customers and for accounts over which they exercise investment discretion. To the extent deemed appropriate by these entities, information barriers will exist between the Custodian, Marketing Agent, Trustee, and their affiliates transacting in the gold cash market or the Shares; however, the Exchange will not require such information barriers. UBS Securities LLC was the initial purchaser of the Shares ("Initial Purchaser"), as described below. The Sponsor, Trustee, Custodian, and Initial Purchaser are not affiliated with one another or with the Exchange.

c. Trust Expenses and Management Fees

Generally, the assets of the Trust (*e.g.*, gold bullion) will be sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of an investor's Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include: (1) Fees paid to the Sponsor; (2) fees paid to the Trustee; (3) fees paid to the Custodian; (4) fees paid to the Marketing Agent; and (5) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and NYSE listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value ("NAV") of the Trust.

d. Description and Characteristics of the Shares

(1) Liquidity

The Shares may trade at a discount or premium relative to the NAV per Share because of non-concurrent trading hours between the major gold markets and the Exchange. While the Shares will trade on the Exchange until 4:15 p.m. eastern time, liquidity in the OTC market for gold will be reduced after the close of COMEX at 1:30 p.m. eastern time. During this time, trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the OTC gold market.

Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the underlying gold held by the Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts, and can be expected to operate efficiently in the case of the Shares and gold.

(2) Creation and Redemption of Trust Shares

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (such aggregation referred to as a "Basket"). Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Shares for resale.

[9] Information regarding average daily volume estimates by COMEX can be found at *http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2*. The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

[10] There are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

[11] The World Gold Council is a not-for-profit association registered under Swiss law.

Authorized Participants purchasing a Basket must make an in-kind deposit of gold ("Gold Deposit"), together with, if applicable, a specified cash payment ("Cash Deposit" [12] and together with the Gold Deposit, the "Creation Basket Deposit"). The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment ("Cash Redemption Amount" [13] and together with the gold, the "Redemption Distribution").

The Exchange expects that certain Authorized Participants will be able to participate directly in the gold bullion market and the gold futures market. The Sponsor believes that the size and operation of the gold bullion market make it unlikely that an Authorized Participant's direct activities in the gold or securities markets would impact the price of gold or the price of the Shares. Each Authorized Participant is: (1) Regulated as a broker-dealer regulated under the Act and registered with NASD; or (2) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Act or registered with NASD, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants will be regulated under federal and state banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls, and information barriers as it determines is appropriate in light of its own regulatory regime. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

The total amount of gold and any cash required for the creation or redemption of each Basket will be in the same proportion to the total assets of the Trust (net of accrued and unpaid fees, expenses, and other liabilities) on the date the Purchase Order is properly received as the number of Shares to be created in respect of the Creation Basket Deposit bears to the total number of Shares outstanding on the date the Purchase Order is received. Except when aggregated in Baskets, the Shares are not redeemable. The Trust will impose transaction fees in connection with creation and redemption transactions.

The Trustee will determine the NAV [14] and daily adjusted NAV ("ANAV") of the Trust on each business day at the earlier of the London p.m. fix for such day or 12 p.m. eastern time.[15] In determining the Trust's NAV and ANAV, the Trustee will value the gold held by the Trust based on the London p.m. fix price for a troy ounce of gold. Once the value of the gold has been determined, the Trustee will determine the ANAV of the Trust by subtracting all accrued fees (other than the fees to be computed by reference to the ANAV or custody fees based on the value of the gold held by the Trust), expenses, and other liabilities of the Trust from the total value of the gold and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). Then the ANAV of the Trust is used to compute the Trustee's, the Sponsor's, and Marketing Agent's fees.[16] To determine the Trust's NAV, the Trustee will subtract from the ANAV the amount of estimated accrued but unpaid fees that are based on the ANAV (*e.g.*, the Trustee's, the Sponsor's, and Marketing Agent's fees) and the amount of custody fees, which are based on the value of the gold held by the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on NYSE.

The Exchange understands that, upon initiation of trading on NYSE, UBS Securities LLC, the Initial Purchaser, purchased 100,000 Shares, which comprised the seed Basket. The Initial Purchaser also purchased 900,000 Shares, which comprise the initial Baskets. The Trust received all proceeds from the offering of the seed Basket and the initial Baskets in gold bullion. In connection with the offering and sale of the initial Baskets, the Sponsor paid a fee to the Initial Purchaser at the time of its purchase of the initial Baskets. In addition, the Initial Purchaser received commissions/fees from investors who purchased Shares from the initial Baskets through their commission/fee-based brokerage accounts.

(3) Information About Underlying Gold Holdings

The last-sale price for the Shares will be disseminated, on a real-time basis, over the Consolidated Tape by each market trading the Shares. There is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. In most instances, real-time information is available only for a fee, and information available free of charge is subject to delay (typically, 20 minutes).

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as

[12] The amount of any required Cash Deposit will be determined as follows: (1) The fees, expenses, and liabilities of the Trust will be subtracted from any cash held or receivable by the Trust as of the date an Authorized Participant places an order to purchase one or more Baskets ("Purchase Order"); (2) the remaining amount will be divided by the number of Baskets outstanding and then multiplied by the number of Baskets being created pursuant to the Purchase Order. If the resulting amount is positive, that amount will be the required Cash Deposit. If the resulting amount is negative, the amount of the required Gold Deposit will be reduced by a number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Purchase Order date. Fractions of an ounce of gold of less than 0.001 of an ounce included in the Gold Deposit amount will be disregarded.

[13] The Cash Redemption Amount is equal to the excess (if any) of all assets of the Trust other than gold, less all estimated accrued but unpaid fees, expenses, and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's order to redeem one or more Baskets ("Redemption Order"). The Trustee will distribute any positive Cash Redemption Amount through the Depository Trust Company ("DTC") to the account of the Authorized Participant at DTC. If the Cash Redemption Amount is negative, the credit to the Authorized Participant's unallocated account ("Authorized Participant Unallocated Account") will be reduced by the number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Redemption Order date. Fractions of a fine ounce of gold included in the Redemption Distribution of less than 0.001 of an ounce will be disregarded. Redemption Distributions will be subject to the deduction of any applicable tax or other governmental charges due.

[14] The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include accrued expenses).

[15] The London fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources.

[16] The Custodian's fee is not calculated based on ANAV, but rather the value of the gold held by the Trust.

bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on COMEX are available by subscription from Reuters and Bloomberg. NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. The Exchange notes that there are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Washington Post*. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[17] Current gold spot prices are also available with bid/ask spreads from gold bullion dealers.

In addition, the Exchange, via a link to the Trust's Web site (*http://www.streettracksgoldshares.com*), will provide at no charge continuously updated bids and offers indicative of the spot price of gold on its own public Web site, *http://www.chx.com*.[18] The Trust Web site provides a calculation of the estimated NAV (also known as the Intraday Indicative Value or "IIV") of a Share, as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. Comparing the IIV with the last sale price of the Shares helps an investor to determine whether, and to what extent, Shares may be selling at a premium or a discount to the NAV. Although provided free of charge, the indicative spot price and IIV per Share will be provided on an essentially real-time basis.[19] The Trust Web site provides the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Trust Web site contains the following information, on a per-Share basis, for the Trust: (1) The IIV as of the close of the prior business day and the midpoint of the bid/ask price[20] in relation to such IIV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such IIV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Trust Web site also provides the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site provides the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay.[21]

e. Initial Share Issuance and Continued Trading

The Exchange understands that a minimum of three Baskets were outstanding at the commencement of trading on NYSE. The number of Shares per Basket is 100,000.

The Exchange's applicable continued trading criteria require it to delist the Shares if any of the following occur: (1) The value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Custodian, Marketing Agent, or the Exchange, or the Exchange stops providing the hyperlink on its Web site to any such unaffiliated gold value; (2) the IIV is no longer made available on at least a 15-second delayed basis; or (3) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove the Shares from trading upon termination of the Trust or delisting from the NYSE without immediate re-listing on another exchange.

f. Exchange Trading Rules and Policies

Unless the context otherwise requires, the provisions of the Exchange's constitution and all other rules and policies of the Board of Governors are applicable to the trading on the Exchange of the Shares. The Shares are included within the definition of "security" or "securities" as those terms are used in the constitution and rules of the Exchange.

The Exchange is proposing new Rule 24, in Article XXX, to set out new obligations with respect to a specialist's trading of the Shares. First, the Participant[22] acting as specialist in the Shares ("Specialist Participant") is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange. In addition, the Specialist Participant must file with the Exchange, in a manner prescribed by the Exchange, and keep current, a list identifying all accounts for trading physical gold, gold futures, options on gold futures, or any other gold derivative, which the Specialist Participant may have or over which it may exercise investment discretion. Under the proposed rule, no Specialist Participant may trade in physical gold, gold futures, options on gold futures, or any other gold derivative, in an account in which a Specialist Participant, directly or indirectly, controls trading activities or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange.

Additionally, the proposed rule would provide that no Specialist Participant, co-specialist, or relief specialist in the Shares and no partner, officer, director, Associated Person or employee of such Participant may act as a market maker or function in any capacity involving market-making responsibilities in physical gold, gold futures, options on gold futures, or any other gold derivative, except that an Associated Person of the Specialist Participant may act in a market-making capacity, other than as a specialist in equity gold shares on another market center, in physical gold, gold futures, options on gold futures, or any other gold derivative, so long as the Associated Person obtains prior written consent from the Exchange that the Associated Person and the Specialist Participant have established procedures

[17] There may be incremental differences in the gold spot price among the various information service sources. While the Exchange believes the differences in the gold spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of gold or gold-based products, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[18] The Trust Web site's gold spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The Trust Web site will indicate that there are other sources for obtaining the gold spot price. In the event that the Trust Web site should cease to provide this indicative spot price from an unaffiliated source (and the intraday indicative value) of the Shares, the Exchange will cease to trade the Shares.

[19] The Trust's Web site, to which the Exchange's Web sites will link, will disseminate an indicative spot price of gold and the IIV and indicate that these values are subject to an average delay of 5 to 10 seconds.

[20] The bid/ask price is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day IIV.

[21] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[22] CHX demutualized on February 9, 2005. As a result of the demutualization, CHX changed its organizational structure from a not-for-profit, non-stock corporation owned by its members to a wholly owned subsidiary of a holding company, CHX Holdings, Inc. CHX members, who received shares of common stock of the holding company in exchange for their CHX memberships, are now stockholders of the new, for-profit, stock corporation. Those members who were qualified to trade on the Exchange at the time of the demutualization have received trading permits giving them continued access to the Exchange's trading facilities. Telephone conversation between Ellen J. Neely, Senior Vice President and General Counsel, CHX, and Steve L. Kuan, Attorney, Division of Market Regulation ("Division"), Commission, on February 25, 2005.

that are sufficient to restrict the flow of privileged information between the Associated Person and the Specialist Participant ("Information Barriers").

As set out in the proposed rule, these Information Barriers must: (1) Provide for the organizational separation of the Associated Person and the Specialist Participant; (2) ensure that the Associated Person does not exert influence over the Specialist Participant; (3) ensure that information relating to each entity's stock positions, trading activities, and clearing and margin arrangements is not improperly shared (except with persons in senior management who are involved in exercising general managerial oversight of one or both entities); (4) require the Associated Person and the Specialist Participant to maintain separate books and records (and separate financial accounting); (5) require each entity to separately meet all required capital requirements; (6) ensure the confidentiality of the Specialist Participant's book as provided by Exchange rules; and (7) must ensure that any other material, non-public information (such as information related to any business transactions between the Associated Person and the issuer of equity gold shares or any research reports or recommendations issued by the Associated Person) is not made improperly available to the Specialist Participant, its officers, directors, partners, or employees in any manner that would allow the Specialist Participant to take undue advantage of that information in the trading of equity gold shares. The Specialist Participant and the Associated Person must submit the proposed Information Barriers in writing to the Exchange, and the Exchange will not approve any exemption from the requirements of proposed CHX Rule 24(b) until it has determined that the Information Barriers are acceptable to the Exchange.

Further, in addition to the existing obligations under Exchange rules regarding the production of books and records, the proposed rule would require the Specialist Participant to make available to the Exchange such books, records, or other information pertaining to transactions by the Specialist Participant, the co-specialist, the relief specialist or any partner, officer, director, employee, or Associated Person in the Specialist Participant for its or their own accounts in physical gold, gold futures, options on gold futures, or any other gold derivative, as may be requested by the Exchange.

Finally, the proposed rule would provide that, in connection with trading physical gold, gold futures, options on gold futures, or any other gold derivative (including equity gold shares), the Specialist Participant must not use any material nonpublic information received from any person associated with a Participant or any employee of such person regarding trading by that person in physical gold, gold futures, options on gold futures, or any other gold derivative.

The Shares would be subject to the Exchange rule relating to trading halts due to extraordinary market volatility[23] and the Exchange rule that allows Exchange officials to halt trading in specific securities, under certain circumstances.[24] In exercising the discretion described above, appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in gold or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading in the Shares on the Exchange will normally occur until 3:15 p.m. central time (4:15 p.m. eastern time), each business day. The minimum quoting increment for Shares on the Exchange will be $0.01, pursuant to CHX Article XX, Rule 22.

g. Surveillance

The Exchange's surveillance procedures for reviewing trading in GLD will be comparable to the procedures used for reviewing trading in other securities (including exchange-traded funds) on the Exchange. In addition, for intermarket surveillance purposes, the Exchange has entered into a memorandum of understanding ("MOU") with NYMEX that permits the sharing of information relating to products based, in whole or in part, upon an interest in, or the performance of the market for, gold. The rules described above that relate to the obligations of the Specialist Participant, particularly the rules that require the Specialist Participant to provide information to the Exchange, will aid in the Exchange's ability to review the conduct of the Specialist Participant.

h. Suitability

Under Article VIII, Rule 25 of the Exchange's rules, in recommending to a customer the purchase, sale, or exchange of the Shares, the Participant must have reasonable grounds for believing that the recommendation is suitable for the customer. In addition, this rule confirms that, prior to the execution of a transaction recommended to a customer, a Participant must make reasonable efforts to obtain a variety of information about the customer, including, but not limited to, the customer's financial status, tax status, and investment objectives.

i. Notice to Participants

The Exchange will issue a Notice to Participants in connection with the trading of the Shares. The notice will describe the characteristics of the Shares and the risks of trading this type of security. Specifically, the notice, among other things, will discuss what the Shares are; how a Basket is created and redeemed; the requirement that Participants deliver a prospectus to investors purchasing the Shares prior to, or concurrently with, the confirmation of a transaction;[25] applicable Exchange rules; dissemination of information regarding the indicative price of gold and the IIV; trading information; the applicability of CHX Article VIII, Rule 25 regarding suitability; and any relief granted by the Commission or the staff from any rules under the Act. In describing the procedures for creating and redeeming a Basket, the notice will state that the Shares are not individually redeemable but are redeemable only in Basket-size aggregations. The notice will also explain that the Trust is subject to various fees and expenses described in the registration statement and prospectus and that the number of ounces of gold required to create a Basket or to be delivered by the Trust upon the redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold. due to the sale of the Trust's gold to pay the Trust's expenses. The notice will also note the fact that there is no regulated source of last-sale information regarding physical gold and that the Commission has no jurisdiction over the trading of gold as a physical commodity. Finally, the notice will disclose that the NAV for the Shares will be calculated as of the earlier of the London p.m. fix for that day or 12 p.m. eastern time each day that NYSE is open for trading.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27]

[23] *See* CHX Article IX, Rule 10A.

[24] *See* CHX Article IX, Rule 10(b).

[25] Telephone conversation between Ellen J. Neely, Senior Vice President and General Counsel, CHX, and Steve L. Kuan, Attorney, Division, Commission, on February 25, 2005.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–41. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–41 and should be submitted on or before March 29, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[29] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal will benefit investors by increasing competition among markets that trade GLD.

In addition, the Commission believes that the proposal is consistent with Section 12(f) of the Act,[30] which permits an exchange to trade, pursuant to UTP, a security that is listed and traded on another exchange.[31] The Commission notes that it previously approved the listing and trading of the Shares on NYSE.[32] The Commission also believes that the proposal is consistent with Rule 12f–5 under the Act,[33] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the existing rules of the Exchange governing the trading of equity securities, including rules relating to trading hours, trading halts, and the minimum trading increment.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[34] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding GLD are disseminated through the Consolidated Quotation System. Furthermore, as noted by the Exchange, various means exist for investors to obtain reliable gold price information and thereby to monitor the underlying spot market in gold relative to the NAV of their Shares. Additionally, the Trust's Web site will also provide an updated IIV at least every 15 seconds. If the Trust ceases to maintain or to calculate the IIV or if the IIV ceases to be widely available, the Exchange would cease trading GLD.

The Commission notes that, if GLD were to be delisted by NYSE, the Exchange would no longer have authority to trade GLD pursuant to this order.

In support of the proposal, the Exchange made the following representations:

1. The Exchange's surveillance procedures for reviewing trading in GLD will be comparable to the procedures used for reviewing trading in other securities (including exchange-traded funds) on the Exchange. In addition, the Exchange entered into an MOU with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or the performance of gold.

2. The Exchange will distribute a Notice to Participants prior to the commencement of trading of GLD on the Exchange that explains its terms, characteristics, and risks of trading GLD.

3. The Exchange will require a Participant with a customer that purchases the Shares on the Exchange to provide that customer with a product

[28] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78*l*(f).

[31] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[32] *See* NYSE Approval Order, *supra* note 3.

[33] 17 CFR 240.12f–5.

[34] 15 U.S.C. 78k–1(a)(1)(C)(iii).

prospectus and will note this prospectus delivery requirement in the Notice to Participants.

This approval order is conditioned on the Exchange's adherence to these representations.

Finally, the Commission believes that the Exchange's rules imposing trading restrictions and information barriers on Specialist Participants in GLD are reasonable and consistent with the Act. These rules generally require a Specialist Participant to report to the Exchange a list of all accounts for trading gold or gold derivatives over which the Specialist Participant exercises investment discretion or has an interest. Furthermore, Specialist Participants and their affiliated persons will be required to make available to the Exchange, upon request, their books and records pertaining to transactions in gold and gold derivatives.

The Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of GLD on NYSE is consistent with the Act.[35] The Commission presently is not aware of any regulatory issue that should cause the Commission to revisit that earlier finding or preclude the trading of GLD on the Exchange pursuant to UTP. Therefore, accelerating approval of the proposal should benefit investors by creating, without undue delay, additional competition in the market for GLD.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–CHX–2004–41) as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–936 Filed 3–7–05; 8:45 am]

BILLING CODE 8010–01–P

[35] *See supra* note 3.

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51290; File No. SR–DTC–2005–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Establish a Set Up Fee for Open-Ended Mutual Funds

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 16, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish a set up fee for open-ended mutual funds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a set up fee for open-ended mutual funds deposited at DTC. The $10,000 fee, payable by the family of funds,[3] will be for the first CUSIP in the family of funds to become eligible for deposit at DTC.[4] The fee must be paid before the first CUSIP becomes eligible for deposit at DTC. DTC will not charge the set up fee for additional CUSIPs issued by the same family of funds. Limiting the DTC services available to an open-ended mutual fund involves manual processing at the time of making it eligible, which leads to significant processing costs for DTC.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change allows for Open-Ended Funds to be deposited at DTC assuring the safeguarding of securities and funds which are in the custody or control of DTC because DTC will safeguard Open-Ended Funds in a manner consistent with the manner it safeguards other securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the approval of DTC's rule change is consistent with this section because it will allow DTC to provide this service whereby those pledging and those taking pledges of open-ended mutual funds will be able to benefit from an automated service with uniform procedures.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] A family of funds is a group of mutual funds that is managed by the same fund company.

[4] Open-Ended Funds will have limited use of DTC's services.

[5] 15 U.S.C. 78q–1(b)(3)(F).

publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC to establish a set up fee for open-ended mutual funds deposited at DTC at the same time it makes open-ended mutual funds depository eligible.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2005–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2005–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2005–02 and should be submitted on or before March 29, 2005.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–DTC–2005–02) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[6] Securities Exchange Act Release No. 51289 (March 2, 2005) [File No. SR–DTC–2005–01].

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51289; File No. SR–DTC–2005–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Open-Ended Funds Depository Eligible

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 16, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to make open-ended funds depository eligible.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Due to processing problems that DTC has experienced with open-ended funds in the past, open-ended funds are not eligible for deposit at DTC. The proposed rule change allows DTC to accept open-ended funds for deposit but will not make the full range of DTC services available for these funds. Participants will be able to hold open-ended funds in their accounts at DTC and will be able to pledge open-ended funds to other DTC participants using DTC's system. Other than holding and pledging, no other services (*i.e.*, redemption services, reorganization services, dividend payments, or valued transactions) will be available to participants for open-ended funds. Dividends paid on open-ended funds will not be paid to DTC but will be paid to participants outside of DTC's system pursuant to instructions the open-ended fund's issuer or its agent receives from participants. Participants will deposit shares in open-ended funds into their DTC accounts and will withdraw shares in open-ended funds from their DTC accounts through the Deposit or Withdrawal at Custodian ("DWAC") service.

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to DTC because it assures the safeguarding of securities and funds which are in the custody or control of DTC because DTC will safeguard open-ended funds in a manner consistent with the manner it safeguards other securities. It will also promote efficiencies related to pledges of open-ended funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1.

solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because the proposed rule does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2005–01 and should be submitted on or before March 29, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51295; File No. SR–ISE–2005–14]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Position Limits and Exercise Limits

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by ISE. On March 1, 2005 the ISE filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend ISE Rules 412, 413, and 414 to increase the standard position and exercise limits for equity options contracts and options on the Nasdaq-100 Index Tracking Stock ("QQQQ"). The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing several change to ISE Rule 412 (Position Limits), ISE Rule 413 (Exemptions from Position Limits), and ISE Rule 414 (Exercise Limits). ISE Rule 412 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. ISE Rule 413 establishes certain qualified hedging transactions and positions that are exempt from established options position limits as prescribed under ISE Rule 412. ISE Rule 414 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits. On February 23, 2005, the Commission granted accelerated approval of a rule change proposed by the Chicago Board

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made certain technical changes to Exhibit 5 to the filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

Options Exchange, Inc. ("CBOE") relating to position and exercise limits.[6]

Standard Position and Exercise Limits

The Exchange is proposing to adopt a pilot program for a period of six months during which the standard position and exercise limits for options on the QQQQ and for equity option classes traded on the Exchange would be increased to the following levels:

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	**Proposed QQQQ Option Contract Limit**
300,000	900,000

The ISE's standard position limits have been in effect since the Exchange commenced trading in May 2000. These standard position limits are the same as the position limits at the other options exchanges at that time, which were last increased on December 31, 1998.[7] Since that time, there has been a steady increase in the number of accounts that, (a) approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several members have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. A review of available data indicates that the majority of accounts that maintain sizable positions are in those classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizeable positions in the lower three tiers. In addition, overall volume in the options market has continually increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences during that same period justifies the proposed increase in the position and exercise limits.

The Exchange also proposes the adoption of a new equity hedge exemption to the existing exemptions currently provided under ISE Rule 413. Specifically, proposed ISE Rule 413(a)(5) would allow for a "reverse collar" hedge exemption where a long call position is accompanied by a short put position where the long call expires with the short put and the strike price of the long call equals or exceeds the short put and where each long call and short put position is hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call short put can be in-the-money at the time the position is established. The Exchange believes this is consistent with existing ISE Rule 413(a)(4), which provides for an exemption for a "collar", and ISE Rules 413(a)(2) and 413(a)(3), which provide for a hedge exemption for reverse conversion and conversions, respectively.

Manipulation

The ISE believes that position and exercise limits, at their current levels, no longer serve their stated purpose. The Commission has previously stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[8]

The Exchange believes that the existing surveillance procedures and reporting requirements at the ISE, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of ISE's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and in underlying stocks.

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[9] Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, ISE Rule 415, which requires members to file reports with the Exchange for any customer who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the stock market. In addition, the Exchange has found that restrictive limits and narrow hedge exemption relief restrict members from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on gross rather than a delta basis also is an impediment.

Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option.

[1] *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30).

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–CBOE–98–25).

[8] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11).

[9] 17 CFR 240.13d–1.

Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It also should be noted that the Exchange has the authority under ISE Rule 1204 to impose higher margin requirements upon a member when the Exchange determines that higher requirements are warranted. Also, the Commission's net capital rule, Rule 15c3–1 under the Act,[10] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most active stocks. To date, the Exchange believes that there have been no adverse affects on the market as a result of these past increases in the limits for equity option contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objective of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the ISE as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the ISE gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[17] The ISE has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing notice requirement and the 30-day operative delay.[18] Waiving the pre-filing requirement and accelerating the operative date will allow the ISE to immediately conform its position and exercise limits and its equity hedge exemption strategies to those of the CBOE, which were recently approved by the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–ISE–2005–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2005–14 and should be submitted on or before March 29, 2005.

[10] 17 CFR 240.15c3–1.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). *See* Securities Exchange Act Release No. 51244 (February 23, 2005).

[19] *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30).

[20] For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 1, 2005, the date that the ISE filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–969 Filed 3–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51291; File No. SR–OCC–2005–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise its Cross-Margining Agreement With The Clearing Corporation

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 1, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the Amended and Restated Cross-Margining Agreement between OCC and The Clearing Corporation ("CCorp") ("X–M Agreement"), formerly known as Board of Trade Clearing Corporation, that governs the OCC–CCorp cross-margin program as well as the agreements governing the participation of clearing members and market professionals therein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change revises the "X–M Agreement.[3] Specifically, OCC and CCorp have executed an amendment that revises the X–M Agreement to: (1) Reflect CCorp's change in name and address along with OCC's change in address; (2) modify the description of the contract markets for which CCorp provides clearance and settlement services and, as a result thereof, make a conforming change to the definition of the term "market professional"; (3) as permitted under OCC Rule 705, add Government-Sponsored Enterprise (GSE) debt securities as an eligible form of initial margin and make conforming changes to various provisions in the X–M Agreement; (4) eliminate common stock as an eligible form of initial margin as clearing members have never deposited such collateral in the cross-margin program; (5) subject to OCC Rule 705, permit the clearing organizations to agree to use the valuation rate of one or the other clearing organizations in valuing Government and GSE debt securities;[4] (6) update certain contact information; and (7) update Exhibit A, which contains the list of contracts eligible under the OCC–CCorp cross-margining program.

In addition, OCC and CCorp have amended the agreements governing the cross-margining accounts of clearing members and market professionals that participate in the OCC–CCorp cross-margining program. The amendments to these agreements: (1) Reflect CCorp's change in name; (2) reflect the revised definition of the term "market professional"; (3) make other non-substantive, technical changes;[5] and (4) eliminate the requirement that clearing members and market professionals furnish the clearing organizations with financing statements relating to positions, collateral and property maintained with respect to accounts subject to cross-margining. The adoption by all 50 states of the 1999 revisions to Articles 8 and 9 of the Uniform Commercial Code has rendered the financing statement requirement obsolete.

The proposed change is consistent with Section 17A of the Act[6] and the rules and regulations thereunder applicable to OCC because it updates agreements used in connection with a longstanding cross-margining program that provides lower clearing margins to clearing members while enhancing the safety of the clearing system. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] For a description of the existing agreement, see Release No. 34–39203 (October 3, 1997), 62 FR 53371, [File No. SR–OCC–97–14] (order approving amendments to the cross-margining agreements and the forms of agreements governing the cross-margin accounts of clearing members and market professionals that participate in OCC/CCorp cross-margining); Release No. 34–32681 (July 27, 1993), 58 FR 41302 [File No. SR–OCC–92–24] (order approving expansion of cross-margining program between OCC and CCorp to include non-proprietary positions); and Release No. 34–29888 (October 31, 1991), 56 FR 56680 [File No. SR–OCC–91–07] (order approving establishment of cross-margining program between OCC and CCorp).

[4] The amendment to the X–M Agreement provides OCC with the flexibility to agree with CCorp to apply the valuation rates of one or the other clearing organization in the event Rule 705 is amended accordingly.

[5] Such changes include, for example, describing firms as "participants" in CCorp rather than as "clearing members."

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2005–01 and should be submitted on or before March 29, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–967 Filed 3–7–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51281; File No. SR–PCX–2005–21]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Deletion of Certain Obsolete or Unnecessary Rules

March 1, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the PCX. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules to delete certain rules, or portions thereof, which have been determined as obsolete or unnecessary. The text of the proposed rule change is available on the PCX's Web site at *http://www.pacificex.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 9, 2003, the Exchange responded to a request by the Commission's Office of Compliance Inspections and Examinations for section 19(g) obligation compliance under the Act.[6] As part of its compliance, the Exchange performed a complete review of the PCX rules, as well as the surveillance procedures thereof, and found a number of rules that are obsolete or superfluous in the current market structure. Thus, the Exchange proposes to delete these inapplicable rules, or portions thereof, at this time. The proposed rules, or portions thereof, to be deleted are:

- PCX Rule 4.1, Commentary .02—This commentary relates to trading in gold and silver bullion. This commentary is obsolete because the Exchange no longer trades gold and silver bullion.
- PCX Rule 6.91—This rule sets forth the pilot program for the Intermarket Linkage Program. This rule is no longer necessary as the permanent Intermarket Linkage Program (PCX Rules 6.92–6.96) has been implemented.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The PCX asked the Commission to waive the 30-day operative delay and the five-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii).

[6] 15 U.S.C. 78s(g).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Furthermore, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 30-day operative delay and the five-day pre-filing notice requirement, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the 30-day operative delay and the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest.[12] By waiving the 30-day operative delay and the five-day pre-filing notice requirement, the deletion of the obsolete or unnecessary rules will take effect as of the date the PCX filed the proposed rule change.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–21 and should be submitted on or before March 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–931 Filed 3–7–05; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURTITES AND EXCHANGE COMMISSION

[Release No. 34–51286; File No. SR–PCX–2003–55]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Position Limits and Exercise Limits

March 1, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2003, the Pacific Exchange, Inc. ("PCX" of "Exchange") filed with the Securities snd Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by PCX. On February 25, 2005, the PCX filed Amendment No. 1 to the proposed rule change.[3] On February 28, 2005, the PCX filed Amendment No. 2 to the proposed rule change.[4] As amended by Amendment No. 1, the proposal has been submitted as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced and superseded the original filing in its entirety, eliminated among other things, certain hedge exemptions and the position accountability program that were proposed in the original filing, established a new hedge exemption ("reverse collar"), requested that the increases to the standard position and exercise limits proposed in the filing be adopted as a six-month pilot basis, made various clarifying changes to the filing, and changed the statutory basis of the filing.

[4] Amendment No. 2 made certain technical changes to the filing.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

which renders it effective upon the filing of the amendment with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rules 6.8 and 6.9 to increase the standard position and exercise limits for equity options contracts and options on the Nasdaq-100 Index Tracking Stock ("QQQQ"). The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend PCX Rules 6.8 and 6.9 to increase the standard position and exercise limits for equity option contracts and options on the QQQQ as part of a six-month pilot program. PCX Rule 6.8 currently subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. PCX Rule 6.9 establishes exercise limits for the corresponding options at the same levels as the corresponding option position limits. Lastly the Exchange is proposing a housekeeping change to Commentary .08 to PCX Rule 6.8.

Standard Position and Exercise Limits

The Exchange proposes to increase the standard position and exercise limits for equity option classes traded on the Exchange to the following levels:

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	**Proposed QQQQ Option Contract Limit**
300,000	900,000

The Exchange's standard position limits were last increased on December 31, 1998.[7] Since that time, there has been a steady increase in the number of accounts that, (a) approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Industry analysis shows that several members firms have petitioned SROs to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. The available data indicates that the majority of accounts that maintain sizable positions are in those classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizeable positions in the lower three tiers. In addition, overall volume in the options market has continually increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years justifies the proposed increase in the position and exercise limits.

The Exchange also proposes the adoption of a new equity hedge exemption to the existing exemption currently provided under Commentary .07 of PCX Rule 6.8. Specifically, the new provision would allow for a "reverse collar" hedge exemption to apply where a long call position is accompanied by a short put position, and the long call expires with the short put. In addition, the strike price of the long call must equal or exceed the short put, and each long call and short put position must be hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call short put can be in-the-money at the time the position is established. The Exchange believes this is consistent with existing Commentary .07(d) to PCX Rule 6.8, which provides for an exemption for a "collar", and Commentary .07(b) and (c) to PCX Rule 6.8, which provide for a hedge exemption for reverse conversion and conversions, respectively.

Manipulation

The PCX believes that position and exercise limits, at their current levels, no longer serve their stated purpose. The Commission has previously stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[8]

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes the existing surveillance procedures and reporting requirements at the PCX, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity.

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–CBOE–98–25) (approval of increase in position limits and exercise limits on the CBOE).

[8] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (approval of increase in position limits and exercise limits for OEX index options trading on CBOE).

In addition, routine oversight inspections of PCX's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of markets via automated surveillance techniques to identify unusual activity in both options and in underlying stocks. Furthermore, the significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts in combination with the Exchange margin requirements applicable to these products under Exchange rules, serve as a more effective protection than do position limits.[9]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[10] Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, PCX Rule 6.6(a), which requires OTP Holders and OTP Firms to file reports with the Exchange for any customer who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.[11]

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the stock market. In addition, the Exchange has found that restrictive limits and narrow hedge exemption relief restrict OTP Holders and OTP Firms from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on gross rather than a delta basis also is an impediment.

Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that an OTP Holder or OTP Firm or its customer may try to maintain an inordinately large unhedged position in an equity option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that an OTP Holder or OTP Firm must maintain for a large position held by itself or by its customer. It also should be noted that the Exchange has the authority under PCX Rule 4.16(a) to impose higher margin requirements upon a member when the exchange determines that higher requirements are warranted. Also, the Commission's net capital rule, Rule 15c3–1 under the Act,[12] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the larges and most active stocks. To date, the Exchange believes that there have been no adverse affects on the market as a result of these past increases in the limits for equity option contracts.

Housekeeping Changes

The Exchange proposes a minor housekeeping change to Commentary .08 to PCX Rule 6.8 to correct the "Example" pertaining to the equity hedge exemption. The current Example inaccurately refers to the equity hedge exemption being limited to two times the standard limit.[13] Currently, there is no position limit restriction for qualified hedge strategies under the equity hedge exemption policy, thus this portion of the example is incorrect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) if the Act[14] in general, and furthers the objective of section 6(b)(5) of the Act[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the PCX as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[18] Consequently, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[21] Accelerating the operative date will allow the PCX to immediately conform its position and exercise limits and its equity option hedge exemption strategies to those of the Chicago Board Options Exchange, which were recently approved by the Commission.[22]

[9] *See* Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (File No. S7–7–94) (adopting risk-based haircuts); and PCX Rules 4.15 and 4.16.

[10] 17 CFR 240.13d–1.

[11] *See* PCX Rules 1.1(p), (q), and (r) (defining "OTP", "OTP Holder", and "OTP Firm", respectively).

[12] 17 CFR 240.15c3–1.

[13] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (approval of increase in position limits and exercise limits).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] As requested by the PCX, the Commission accepts the original filing as meeting the five-day pre-filing notice requirement of Rule 19b–4(f)(6).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* Securities Exchange Act Release No. 51244 (February 23, 2005) (SR–BOE–2003–30).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.[23]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2003–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–PCX–2003–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2003–55 and should be submitted on or before March 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[23] For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 28, 2005, the date that the PCX filed Amendment No. 2.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51280; File No. SR–PCX–2004–72]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Clearly Erroneous Executions on the Archipelago Exchange

March 1, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III, below, which items have been prepared by the Exchange. PCX filed Amendment No. 1 to the proposed rule change on December 29, 2004,[3] and filed Amendment No. 2 to the proposed rule change on February 15, 2005.[4] The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing clearly erroneous executions ("CEE") on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the Exchange proposes to combine the provisions of PCXE Rules 7.10 (Cancellation of Revisions in Transactions) and PCXE Rule 7.11 (Clearly Erroneous Policy) into one resulting rule, PCXE Rule 7.10, "Clearly Erroneous Executions." The Exchange also proposes to amend the procedures that an ETP Holder would be required to follow when seeking relief for clearly erroneous executions. Finally, the Exchange has revised its guideline listing factors it may consider in making its determinations regarding CEE. A copy of the revised guideline is available at the Exchange's Web site (*http://www.pacificex.com/legal/legal_home.html*).

The text of the proposed rule change is set forth below. Additions are in *italics*. Deletions are in [brackets].

* * * * *

Rule 7: Equities Trading

Rule 7.10. *Clearly Erroneous Executions* [Cancellation of Revisions in Transactions]

(a) Definition. For purposes of this Rule, the terms of a transaction executed on the Corporation are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A *transaction* [sale] made in *clearly erroneous* [demonstrable] error and cancelled by both parties may be removed, if the parties do not object, subject to the approval of the Corporation. [Disagreements with respect thereto shall be referred to the appropriate trading authority of the Corporation. A dispute arising on bids, offers or sales, if not settled by agreement between the parties interested, shall be settled by the Corporation.]

(b) Request for Corporation Review. An ETP Holder that receives an execution on an order that was submitted erroneously to the Corporation for its own or customer account may request that the Corporation review the transaction under this Rule. Such request for review shall be made via telephone, facsimile or e-mail and submitted within fifteen (15) minutes of the trade in question. Upon receipt, the counterparty to the trade, if any, shall be notified by the Corporation as soon as practicable. Thereafter, an Officer of the Corporation or such other designee of the Corporation ("Officer") shall review the transaction under dispute and determine whether it is clearly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1, submitted by Tania Blanford, Staff Attorney, PCX ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety.

[4] *See* Amendment No. 2, submitted by James Draddy, Vice President, Equities Regulation, PCX ("Amendment No. 2"). Amendment No. 2 replaces the original filing and Amendment No 1 in their entirety.

erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Each party to the transaction shall provide, within 30 minutes of the request for review, any supporting written information as may be reasonably requested by Officer to aid resolution of the matter. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(c) Review Procedures.

(1) Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Officer. If the Officer determines that the transaction is not clearly erroneous, the Officer shall decline to take any action in connection with the completed trade. In the event that the Officer determines that the transaction in dispute is clearly erroneous, the Officer shall declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The parties shall be promptly notified of the determination.

(2) If a party affected by a determination made under this Rule so requests within the time permitted below, the Clearly Erroneous Execution Panel ("CEE Panel") will review decisions made by the Officer under this Rule, including whether a clearly erroneous execution occurred and whether the correct adjustment was made.

(A) The CEE Panel will be comprised of the PCXE Chief Regulatory Officer ("CRO"), or a designee of the CRO, and representatives from two (2) ETP Holders.

(B) The Exchange shall designate at least ten (10) ETP Holder representatives to be called upon to serve on the CEE Panel as needed. In no case shall a CEE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a CEE Panel on an equally frequent basis.

(3) A request for review on appeal must be made via facsimile or e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CEE Panel shall review the facts and render a decision within the time frame prescribed by the Corporation.

(4) The CEE Panel may overturn or modify an action taken by the Officer under this Rule. All determinations by the CEE Panel shall constitute final action by the Corporation on the matter at issue.

(d) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Corporation, or extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the Officer, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Officer pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of subsection (c)(2)–(4).

(e) Trade Nullification and Price Adjustments for UTP Securities that are Subject of Initial Public Offerings ("IPOs"). Pursuant to SEC Rule 12f–2, as amended, the Corporation may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in the subject security has been effected on the national securities exchange or association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. A clearly erroneous error will be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on the Corporation is the lesser of $1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the Officer shall declare the opening transaction null and void or adjust the transaction price to the opening price on the listing exchange or association. Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same manner as the procedure set forth in (c)(1). Absent extraordinary circumstances, any such action of the Officer pursuant to this subsection (e) shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. Each party involved in the transaction shall be notified as soon as practicable by the Corporation, and the party aggrieved by the action may appeal such action to the PCXE CRO in accordance with the provisions of subsection (c)(2)–(4) above.

Rule 7.11. *Reserved* [Clearly Erroneous Policy]

[(a) Definition. For the purposes of this Rule, the terms of a transaction executed on the Corporation are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(b) Request for Corporation Review. An ETP Holder that receives an execution on an order that was submitted erroneously to the Corporation for its own or customer account may request that the Corporation review the transaction under this Rule. Such request for review shall be made via telephone and in writing via facsimile or e-mail. The telephonic request should be submitted immediately and the written request should be submitted within fifteen (15) minutes of the time the trade in question was executed. Once the request has been received, an officer of the Corporation designated by the President shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Each party to the transaction shall provide, on a timely basis, any supporting written information as may be reasonably requested by the designated officer to aid resolution of the matter.

(c) Review Procedures. Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial written request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the designated Corporation officer. If the officer determines that the transaction is not clearly erroneous, the officer shall decline to take any action in connection with the completed trade. In the event that the officer determines that the transaction in dispute is clearly erroneous, the officer shall declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they

would have been in, had the error not occurred. The officer shall promptly notify the parties of the determination reached and shall issue a written resolution of the matter. The ETP Holder aggrieved by the officer's determination may appeal such determination in accordance with the provisions of Rule 10.13.

(d) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Corporation, the Chief Executive Officer, President, or such other officer designated by the Corporation may declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer, President or designated Corporation officer pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of Rule 10.13.]

Rule 10: Disciplinary Proceedings, Other Hearings, and Appeals

Rule 10.13. Hearings and Review of Decisions by the Corporation

(a) No change.

(1)–(4) No change.

[(5) actions taken by the Corporation pursuant to Rule 7.11;]

(5) [(6)] Renumbered.

(6) [(7)] Renumbered.

(7) [(8)] Renumbered.

(b)–(m) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in item IV below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently maintains two rules regarding clearly erroneous executions: PCXE Rule 7.10 (Cancellation of Revisions in Transactions) and PCXE Rule 7.11 (Clearly Erroneous Policy). The Exchange now proposes to revise its rules in order to: (i) Combine the rules for CEE into one rule, PCXE Rule 7.10, entitled "Clearly Erroneous Executions," and (ii) amend the procedures that an ETP Holder would be required to follow when seeking relief for clearly erroneous executions.

The Exchange currently utilizes the provision set forth in PCXE Rule 7.10 in conjunction with a guideline, which describes the internal procedures used to implement PCXE Rule 7.10, as well as the prices at which transactions generally may be considered erroneous.[5] PCXE Rule 7.11 generally provides policies that the Exchange refers to when responding to a claim that an execution resulted in an obvious error. The Exchange believes that these distinct rules and guidelines lack clarity and may result in inconsistent outcomes. Therefore, the Exchange believes that combining the pertinent elements of PCXE Rule 7.10 (and the related guideline) and PCXE Rule 7.11 is necessary to eliminate ongoing confusion regarding the Exchange's policy. The Exchange has also revised its guideline to streamline it to a list of factors that the Exchange may consider when making its determination regarding CEEs.

The Exchange also proposes the following revisions to its rules regarding CEEs.

Proposed PCXE Rule 7.10(a)—the Exchange proposes to move the Definition provision from current PCXE Rule 7.11(a) to proposed new PCXE Rule 7.10(a) without substantive changes. The Exchange also proposes to delete the last two sentences of current PCXE Rule 7.10 as they are superfluous.

Proposed PCXE Rule 7.10(b)—the Exchange proposes to move the Request for Corporation Review provision from current PCXE Rule 7.11(b) to proposed new PCXE Rule 7.10(b) with four minor changes: (i) ETP Holders will be permitted to request the review by telephone, facsimile or e-mail within 15 minutes of the trade in question instead of being required to follow up a telephone request with a facsimile or e-mail; (2) the Exchange proposes to include a provision allowing the Officer of the Corporation who ordinarily reviews such requests to appoint a designee to review the requests in certain circumstances;[6] (iii) the Exchange proposes to change the time frame in which additional supporting information is submitted from "on a timely basis" to "within 30 minutes" as the Exchange believes it is appropriate to set forth an unambiguous timeline for such submissions; and (iv) the Exchange proposes to include a provision that would allow either party to request the written information provided by the other party on the disputed matter.

Proposed PCXE Rule 7.10(c)(1)—the Exchange proposes to move current PCXE Rule 7.11(c) to proposed new PCXE Rule 7.10(c)(1). The change to this rule is primarily stylistic with the exception of the appeals procedure, which will be deleted from this subsection and moved to proposed new PCXE Rule 7.10(c)(2)–(4).

Proposed PCXE Rule 7.10(c)(2)–(4)—The Exchange also proposes new PCXE Rule 7.10(c)(2)–(4) to implement a revised appeal process for determinations on clearly erroneous executions. Proposed new PCXE Rule 7.10(c)(2)–(4) allows a party affected by the determination to request an appeal to the Clearly Erroneous Execution Panel ("CEE Panel") to review the determination made by the Officer under PCXE Rule 7.10(c)(1). The CEE Panel will be comprised of the PCXE Chief Regulatory Officer ("CRO"), or a designee of the CRO,[7] and representatives from two (2) ETP Holders.[8] Requests for appeal must be made via facsimile or e-mail within

[5] The current guideline is readily available on the ArcaEx Web site at *http://www.tradearca.com/traders/erroneous.asp*. The Exchange notifies the ETP Holders of any changes to the guideline via the Weekly Bulletin that is distributed to all ETP Holders and also by posting such changes on the ArcaEx Web site.

[6] Examples of such circumstances would include the Officer's absence due to illness, vacation time or such other similar circumstances. The Exchange represents that the designee of the Officer will be an employee of the Corporation with similar stature as the Officer, such as a Vice President of Market Management.

[7] The Exchange represents that the designee of the CRO will be an employee of the Corporation with similar stature as the CRO, such as the VP of Equities Regulation. The Exchange notes that the International Securities Exchange designates an Obvious Error Panel to independently make appeals decisions and also to overturn or modify actions taken by the exchange. *See* ISE Rule 720.

[8] The Exchange shall designate at least ten (10) ETP Holder representatives to be called upon to serve on the CEE Panel. In no case shall the CEE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a CEE Panel on an equally frequent basis.

thirty (30) minutes after the party requesting the appeal is given notification of the initial determination. Thereafter, the CEE Panel shall review the information and may overturn or modify the action taken by the Officer within the time frame prescribed by the Corporation. Such determination by the CEE Panel will be considered a final action by the Corporation on the matter at issue. All final determinations made by the CEE Panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. The revised process is intended to provide a timely appeal for ETP Holders in place of the lengthy general appeal process provided in PCXE Rule 10.13.

Proposed PCXE Rule 7.10(d)—the Exchange proposes to move current PCXE Rule 7.11(d) that governs the procedures for system disruption and malfunctions to proposed new PCXE Rule 7.10(d). In addition, the Exchange proposes to include "extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary" as another condition in which an Officer may act, on its own motion, to review erroneous transactions. The Exchange believes that errors due to extraordinary market conditions warrant a review irrespective of a complaint by an ETP Holder. Such reviews are considered normal industry standard.[9]

Proposed PCXE Rule 7.10(e)—the Exchange proposes new PCXE Rule 7.10(e) in order to codify the PCXE's current guideline with respect to trade nullification and price adjustments for securities that are the subject of initial public offerings ("IPOs"). The Exchange believes that a separate provision is appropriate because the Exchange's intent is to always adjust the price of an opening trade on ArcaEx if it is away from the price the issue opens on the listing market. Thus, if the price of the trade is either $1.00 or 10% away from the opening price on the listing market, the trade would be automatically adjusted to the opening price. In such circumstances, the Officer shall declare the opening transaction null or adjust the transaction price to the opening price on the listed exchange or association. Clearly erroneous executions of subsequent trades in the subject security will be reviewed in the same manner as those subject to the general guidelines. Consistent with the PCXE's general clearly erroneous executions rule set forth in proposed new PCXE Rule 7.10, this provision also provides an immediate appeal process for determinations.

Miscellaneous—the Exchange proposes to delete paragraph (a)(5) from current PCXE Rule 10.13, which governs the hearings and review of decisions by the Corporation. Paragraph (a)(5) states that the provisions of PCXE Rule 10.13 apply to actions taken by the Corporation pursuant to current PCXE Rule 7.11. This provision would be superceded by the immediate appeal process for ETP Holders in proposed new PCXE Rule 7.10(c)(2)–(4).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[10] of the Act, in general, and furthers the objectives of section 6(b)(5),[11] in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether they are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–72 and should be submitted on or before March 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[9] *See, e.g.*, NASD Rule 11890(b).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51296; File No. SR–PCX–2004–124]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, and 3 by the Pacific Exchange, Inc., Relating to Adjournments of a Hearing Within Three Business Days of a Scheduled Hearing Session

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2004, the Pacific Exchange, Inc., ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. On February 3, 2005, PCX filed Amendment No. 1 to the proposed rule change.[3] On the same day, PCX filed Amendment No. 2 to the proposed rule change, which replaced Amendment No. 1 in its entirety.[4] On February 28, 2005, PCX filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend the PCX Options and PCX Equities, Inc., arbitration rules, PCX Rule 12.18 and PCXE Rule 12.19, respectively, in order to modify the arbitration adjournment provision. PCX is also proposing to amend PCX Rule 12.6 and PCXE Rule 12.7, respectively, to provide that if the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments pursuant to PCX Rule 12.18(d) or PCXE Rule 12.19(d).[6] Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets]. Because the proposed changes to PCX Rule 12.6 and PCX Rule 12.18 are identical to the proposed changes to PCXE Rule 12.7 and PCXE Rule 12.19, only the PCX rules appear below (the PCXE rules have not been included).

* * * * *

Rules of the Pacific Exchange, Inc.

Rule 12 Arbitration

* * * * *

Settlements

Rule 12.6 (*a*) All settlements upon any matter submitted shall be at the election of the parties.

(b) If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fess incurred as a result of adjournments, pursuant to Rule 12.18(d).

* * * * *

Adjournments

Rule 12.18 (a)–(c)—No change.

(d) If an adjournment request is made by one or more parties and granted within three business days of a scheduled hearing session, not including prehearing sessions, the party or parties making the request shall pay an additional fee of $100 per arbitrator to compensate the arbitrator for the inconvenience due to last minute adjournments. If more than one party requests the adjournment, the arbitrators shall allocate the $100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the $100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that a request results in the adjournment of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange proposes to amend PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 to modify the arbitration adjournment provision to charge parties a fee of $100.00 per arbitrator in the event that a hearing is adjourned within three business days of a scheduled hearing session.

The Exchange has found that parties often seek to adjourn scheduled hearing sessions at the last minute for various reasons, which may include scheduling conflicts of parties or their counsel, ongoing settlement discussions, or other personal matters unrelated to the arbitration process. Regardless, last minute adjournments result in inconvenience and lost income to the arbitrators. The Exchange, therefore, proposes to charge parties a nominal fee of $100.00 per arbitrator in the event that a hearing is adjourned within three business days of a scheduled hearing session. The fee will not apply to the adjournment of a pre-hearing session. It will, however, apply if the parties agree to settle their dispute and one or more parties makes an adjournment request within three business days before a scheduled hearing session. This will be considered to be an adjournment request that is made and granted for purposes of proposed PCX Rule 12.18 and PCXE Rule 12.19.[7]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated February 3, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

[4] *See* letter dated February 3, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

[5] *See* letter dated February 28, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

[6] Telephone conversation between Tania Blanford, Regulatory Staff Attorney, PCX, and Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Division of Market Regulation, SEC, February 28, 2005 regarding conforming PCX's Statement of the Terms of Substance of the Proposed Rule Change section of its Notice of Filing of Proposed Rule Change Relating to Adjournments of a Hearing Within Three Business Days of a Scheduled Hearing Session with the changes to the text of PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 proposed by Amendment No. 2.

[7] Telephone conversation between Tania Blanford, Regulatory Staff Attorney, PCX, and Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Division of Market Regulation, SEC, February 28, 2005 regarding conforming PCX's

The arbitrators will have discretion to allocate the fee among the requesting parties, if more than one party requests the adjournment. The arbitrators may also allocate all or portion of the fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, the arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

The Exchange believes this fee is reasonable in order to compensate arbitrators for their inconvenience due to last minute adjournments.

Basis

The Exchange believes that the proposal is consistent with Section 6(b)[8] of the Act, in general, and Section 6(b)(5)[9] of the Act, in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed modifications, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–124. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–124 and should be submitted on or before March 29, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–966 Filed 3–7–05; 8:45 am]

BILLING CODE 8010–01–P

Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change of its Notice of Filing of Proposed Rule Change Relating to Adjournments of a Hearing Within Three Business Days of a Scheduled Hearing Session with the changes to the text of PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 proposed by Amendment No. 2.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

DEPARTMENT OF STATE

[Public Notice 5010]

Culturally Significant Objects Imported for Exhibition Determinations: "In Sight: Contemporary Dutch Photography from the Collection of the Stedelijk Museum, Amsterdam"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "In Sight: Contemporary Dutch Photography from the Collection of the Stedelijk Museum, Amsterdam", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, from on or about March 26, 2005, until on or about May 8, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 1, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–4463 Filed 3–7–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5009]

Culturally Significant Objects Imported for Exhibition Determinations: "Printing the Talmud: From Bomberg to Schottenstein"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "Printing the Talmud: From Bomberg to Schottenstein," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at the Yeshiva University Museum, New York, NY, from on or about April 10, 2005, to on or about August 28, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 25, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–4462 Filed 3–7–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5006]

RIN 1400–AA–88

Department of State Selection of Accrediting Entities Under the Intercountry Adoption Act of 2000

AGENCY: Department of State

ACTION: Notice

SUMMARY: The Department of State (the Department) is the lead Federal agency for implementation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). Among other things, the IAA gives the Secretary of State responsibility for the accreditation of agencies and approval of persons to provide adoption services under the Convention. The IAA requires the Department to enter into agreements with one or more qualified entities under which such entities will perform the task of accrediting or approving agencies and persons. This notice is to inform the public that the Department will be conducting meetings with potential accrediting entities in order to reach agreements with those that are qualified to be designated as IAA accrediting entities. The agreements will set forth how the accrediting entities will perform their functions under the IAA. The final agreements will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lisa Vogel at 202–736–9108. Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department, pursuant to section 202(a) of the IAA, must enter into at least one agreement to designate an accrediting entity. Accrediting entities may be: (1) Nonprofit private entities with expertise in developing and administering standards for entities providing child welfare services; or (2) State adoption licensing bodies that have expertise in developing and administering standards for entities providing child welfare services and that accredit only agencies located in that State. Five potential State licensing bodies (Colorado, Connecticut, New Mexico, Utah, and Vermont) and one potential nonprofit accrediting entity (Council on Accreditation) have submitted statements of interest indicating that they may be eligible and may wish to be designated as accrediting entities under the IAA. The Department now intends to begin meeting with these potential accrediting entities to develop agreements. The agreements will set forth how the accrediting entities will perform their functions under the IAA and how the Department will oversee their performance of such functions, and will address related matters such as the fees that an accrediting entity may charge agencies and persons for accreditation/approval services.

These meetings with potential accrediting entities will be open only to the eligible applicants. They will focus on the development of agreements. No agreements will be signed or published in the **Federal Register** until the Department has issued a final rule on the accreditation and approval of agencies and persons, for which a proposed rule (for 22 CFR part 96) was published in the **Federal Register** (68 FR 54064, September 15, 2003). The public comment period for that proposed rule is now closed. Post-comment period comments on the rule are discouraged. If the planned meetings to develop agreements result in the Department receiving additional comments from a potential accrediting entity, however, the Department will consider their possible addition to the public file. Interested persons are free to check the public file on an ongoing basis for such comments. The Department is not required to consider comments provided to it after the comment period has closed, and is making no commitment to do so; any addition of comments to the public file is intended to promote the transparency of the regulatory process.

Public comments and supporting materials submitted in connection with the proposed rule are available for viewing and copying at: U.S. Department of State, SA–29, 2100 Pennsylvania Avenue NW., Washington, DC 20520. To review docket materials, members of the public must make an appointment by calling Delilia Gibson-Martin at 202–736–9105. The public may copy a maximum of 100 pages at no charge. Additional copies cost $0.25 per page. The Department has also posted public comments at: *http://travel.state.gov.*

Dated: March 1, 2005.

Daniel B. Smith,

Acting, Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 05–4461 Filed 3–7–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4967]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: The International Telecommunication Advisory Committee will meet in March, April, and May to prepare positions for the next meeting of the ITU Council Working Group on the International Telecommunication Regulations (WGITR). Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair.

The International Telecommunication Advisory Committee (ITAC) will meet on the following dates at the offices of Squire Sanders & Dempsey, 1201 Pennsylvania Avenue NW, Washington, DC to prepare for the next meeting of the ITU Council Working Group on the International Telecommunication Regulations (WGITR): Thursday, March 24, 9–11 a.m.; Wednesday, April 6 2–4 p.m.; Wednesday, April 20 9–11 a.m.; and Tuesday, May 3, 9–11 a.m. Directions to the meeting location and conference bridge information may be obtained by calling the ITAC Secretariat at (202) 647–2593.

Dated: February 22, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Department of State.

[FR Doc. 05–4459 Filed 3–7–05; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4970]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: The International Telecommunication Advisory Committee announces additional April meetings to prepare positions for the next meeting of the ITU–T Study Groups 11 (Signalling requirements and protocols), 13 (Next Generation Networks), and 15 (Optical and other transport network infrastructures). Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Directions to the meeting location are available to the public on the Internet and conference bridge information (if any) may be obtained from *marcie.g@comcast.com.*

The International Telecommunication Advisory Committee (ITAC) will meet on Friday, April 15, 2005 to prepare U.S. and company contributions to ITU–T Study Groups 11 and 13. The meeting will be held at the Double Tree Hotel Denver North, 8773 Yates Drive, Westminster, CO 80031 starting 30 minutes after the close of the plenary meeting of the Packet Technologies and Systems Committee (PTSC) of the Alliance for Telecommunications Solutions (ATIS), being held at the same venue.

The International Telecommunication Advisory Committee (ITAC) will meet on Friday, April 22, 2005 to prepare U.S. and company contributions to ITU–T Study Group 15. The meeting will be held at the Double Tree Hotel Denver North, 8773 Yates Drive, Westminster, CO 80031 starting 30 minutes after the close of the plenary meeting of the Optical Transport and Synchronization Committee (OTSC) of the Alliance for Telecommunications Solutions (ATIS), being held at the same venue.

Dated: March 1, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Department of State.

[FR Doc. 05–4460 Filed 3–7–05; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15701; Notice 2]

Bridgestone/Firestone North America Tire, LLC (BFNT); Grant of Application for Decision That a Noncompliance Is Inconsequential to Motor Vehicle Safety

Bridgestone/Firestone North America Tire, LLC (BFNT) has determined that approximately 1,228 P235/75R15 Peerless AMBASSADOR tires do not meet the labeling requirement mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), BFNT has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the application was published, with a 30-day comment period, on August 19, 2003, in the **Federal Register** (68 FR 49841). NHTSA received no comment on this application.

BFNT's Oklahoma City, Oklahoma plant produced approximately 1,228 tires with incorrect markings during the U.S. Department of Transportation's weeks of 17, 18, and 19 in 2003 (from April 20, 2003 through May 10, 2003). The tires were marked: "Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 1 Polyester." The correct marking required by FMVSS No. 109 is "Tread Plies: 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 2 Polyester."

The labeling requirements of FMVSS No. 109, New Pneumatic Tires, S4.3, paragraphs (d) and (e), mandate that each tire have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different. Also, each tire must be labeled with the generic name of each cord material used in the sidewall and tread.

BFNT argues that the noncompliance described herein is inconsequential to motor vehicle safety. The noncompliant subject tires were constructed with more tread plies than indicated on the sidewall marking (two instead of one). BFNT states that this noncompliance is unlikely to have an adverse impact on motor vehicle safety since the actual construction of the subject tires is more robust than that identified on the sidewall. The noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and, the noncompliance will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments on the tire labeling information required by 49 CFR Sections 571.109 and 119, part 567, part 574, and part 575. With regard to the tire construction labeling requirements of FMVSS 109, S4.3, paragraphs (d) and (e), most commenters indicated that the information was of little or no safety value to consumers. However, according to the comments, when tires are processed for retreading or repairing, it is important for the retreader or repair technician to understand the make-up of the tires and the types of plies. This

enables them to select the proper repair materials or procedures for retreading or repairing the tires. A steel cord radial tire can experience a circumferential or "zipper" rupture in the upper sidewall when it is operated underinflated or overloaded. If information regarding the number of plies and cord material is removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall ply. As a result, many light truck tires will be inflated outside a restraining device or safety cage where they represent a substantial threat to the technician. This information is critical when determining if the tire is a candidate for a zipper rupture. In this case, since the steel cord construction is properly identified on the sidewall, the technician will have sufficient notice.

In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

The agency believes that the true measure of inconsequentiality to motor vehicle safety, in this case, is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. Since the tires had more tread plies than indicated on the sidewall, the labeling noncompliance has no effect on the performance of the subject tires. A tire with more tread plies is likely to be a more robust tire even though it has no additional load-carrying capacity.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 2, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–4435 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20489]

Notice of Receipt of Petition for Decision That Nonconforming 2004 and 2005 Porsche Carrera GT Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2004 and 2005 Porsche Carrera GT passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 and 2005 Porsche Carrera GT passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 7, 2005.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Technologies, LLC, of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2004 and 2005 Porsche Carrera GT passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2004 and 2005 Porsche Carrera GT passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2004 and 2005 Porsche Carrera GT passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2004 and 2005 Porsche Carrera GT passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2004 and 2005 Porsche Carrera GT passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and*

Washing Systems, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* installation of a U.S.-model instrument cluster. U.S. version software must also be downloaded to meet the requirements of this standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model headlamps, front side marker lamps, taillamp assemblies that incorporate rear side marker lamps, a high-mounted stoplamp assembly, and front and rear side reflex reflectors.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection*: installation of U.S. version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems*: installation of U.S. version software, or installation of a supplemental relay system to meet the requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* installation of U.S. version software to ensure that the seat belt warning system meets the requirements of this standard.

Petitioner states that the vehicle's restraint system components include U.S.-model airbags and knee bolsters, and combination lap and shoulder belts at the outboard front designated seating positions.

Standard No. 209 *Seat Belt Assemblies*: inspection of all vehicles and replacement of any non-U.S.-model seat belts with U.S.-model components on vehicles that are not already so equipped.

The petitioner also states that all vehicles will be inspected for conformity with the Bumper Standard found in 49 CFR Part 581 and that any non-U.S.-model components necessary for conformity with this standard will be replaced with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–4297 Filed 3–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34667]

BNSF Railway Company—Acquisition and Operation—State of South Dakota

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of application and request for public comments.

SUMMARY: BNSF Railway Company (BNSF) [1] has filed an application under 49 U.S.C. 10901 for authority to acquire and operate approximately 368 miles of railroad lines (referred to as the "Core Lines") that are owned by the State of South Dakota (the State).[2] The Core Lines, which are described in a July 10, 1986 Operating Agreement between Burlington Northern Railroad Company (BN, a BNSF predecessor) and the State, extend principally: between milepost (MP) 777.0 near Aberdeen, SD, and MP 650.6 near Mitchell, SD; between MP 518.9 near Sioux City, IA, and MP 649.7 near Mitchell, SD; between MP 293.1 near Canton, SD, and MP 650.6 near Mitchell, SD; [3] between MPs 74.1 and 68.8 in Sioux Falls, SD; between MP 68.8 near Sioux Falls, SD, and MP 49.4 near Canton, SD; and between MPs 511.9 and 518.9 in Sioux City, IA.

DATES: Comments respecting the BNSF application must be filed by March 11, 2005. Replies to such comments must be filed by March 25, 2005.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent to each of the following (any such copy may be sent by e-mail or fax, but only if service by e-mail or fax is acceptable to the recipient): Adrian L. Steel, Jr., Mayer, Brown, Rowe & Maw LLP, 1909 K Street, NW., Washington, DC 20006–1101 (phone: (202) 263–3237; fax: (202) 263–5237); and Sarah W. Bailiff, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131 (phone: (817) 352–2354; fax: (817) 352–2397).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

[1] Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

[2] BNSF previously indicated that the Core Lines consist of approximately 369.7 miles of railroad lines. *See The Burlington Northern and Santa Fe Railway Company C—Acquisition and Operation Exemption—State of South Dakota*, STB Finance Docket No. 34645 (STB served Jan. 19, 2005). The slight discrepancy (the 368 miles now indicated vs. the 369.7 miles previously indicated) has not been explained.

[3] The distance between MP 293.1 near Canton and MP 650.6 near Mitchell is approximately 81.50 miles. *See* BNSF's application, Exhibit B, Appendix 1 at 6. BNSF has not explained the discrepancy respecting the milepost designations.

SUPPLEMENTARY INFORMATION: The Core Lines were once part of the rail system operated by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the Milwaukee Road). The Milwaukee Road entered bankruptcy in 1977, and, in 1980, it received, both from the Interstate Commerce Commission (ICC) and from the bankruptcy court, approval to abandon the Core Lines. In March 1980, the Milwaukee Road terminated its Core Lines operations, and thereafter, for more than a year, shippers located on the Core Lines had no rail service of any kind. In 1981, the abandoned Core Lines were acquired by the State, and, since on or about July 6, 1981, BN/BNSF has provided common carrier rail service over the Core Lines pursuant to various agreements (the most recent of which is the 1986 Operating Agreement) with the State,[4] and pursuant to a Modified Certificate of Public Convenience and Necessity (the modified certificate) issued by the ICC. See 49 CFR Part 1150, Subpart C (§ 1150.21 *et seq.*) (these are the "modified certificate" regulations that apply to operations over abandoned rail lines that have been acquired, through purchase or lease, by a State).

A contractual dispute has arisen respecting the scope of the rights retained by or granted to the State and/or BNSF under the 1986 Operating Agreement. On June 29, 2004, BNSF advised the State that it desired to exercise its "purchase option" right (said to be provided in the 1986 Operating Agreement) to acquire the Core Lines. The State apparently contends that the 1986 Operating Agreement gives BNSF no right to acquire the Core Lines and/or gives the State a right to allow other railroads to operate over the Core Lines. BNSF apparently contends that the 1986 Operating Agreement gives BNSF a right to acquire the Core Lines and gives the State no right to allow other railroads to operate over the Core Lines. The dispute concerning the various rights asserted by the State and BNSF is now the subject of litigation in *The Burlington Northern and Santa Fe Railway Company* v. *State of South Dakota*, Civ. No. 04–470 (S.D. 6th Circuit).

The contractual dispute between BNSF and the State must be resolved by the court; that dispute will *not* be resolved by the Board. However, a related matter—BNSF's request that the Board authorize BNSF to acquire and operate the Core Lines—must be resolved by the Board. But even if the Board authorizes BNSF to acquire the Core Lines, that authorization is only permissive. If the South Dakota state court decides that BNSF does not have, under the 1986 Operating Agreement, a right to acquire the Core Lines, then any Board-granted authority cannot be exercised.[5]

On December 23, 2004, BNSF filed, in STB Finance Docket No. 34645, *The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—State of South Dakota*, a verified notice of exemption under 49 CFR 1150.31 to acquire and operate the Core Lines. By decision served January 14, 2005,[6] the Board rejected BNSF's § 1150.31 exemption notice on the ground that the transaction contemplated by BNSF (the transfer of the Core Lines from modified certificate" status to § 10901 "railroad line" status) was not appropriate for consideration under the § 1150.31 "class exemption" procedure. The Board explained that, whereas the § 1150.31 class exemption typically applies to routine transactions that are not subject to substantial controversy and opposition, the transaction contemplated by BNSF was neither routine nor noncontroversial. Therefore, the Board required BNSF to file either a § 10502 exemption petition or a formal § 10901 application, in order to compile a record that would allow the Board to resolve the issues raised. The Board specified that BNSF should file a petition or an application as soon as possible; that BNSF should include, in this filing, its entire "case in chief"; that the State should submit its reply to this filing no later than the 21st day after the date on which the filing was made; that the State should include, in this submission, its entire case; and that BNSF should submit its response to the State's reply no later than the 14th day after the date on which the reply was filed.

On February 18, 2005, BNSF filed, in STB Finance Docket No. 34667, *BNSF Railway Company—Acquisition and Operation—State of South Dakota*, a formal "10901 application. This application seeks authority, under 49 U.S.C. 10901 and 49 CFR part 1150, subpart A (§ 1150.1 *et seq.*), to acquire and operate the Core Lines. The formal application filed in STB Finance Docket No. 34667 contemplates the same transaction that was contemplated by the class exemption notice previously filed in STB Finance Docket No. 34645: the transfer of the Core Lines from "modified certificate" status to § 10901 "railroad line" status.

As indicated in the decision served January 14, 2005, in STB Finance Docket No. 34645, comments respecting the BNSF application must be filed by March 11, 2005 (the 21st day after the date on which the application was filed), and replies to such comments must be filed by March 25, 2005 (the 14th day after March 11th).

The application filed by BNSF in STB Finance Docket No. 34667 is available for public inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. The application is also available for inspection at BNSF's offices, at 2500 Lou Menk Drive, in Fort Worth, TX. The application is also available for viewing and downloading at the Board's Web site, at *http://www.stb.dot.gov*. In addition, copies of the application may be obtained from BNSF's representatives (Adrian L. Steel, Jr., and Sarah W. Bailiff) at the addresses indicated above.

Board decisions and notices are available on the Board's Web site at *http://www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 2, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–4417 Filed 3–7–05; 8:45 am]

BILLING CODE 4915–01–P

[4] BNSF advises that, under the 1986 Operating Agreement, it currently operates over the Core Lines as a lessee (*i.e.*, the 1986 Operating Agreement provides for a lease of the Core Lines to BNSF).

[5] BNSF has acknowledged this point. *See* BNSF's application at 4: "BNSF recognizes that it will need to prevail in acquiring the Core Lines from the State whether through voluntary conveyance by the State or involuntary conveyance as may be ordered by the state court before BNSF can acquire title to the Lines.

[6] *The Burlington Northern and Sonto Fe Railway Compony C Acquisition and Operotion Exemption C State of South Dakota*, STB Finance Docket No. 34645 (STB served Jan. 14, 2005).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 2, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 7, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0854.
Project Regulation Number: LR–1214.
Type of Review: Extension.
Title: Discharge of Liens.
Description: The Internal Revenue Service needs this information to determine if the tax payer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.
Respondents: Individuals or Households, Business or other for-profit, Farms.
Estimated Number of Respondents: 500.
Estimated Burden Hours Respondent: 24 minutes.
Frequency of response: On occasion.
Estimated Total Reporting Burden: 200 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Christopher Davis,
Treasury PRA Assistant.
[FR Doc. 05–4437 Filed 3–7–05; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 28, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 7, 2005 to be assured of consideration.

Internal Revenue Service (IRS)
OMB Number: 1545–1483.
Form Number: IRS Form W–7.
Type of Review: Revision.
Title: Application for IRS Individual Taxpayer Identification Number.
Description: Regulations under IRC section 6109 provide for a type of taxpayer identifying number called the "IRS individual taxpayer identification number" (ITIN). Individuals who currently do not have, and are not eligible to obtain, social security numbers can apply for this number on Form W–7. Taxpayers may use this number when required to furnish a taxpayer identifying number under regulations. An ITIN is intended for tax use only.
Respondents: Individuals or Households.
Estimated Number of Respondents: 500,000.
Estimated Burden Hours Respondent: 1 hour 26 minutes.
Frequency of response: Other Individuals file once to get ITIN.
Estimated Total Reporting Burden: 715,000 hours.

OMB Number: 1545–1548.
Form Number: Rev. Proc. 2003–45.
Type of Review: Revision.
Title: Revenue Procedure 2003–45 Late Election Relief for S Corporation; Revenue Procedure 2004–48, Deemed Corporate Election for Late Electing S Corporations.
Description: The IRS will use the information provided by taxpayers under this revenue procedure to determine whether relief should be granted for the relevant late election.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Respondent: 1 hour.
Frequency of response: On Occasion.
Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1632.
Form Number: REG–118662–98 Final.
Type of Review: Extension.
Title: REG–118662–98 (Final) New Technologies in Retirement Plans.
Description: These regulations provide that certain notices and consents required in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.
Respondents: Individuals or Households, Business or Other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.
Estimated Number of Respondents: 375,000.
Estimated Burden Hours Respondent: 1 hour.
Frequency of response: On Occasion.
Estimated Total Reporting Burden: 477,563 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634. Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Christopher Davis,
Treasury PRA Assistant.
[FR Doc. 05–4438 Filed 3–7–05; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8889

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8889, Health Savings Accounts (HSAs).

DATES: Written comments should be received on or before May 9, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Health Savings Accounts (HSAs).

OMB Number: 1545–1911.

Form Number: 8889.

Abstract: Form 8889 is used to report contributions to and distributions from an HSA. The form will figure any HSA deduction that is entered on Form 1040. The form will also figure the amount of any taxable distributions from an HSA that is entered on Form 1040, and any distributions that are subject to the additional 10% tax that is entered on Form 1040.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,400,000.

Estimated Time Per Respondent: 29 min.

Estimated Total Annual Burden Hours: 3,234,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–4505 Filed 3–7–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
March 8, 2005

Part II

Federal Communications Commission

47 CFR Part 76

Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Implementation of Section 340 of the Communications Act; Notice of Proposed Rulemaking; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–49; FCC 05–24]

Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Implementation of Section 340 of the Communications Act; Notice of Proposed Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to implement Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), which creates Section 340 of the Communications Act of 1934, as amended ("Act"), and amends the copyright laws in order to provide satellite carriers with the authority to offer Commission-determined "significantly-viewed" signals of out-of-market broadcast stations to subscribers. This document achieves the SHVERA's statutory objectives to publish and maintain a list of the stations and the communities containing such stations that are eligible for "significantly viewed" status; and commence a rulemaking proceeding to implement new Section 340.

DATES: Submit comments on or before April 8, 2005; and reply comments must be filed on or before April 29, 2005. Written comments on the proposed information collection requirements contained in the document must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before May 9, 2005.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, *Evan.Baranoff@fcc.gov*, or Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking ("*NPRM*") FCC 05–24, adopted on February 4, 2005, and released on February 7, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This *NPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"), Public Law. 104–13, 109 Stat 163 (1995), and contains proposed information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the proposed information collection requirements contained in this *NPRM*, as required by the PRA. Written comments on the PRA proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before May 9, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; 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, ("SBPRA"), Public Law 107–198, 116 Stat 729 (2002), see 44 U.S.C. 3506(c)(4), comments should also address how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

The following existing information collection requirements would be modified if the proposed rules contained in the *NPRM* are adopted.

OMB Control Number: 3060–0311.

Title: 47 CFR 76.54, Significantly Viewed Signals; Method to be Followed for Special Showings.

Form Number: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 250.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time Per Response: 1–15 hours (average).

Total Annual Burden: 4,610 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.54(c) is used to notify interested parties, including licensees or permittees of television broadcast stations, about audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections. The proposed § 76.54(c) retains the existing notification requirement, but, if adopted, would increase the potential number of parties that would file such notifications. 47 CFR 76.54(e) and (f), if adopted, would be used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.

OMB Control Number: 3060–0888.

Title: Part 76, Multichannel Video and Cable Television Service; Pleading and Complaint Rules; 47 CFR 76.7 Petition Procedures.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time Per Response: 4–40 hours (average).

Total Annual Burden: 11,000 hours.

Total Annual Costs: $2,000,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.7 is used to make determinations on petitions and complaints filed with the Commission. The proposed rule changes, if adopted, would expand the potential number of parties and situations that may require the filing of § 76.7 petitions. Parties (cable operators and broadcast stations) are currently permitted to file § 76.7 petitions (with audience surveys) to demonstrate significantly viewed status under rule § 76.54. The proposed rule changes, if adopted, would authorize additional parties (satellite carriers) to file such § 76.7 petitions to demonstrate significantly viewed status under new Section 340 of the Act. Moreover, the proposed rule changes, if adopted, would authorize parties to file § 76.7 petitions in order to file a complaint under the Section 340 enforcement provisions.

OMB Control Number: 3060–0960.

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules; 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection; 47 CFR 76.127, Satellite Sports Blackout Rules.

Form Number: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,428.

Estimated Time Per Response: 0.5–1 hour (average).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 68,529 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.122, 76.123, 76.124 and 76.127 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network, syndicated, and sports programming in the broadcasters' recognized market areas. The proposed rule changes to §§ 76.122 and 76.123, if adopted, would implement statutory requirements to provide new rights for in-market stations to assert nonduplication and exclusivity rights, potentially increasing the number of filings pursuant to these rules. No changes to §§ 76.124 and 76.127 are proposed.

Summary of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking ("NPRM"), the Commission proposes rules to implement Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), Pub. L. No. 108–447, sec. 202, 118 Stat 2809, 3393 (2004) (to be codified at 47 U.S.C. 340). (The SHVERA was enacted on December 8, 2004 as title IX of the "Consolidated Appropriations Act, 2005." This proceeding is one of a number of Commission proceedings that will be required to implement the SHVERA. The other proceedings will follow according to the timeframes set forth in the SHVERA, to be undertaken and largely completely in 2005; *see* Sections 202, 204, 205, 207, 208, 209 and 210 of the SHVERA; see also public notice, "Media Bureau Seeks Comment For Inquiry Required By the on Rules Affecting Competition In the Television Marketplace," MB Docket No. 05–28, DA 05–169 (rel. Jan. 25, 2005).) Section 202 of the SHVERA creates Section 340 of the Communications Act of 1934, as amended ("Communications Act" or "Act"), which provides satellite carriers with the authority to offer Commission-determined "significantly viewed" signals of out-of-market (or "distant") broadcast stations to subscribers. The SHVERA imposes strict statutory deadlines, directing the Commission to (1) publish and maintain a list of stations eligible for "significantly viewed" status and the related communities (as determined by the Commission), and (2) commence a rulemaking proceeding to implement Section 340 of the Act, 47 U.S.C. 340, both within 60 days, thus enabling satellite carriage of such "significantly viewed" signals. The SHVERA was enacted by Presidential signature on December 8, 2004. The SHVERA also requires that the Commission adopt rules implementing Section 340 of the Act, 47 U.S.C. 340, within one year of the statute's enactment. Section 340(h) of the Act, 47 U.S.C. 340(h), directs the Commission to make specific revisions to § 76.66 of our rules, 47 CFR 76.66, with respect to carriage elections, retransmission consent negotiations and notifications to stations in local-into-local markets no later than October 30, 2005. These revisions will be addressed in a separate proceeding.)

2. With the SHVERA, Congress takes another step toward "moderniz[ing] satellite television policy and enhanc[ing] competition between satellite and cable operators." The SHVERA adopts for satellite carriers and subscribers the concept of "significantly viewed," which has applied in the cable context for more than 30 years. In 1972, the Commission adopted the concept of "significantly viewed" signals to differentiate between out-of-market television stations "that have sufficient audience to be considered local and those that do not." The Commission concluded at that time that it would not be reasonable if choices on cable were more limited than choices over the air, and gave cable carriage rights to stations in communities where they had significant over-the-air non-cable viewing. (At the time the Commission adopted the significantly viewed rules, the cable television carriage rules were generally based on mileage zones from the relevant stations. A television station was generally considered "local" for cable carriage purposes if the relevant community served was within 35 miles of the station's city of license or within its Grade B contour but not within the 35 mile zone of another market. Cable system carriage of significantly viewed stations, however, was based on audience viewership levels in the relevant communities rather than by strict mileage zones. This afforded significantly viewed stations carriage when they otherwise would have been considered distant stations, 47 CFR 76.5(i), 47 CFR 76.5(i).) The designation is salient because it has enabled stations assigned to one market to be treated as "local" stations with respect to a particular cable community in another market.

3. The copyright provisions that apply to cable systems have recognized the Commission's designation of stations as "significantly viewed" and treated them, for copyright purposes, as "local," and therefore subject to reduced copyright payment obligations. The copyright provisions governing satellite carriers did not, however, provide a statutory copyright license for significantly viewed signals, and as a consequence such signals are not, as a practical matter, generally available for carriage for satellite distribution outside of their Designated Market Areas ("DMAs"). Recognizing that the reach of a station's over-the-air signal is not constrained by the boundary of a DMA, the SHVERA now will allow a satellite carrier to treat an otherwise distant signal as "local" in a community where such signal is "significantly viewed" by consumers in that community. (A DMA generally identifies a television station's "local market."). In this way, the statutory provisions governing satellite carriage of broadcast stations move

closer to the provisions that have long governed cable carriage.

II. Background

A. Satellite Home Viewer Act (SHVA)

4. In 1988, Congress passed the Satellite Home Viewer Act ("1988 SHVA"), which established a statutory copyright license for satellite carriers to offer subscribers who could not receive the signal of a broadcast station over the air access to broadcast programming via satellite. The 1988 SHVA reflected Congress' intent to protect the role of local broadcasters in providing over-the-air television by limiting satellite delivery of network broadcast programming to subscribers who were "unserved" by over-the-air signals. The 1988 SHVA, however, did permit satellite carriers to offer distant "superstations" to subscribers.

B. Satellite Home Viewer Improvement Act of 1999 (SHVIA)

5. In the Satellite Home Viewer Improvement Act ("SHVIA"), Congress expanded on the 1988 SHVA by amending both the 1988 copyright laws and the Communications Act to permit satellite carriers to retransmit local broadcast television signals directly to consumers. Generally, the SHVIA sought to level the competitive playing field between satellite and cable operators, thereby providing consumers with more and better choices when selecting a multichannel video programming distributor ("MVPD"). The Commission undertook a number of rulemakings to implement the SHVIA, adopting rules for satellite companies with regard to mandatory carriage of broadcast signals, retransmission consent, and program exclusivity that closely paralleled the requirements for cable service.

6. A key element of the SHVIA was to provide satellite carriers with a statutory copyright license to facilitate the retransmission of local broadcast programming, or "local-into-local" service, to subscribers. A satellite carrier provides "local-into-local" service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. Generally, a television station's "local market" is the DMA in which it is located. (Section 340(i)(1) of the Act, 47 U.S.C. 340(i)(1), as established by the SHVERA, defines the term "local market" using the definition contained in 17 U.S.C. 122(j)(2).) DMAs, which describe each television market in terms of a unique geographic area, are established by Nielsen Media Research based on measured viewing patterns. Each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that has made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA or the station does not provide a good quality signal to the carrier's local receive facility. This is commonly referred to as the "carry one, carry all" requirement; *see* 47 U.S.C. 338.

C. Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA)

7. In December 2004, Congress passed and the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004, which again amends the 1988 copyright laws and the Communications Act to further aid the competitiveness of satellite carriers and expand program offerings for satellite subscribers; *see* the Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108–447, 118 Stat 2809, 3393 (2004) (codified in scattered sections of 17 and 47 U.S.C.). Section 102 of the SHVERA creates a new 17 U.S.C. 119(a)(3) to provide satellite carriers with a statutory copyright license to offer "significantly viewed" signals as part of their local service subscribers. The 1999 SHVIA opened the door for satellite carriers to offer local broadcast programming to subscribers, but the SHVIA copyright license for satellite carriers was still more limited than the statutory copyright license for cable operators. Specifically, for satellite purposes, "local," though out-of-market (i.e., "significantly viewed") signals were treated the same as truly "distant" (e.g., hundreds of miles away) signals for purposes of the SHVIA's statutory copyright licenses in 17 U.S.C. 119 and 122. The SHVERA is intended to correct this particular inconsistency by giving satellite carriers the option to offer Commission-determined "significantly viewed" signals to subscribers.

III. Discussion

8. The SHVERA creates Section 340 of the Act, 47 U.S.C. 340, and expands the statutory copyright license for satellite carriers contained in 17 U.S.C. 119 to establish the framework for satellite carriage of Commission-determined "significantly viewed" signals. As required by the SHVERA, we open this rulemaking proceeding, publish the existing list of significantly viewed stations, and seek comment on implementation of Section 340 of the Act, 47 U.S.C. 340, and on the specific rule proposals and tentative conclusions contained herein.

A. Station Eligibility for Satellite Carriage as "Significantly Viewed"

9. In this section, we will consider which stations are eligible for "significantly viewed" status in which communities pursuant to the statutory copyright license contained in 17 U.S.C. 119(a). We will also consider how stations and the related communities can become eligible for such status. Such examination requires discussion of the interplay of the Section 340 of the Act, 47 U.S.C. 340, requirements with the Commission's network nonduplication and syndicated exclusivity rules. We must also consider how to define a satellite community in this context.

1. "Significantly Viewed" Status

10. The SHVERA specifies two ways for a station to be eligible for "significantly viewed" status. Section 340(a) of the Act, as created by the SHVERA, authorizes a satellite carrier "to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

(1) Has, before the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or

(2) Is, after such date of enactment, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community."

Therefore, to obtain "significantly viewed" status, a station must either (1) be determined by the Commission to be "significantly viewed," as of December 7, 2004 (*i.e.*, must be on the Commission's "Significantly Viewed List" or "SV List"), or (2) obtain a "significantly viewed" determination by the Commission (*i.e.*, must be added to the "Significantly Viewed List"). There is no statutory limit on the number of significantly viewed signals a satellite carrier may carry.

2. List of Significantly Viewed Stations and Communities

11. Section 340(c) of the Act, 47 U.S.C. 340(c), directs the Commission to publish and maintain a unified list of significantly viewed stations, and the communities containing such stations, that will apply to both cable operators and satellite carriers. The provision also requires that the Commission make this list of significantly viewed stations with related communities available to the public on our Web site, and update this list within 10 business days after taking an action to modify the list. (At the completion of this rulemaking proceeding, the final list will be published on the Commission's Web site at *http://www.fcc.gov/mb,* and, as further required by SHVERA, we will update the list as it appears on the website within 10 days of any modifications.)

12. In accordance with the SHVERA, we have compiled a list of stations that have been granted significantly viewed status pursuant to the Commission's cable television rules. This list ("SV List"), attached as Appendix B, is a list of significantly viewed stations and the communities containing such stations combining the Commission's original 1972 list of significantly viewed stations granted on a county-wide basis with stations added on a county or community-wide basis over the intervening years. (The Commission's initial list of significantly viewed stations was released in 1972. The SV List also includes stations granted significantly viewed status subsequent to 1972. These latter stations and communities have not been previously published by the Commission, but have been included in a list maintained and published annually in Warren Publishing's Cable & Station Coverage Atlas (Warren Publishing Inc., Washington DC). The most recent version of Warren Communications News' significantly viewed list can be found at: Cable and Station Coverage Atlas, Warren Communications News' (Appendix B) (2004). The SV List indicates by a plus sign (+) those that have been added to the 1972 list after its publication to distinguish them from those stations and communities derived from the original 1972 list. We do not believe that this distinction is meaningful for the future and intend to eliminate this designation from the final SV List to be published at the conclusion of this proceeding.) When the Commission initiated the cable carriage rules in 1972, the goal was to be broadly inclusive in order to provide a wide range of programming choices for cable viewers by designating significantly viewed stations on a county-wide basis. The Commission provided that, after this initial period, stations can be added to the list on the basis of community surveys that focus on the area in which the station is significantly viewed. In addition, stations beginning operation after the initial survey period can use the county-wide methodology comparable to that used by Arbitron for the initial survey in lieu of a community-based survey.

13. As explained below, some stations on the SV List have been the subject of waivers and program deletions based on network nonduplication or syndicated exclusivity. The SV List indicates by a pound sign (#) the stations and related communities thus subjected to programming deletions. Cable operators and satellite carriers must be aware of these required programming deletions ("blackouts") and abide by them in their carriage of these stations in the communities so indicated.

14. Based on the short time frame mandated by the SHVERA for publication of the SV List, as well as the legislative history, we believe that Congress intends for satellite carriers to make use of the SV List to expand their carriage offerings so that their subscribers can begin to experience the benefits of the SHVERA as soon as possible. We are confident that the SV List appended to this *NPRM* has a high degree of accuracy and, therefore, believe that both cable and satellite carriers may rely on its validity to commence service, consistent with the other requirements set out in the SHVERA and this proceeding, prior to the adoption of a final list. Nevertheless, in light of the length and age of the SV List, we are asking all interested parties to review the SV List to confirm its accuracy. We seek comment here only about whether the SV List accurately reflects such existing significantly viewed determinations, and not about whether the SV List should be modified because of a change in a station's circumstances subsequent to its placement on the SV List. (We are publishing the SV List in accordance with the SHVERA's mandate in new Section 340(c)(1)(A)(i), 47 U.S.C. 340(c)(1)(A)(i). The purpose of this SV List is to identify "the stations that are eligible" for significantly viewed status, meaning those stations already determined to be significantly viewed by the Commission. The House Commerce Committee intended that the Commission publish the SV List within 180 days of enactment, and provided for "interim eligibility" for stations on the list. The intent was for satellite carriers to "start carrying the signals on the list pending adoption of the rules." Although the "interim eligibility" language did not survive, the enacted provision required even faster publication of the SV List (*i.e.,* within 60 days). We believe this indicates Congress' interest in permitting immediate use of the SV List upon publication. As discussed below in Section III.A.3, the SHVERA provides for a mechanism for parties to subsequently seek modification of the SV List. Requests to modify the SV List based on changed circumstances must follow this process. Parties may file comments in response to this *NPRM* describing the nature and basis of any error, including changes in call sign or community. Such comments must include documentary evidence supporting the requested correction. If we find that a station or community has been listed in error, carriage of such signals in such communities will no longer be permitted pursuant to the significantly viewed provisions pertaining to satellite carriers. We believe, however, that carriage instituted in reliance on the SV List, and otherwise in compliance with the SHVERA and the Commission's rules, should not be treated as a "bad faith" violation, notwithstanding a subsequent conclusion that the SV List was in error.

15. With respect to the SV List, we seek specific comment on how to treat communities listed as "unincorporated areas," as well as how to treat communities that have grown or changed over time, either through annexation or other means. We tentatively conclude that community listings or descriptions should generally be interpreted to encompass the area of natural growth of the community, such that we would apply the community description on the SV List to the community so denominated today. We recognize, however, that unincorporated areas present a somewhat more difficult problem because they may not be as clearly defined as are incorporated areas. We seek comment on how best to resolve treatment of unincorporated areas.

3. Procedures for Determining or Modifying Significantly Viewed Status

16. Section 340(c) of the Act, 47 U.S.C. 340(c), provides a procedure for modifying the SV List, either to add eligible stations or communities, or restrict use of eligible stations through application of the Commission's network nonduplication or syndicated exclusivity rules. This provision permits a satellite carrier or station to petition the Commission to include a particular

station and related community on the significantly viewed list. Section 119(a)(3) of the copyright provisions in title 17, 17 U.S.C. 119(a)(3), requires that the Commission use the same rules in considering such petitions that were in effect as of April 15, 1976. Therefore, it is necessary to describe the existing rules and propose how they will be amended to implement the requirements of the SHVERA.

17. The Commission adopted the significantly viewed standard in 1972. The rules that set the standard also established the definition of "full network," "partial network," and "independent" station; *see* 47 CFR 76.5(i), (j), (k), and (l). The standard applies only to over the air viewing and only to commercial stations. As discussed below, these definitions differ from the copyright definition of "network station" and must be harmonized for our implementation of the SHVERA requirements. The Commission's rules provide that an out-of-market network affiliate should be considered to be significantly viewed if it obtains at least a three percent share of viewing hours in television homes in the community and has a net weekly circulation share of at least 25 percent. For independent stations, the test is a share of at least two percent viewing hours and a net weekly circulation of at least five percent. In 1972, the Commission used 1971 American Research Bureau (ARB) information to establish a baseline list of significantly viewed signals. This data provided audience statistics on a county basis. Although the Commission recognized some drawbacks in using this information, it concluded that county audience statistics could be used to indicate over-the-air viewing in all communities within a county. This list of significantly viewed signals is referred to as the "1972 Appendix B" list. To avoid disruption and uncertainty, the Commission stated that the stations deemed significantly viewed based on the ARB survey are not subject to deletion on the basis of some special showing or later survey.

18. In the 1972 Order, the Commission also established procedures for qualifying new signals for significantly viewed status. Under § 76.54 of the rules, 47 CFR 76.54, parties may submit surveys conducted by a disinterested professional organization that is independent from the cable systems or television stations ordering the surveys. The surveys must include the results of two weekly periods separated by at least 30 days, and one of the weeks must be outside the summer viewing period (*i.e.*, April-September). The Commission recognized that the results of sample surveys can only be determinative within a given probability. Therefore, to assure that the survey errs on the side of excluding stations that are not actually significantly viewed, the Commission decided to require that the sample results exceed the significantly viewed standard, currently specified in § 76.5(i) of the rules, by at least one standard error. (A "standard error" is a statistical measure used to assess, at a specified probability, that the sample estimate reflects the actual result had the entire universe been surveyed. Using one standard error, we can be approximately 70 percent certain that the actual audience statistic is the reported statistic plus or minus one standard error. The calculation of the standard error takes into account the sampling procedure, the sample size and the sample result.) Initially, the Commission required separate surveys for each cable community, but the rule was revised to allow a single survey where a cable system served multiple communities. Thus, if a cable system serves more than one community, a single survey may be taken, provided that the sample includes noncable television homes from each community that are proportional to the population.

19. Section 76.54(d) of our rules, 47 CFR 76.54(d), adopted in 1975, amended the rules to permit television stations that were not on the air at the time the ARB surveys were used to create the 1972 Appendix B list to demonstrate their significantly viewed status using county-wide audience surveys in lieu of the more burdensome community-by-community method. For such stations, significantly viewed status may be demonstrated on a county-wide basis using independent professional audience surveys which cover three separate, consecutive four-week periods and are otherwise comparable to the surveys used to compile the 1972 Appendix B list. Under this rule, a demonstration that a station is significantly viewed must be based on audience survey data from the station's first three years of operation. Where surveys are conducted pursuant to § 76.54(d) of our rules, the Commission concluded that the potential for an unrepresentative sample was considerably lessened by the adoption of a longer survey period. Accordingly, the Commission decided not to require that the results be subject to the standard error requirement and the survey results must simply meet the significantly viewed standard for the station type specified in § 76.5(i) of our rules.

20. The SHVERA requires the Commission to use the rules "applicable to determining with respect to a cable system whether signals are significantly viewed in a community" as "in effect on April 15, 1976." It is clear from the SHVERA that Congress intends for the Commission to use the same rules and process for making significantly viewed determinations for satellite carriage as we have used for such determinations in the cable carriage context. We thus tentatively conclude to apply § 76.54 of our rules to satellite carriage. Consistent with Section 340 of the Act, 47 U.S.C. 340, and Section 119(c)(3) of title 17, 47 U.S.C. 119(c)(3), we propose to amend § 76.54 of our rules, 47 CFR 76.54, to include application to satellite carriers. We do not believe that the SHVERA prevents us from making the very amendments that are needed to implement the statutory provisions. Our proposed § 76.54 does not alter the procedures as in effect on April 15, 1976, but is simply amended to make reference to satellite carriers and the new SV List. We also propose to amend § 76.54 to update the existing reference to "Grade B contour," which applies to analog stations, to add "noise limited service contour," the service contour relevant for a station's digital signal. We note that the Commission has previously decided that the digital signal of a television broadcast station will be accorded the same significantly viewed status as that of the analog signal, except that where the station is broadcasting only a digital signal, the station must petition for significantly viewed status using the analog requirements in § 76.54. We further propose to amend § 76.54 to eliminate an outdated reference and correct a typographical error, neither of which changes in any way the substance or the process of the rule. In light of the statutory restriction to use rules in effect on April 15, 1976, we seek comment on our proposed amendments to § 76.54. Additionally, we propose to require satellite carriers or broadcast stations seeking satellite carriage to follow the same petition process now in place for cable operators, as required by §§ 76.5, 76.7 and 76.54 of our rules. We believe, however, that it is not necessary to amend §§ 76.5 and 76.7 in order to permit the filing of such petitions for significantly viewed status by satellite carriers or broadcast stations seeking satellite carriage. A station or cable operator that wishes to have a station/community designated significantly viewed would file a petition pursuant to

the pleading requirements in § 76.7(a)(1) and use the method described in § 76.54 to demonstrate that the station is significantly viewed as defined in § 76.5(i). We seek comment on our proposal and tentative conclusion.

4. Definition of "Network Station"

21. As mentioned above, our rules define network station as one of the "three major national networks." This definition is expressly relied upon in the standard for determining whether a station is significantly viewed for placement on the SV List. The SHVERA, however, relies on the definition of "network station" that is used in the copyright provisions of title 17, which provides that a "network station" is:

"(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or (B) a "noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934 [47 U.S.C. 397])" (47 U.S.C. 340(i)(2); 47 U.S.C. 339(d)(3) and 17 U.S.C. 119(d)(2); 17 U.S.C. 119(d)(2); 47 U.S.C. 340(i)(2); 47 U.S.C. 339(d)(5 47 CFR 76.66(a)(5); Section 339(d)(5) of the Act; 47 U.S.C. 339(d)(5)).

22. The Commission's rules define three types of commercial stations for which significantly viewed status may be recognized: Full, partial, and independent. The SHVERA, however, relies on the copyright definitions of "network" and "superstation."

23. Our significantly viewed rules for satellite carriers must follow SHVERA's requirement that we retain the standard we have used since April 15, 1976, which prevents us from updating these rule provisions for this purpose. Therefore, we propose to harmonize the apparent inconsistencies by continuing to use the definition of network and independent station in our rules for purposes of determining whether a station is significantly viewed for placement on the SV List, which thereby excludes noncommercial stations from eligibility for the SV List. However, as also required by the SHVERA, we will use the copyright definition of network station and superstation for purposes of subscriber eligibility and the other applications of the significantly viewed provisions. We seek comment on these tentative conclusions.

5. Limitations on Carriage of Significantly Viewed Stations Based on Network Nonduplication and Syndicated Exclusivity

24. Section 340(a)(1) of the Act, 47 U.S.C. 340(a)(1), limits satellite carriage of stations included on the SV List "to the extent such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules." In the cable context, a commercial television station may assert "network nonduplication rights" to prevent a cable system within the geographic zone specified in the Commission's rules from carrying programming that duplicates the network programming for which the station has exclusive rights based upon its affiliate agreement with the network. Similarly, a television station or distributor may prevent a cable system within the geographic zone specified in the Commission's rules from carrying programming broadcast by any other television station if the exclusive rights to that programming are held by the station or distributor. Assertion of these rights, collectively known as the "cable exclusivity" rules, generally results in the blacking out of the programming in question. The cable system may continue to carry the station's signal, provided the duplicating programming is blacked out, or it may decide to cease carriage of the station's signal entirely. However, the rules further provide that a station whose programming is subjected to an assertion of either of the exclusivity rules is exempt if it is "significantly viewed" in the relevant cable community. The significantly viewed exception to the Commission's exclusivity rules is based on an otherwise distant station establishing that it receives a "significant" level of over-the-air viewership in a subject community. If this viewership level is met, the station is no longer considered distant for purposes of the application of the Commission's exclusivity rules because it has established that it can be received over-the-air in the subject communities. Thus, a cable system is not required to black out the duplicating programming of a significantly viewed station.

25. Notwithstanding the significantly viewed exemption to the cable exclusivity rules, the station or distributor asserting exclusivity protection may petition the Commission to waive the significantly viewed exception to permit a reassertion of exclusivity protection against a station claiming "significantly viewed" status. If the station or distributor asserting exclusivity demonstrates that the station claiming the significantly viewed exemption no longer merits significantly viewed status, the waiver is granted, and the duplicating programming must be blacked out. Thus, as described above, the Commission's SV List includes all stations deemed to be significantly viewed but indicates by a pound sign (#) those communities in which a waiver has been granted to permit assertion of the exclusivity rules.

26. The satellite context is somewhat more complicated. The exclusivity rules do not apply to satellite carriage of network stations but only to carriage of "national distributed superstations," as provided by Section 339(b)(1)(A), 47 U.S.C. 339(b)(1)(A), which was enacted by the SHVIA in 1999. Section 340(e) of the Act, 47 U.S.C. 340(e), maintains the status quo by providing that the exclusivity rules shall not apply to distant network stations. Section 340(e)(1), however, allows the Commission to adopt rules to permit assertion of the exclusivity rules by stations and distributors with respect to stations carried by satellite carriers pursuant to the new significantly viewed provisions. This provision requires us, therefore, to (1) create a limited right for a station or distributor to assert exclusivity with respect to a station carried by a satellite carrier as significantly viewed; (2) allow that significantly viewed station to assert the significantly viewed exception, just as a station would with respect to cable carriage; and (3) allow the station or distributor asserting exclusivity to petition us for a waiver from the exception. Thus, Congress directs the Commission to ensure parity between cable operators and satellite carriers so that a station's programming that is subject to blackout deletions with respect to a cable system serving a cable community would also be subject to deletions for a satellite carrier's subscribers within the same cable community or within a satellite community.

27. We will implement these SHVERA requirements first by denoting on the SV List which stations in which communities have been subjected to deletions such that duplicating programming must be blacked out by cable operators. Satellite carriers using the SV List may carry these stations but are subject to the same programming deletions that apply to cable systems. Second, we will amend our rules so that stations and distributors may assert exclusivity rights with respect to satellite carriage of significantly viewed stations but only insofar as they can prove that the conditions supporting a

waiver of the significantly viewed exception from the exclusivity rules would apply. We seek comment on this approach to effectuate Congressional provisions and intent.

6. Definition of "Satellite Community'

28. The SHVERA requires the Commission to define "community" in the satellite context. Under the SHVERA, a "community" is either (1) a county or a cable community under the Commission's rules (applicable to significantly viewed signals), or (2) a satellite community as defined by the Commission in implementing the statute; *see* 47 U.S.C. 340(i)(3). The concept of a "community" is important in the SHVERA because the term describes the geographic area where subscribers will be permitted to receive significantly viewed signals.

29. Because the Commission's rules have previously only applied to cable carriage of significantly viewed signals, significantly viewed determinations currently are limited to cable communities. In the cable context, the Commission defined a community unit in terms of a "distinct community or municipal entity" where a cable system operates or will operate. Due to the localized nature of cable systems, cable communities were easily defined by the geographic boundaries of a given cable system, which are often, but not always, coincident with a municipal boundary and may vary as determined on a case-by-case basis.

30. The concept of a cable community is largely inapplicable to the satellite context. Unlike cable service which reaches subscribers via local franchises across the country, satellite carriers offer service on a national basis, with no connection to a particular local community or municipality. Moreover, satellite service is offered in areas of the country that do not have cable service, and thus are not cable communities. Nevertheless, based upon the statutory language that the satellite carriers should use the existing list, we believe that, where a cable community is already defined, the statute requires a satellite carrier to use that defined "community." We seek comment on this interpretation. We also seek comment on whether satellite carriers will be able to determine which of their subscribers are in existing communities and, if not, how best to apply existing cable communities to the satellite context.

31. In the context of adding future "communities" to the SV List, we seek to establish a definition of "satellite community" that will be appropriate for the nature of satellite service, including the opportunity to offer significantly viewed signals in a community where no cable system exists. The definition of satellite community will apply where a satellite carrier seeks to define a community not currently served by cable. We are proposing two alternative approaches and seek comment on these alternatives as well as invite comment on other possible definitions. One option would permit a carrier to seek significantly viewed status for a given station with respect to one or more specified five-digit zip code areas. (We propose to use the five-digit zip codes, as determined by the U.S. Postal Service.) For example, a satellite carrier or station could petition the Commission for a significantly viewed designation pursuant to § 76.54 by listing one or more zip codes and demonstrating that the signal is significantly viewed in these zip codes collectively. If zip codes are aggregated to define a single community, we propose to require satellite carriers to demonstrate significantly viewed status by taking a survey that includes a sample of noncable television homes from each zip code included in the "community" which is proportional to the population. This proportional sampling is consistent with the existing cable rules that require the use of proportional surveys where more than one community is involved. We believe that zip code based communities can be appropriate for this purpose because they capture all areas of the country, including areas now unserved by cable, and provide a practical and efficient approach for satellite carriers to utilize the significantly viewed carriage option offered in the SHVERA. We note that the Commission has previously used zip codes in the satellite context; *e.g.*, to define the various zones of protection afforded under the satellite exclusivity rules. We further propose that a satellite community defined by one or more such zip codes is subject to any subsequent changes made to the listed zip codes by the U.S. Postal Service. Ideally, we would forecast for an area without cable what the franchise area would be were a cable operator to establish cable service. However, in areas currently unserved by cable, this forecasting may not be feasible. In this regard, if a cable operator subsequently offers cable service in a community after it has been defined as a "satellite community," we seek comment on whether we should continue to use the zip code-defined satellite community or, instead, redefine the community to the extent it overlaps with the franchise area of the new cable community.

32. We recognize that the first proposal, use of one or more zip codes to define a satellite community, may ignore an existing town, village, municipality or other geopolitical entity that constitutes a "community" in the more traditional sense. Using one or more zip codes could create an artificial "community" with no minimum or maximum size, except as bounded by a postal zip code map. The alternative proposal would define a satellite "community" as a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of the incorporated areas would be the existing geopolitical boundaries, while the unincorporated community would be defined by one or more five-digit zip code areas. We think that this approach may make it more likely that a cable system subsequently built in such an area would serve a "community" similar to the satellite community, thus making the SV List more easily used by both cable and satellite providers. We seek comment on both alternatives and invite additional variations on these or other proposals.

7. Significantly Viewed Carriage Not Mandatory; Retransmission Consent Rights Not Affected

33. The SHVERA does not require satellite carriers to carry significantly viewed stations. The SHVERA also does not change the retransmission consent requirements. Cable operators must obtain retransmission consent to carry significantly viewed signals, and the SHVERA requires the same of satellite carriers. The SHVERA provides, however, that retransmission consent is not necessary if the satellite carrier is exempt from having to obtain retransmission consent for other reasons. For example, a satellite carrier is exempt under Section 325(b) of the Act, 47 U.S.C. 325(b), from having to obtain retransmission consent when providing a distant signal of a network to an unserved subscriber who cannot receive an over-the-air signal from an affiliate of the same network. Thus, under the SHVERA, the satellite carrier would still be exempt from having to negotiate retransmission consent when providing a significantly viewed signal if it was providing it as a distant signal to an unserved household.

34. We note that the SHVERA requires that local stations must be carried on a single dish; *see* 47 U.S.C. 338(g)(1). Does this requirement with respect to local stations apply to out-of-market significantly viewed signals? If so, does

the statute necessarily require that out of market significantly viewed signals be carried such that the subscriber would receive them on the same antenna and equipment as the local signals? We seek comment on these questions.

8. Definition of "Satellite Carrier"

35. The SHVERA defines the term "satellite carrier" in new Section 338(k) of the Act by reference to the definition in the copyright title 17. This definition includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license. We believe that the definition of "satellite carrier" would include all three types of entities described above but we nevertheless seek comment on this issue.

B. Subscriber Eligibility To Receive "Significantly Viewed" Signals

36. In addition to the statutory requirements concerning station eligibility, the SHVERA also limits the subscribers who are eligible to receive the signals of significantly viewed stations. In general, subscribers are not eligible to receive out-of-market significantly viewed signals of a network station unless they are already receiving the local signal of an affiliate of the same network via satellite. Application of this general principle differs, however, depending on whether the significantly viewed signal is analog or digital, with additional restrictions imposed on digital signals. The subscriber eligibility limitations also provide for an exception where there is no local network station present in the relevant market or when a local network station waives the subscriber eligibility requirements. But first, we will consider the definition of "subscriber."

1. Definition of "Subscriber"

37. The SHVERA defines the term "subscriber" in new Section 338(k) by reference to the definition in 17 U.S.C. 122(j)(4), which provides that a subscriber is "a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor. Notably, the definition used by SHVERA differs slightly from the definition of subscriber currently contained in 17 U.S.C. 119, which establishes the significantly viewed compulsory copyright license for satellite carriers. The definition in 17 U.S.C. 119 limits "subscribers" to individuals in private homes. We believe use of the broader definition in 17 U.S.C. 122(j)(4) was intentional because Congress sought to treat satellite subscribers to significantly viewed stations in the same manner as satellite subscribers to local-into-local service. The 17 U.S.C. 119 definition applies to "distant" signals, to which significantly viewed signals represent an exception. We believe the statute is clear on this point but seek comment on this tentative conclusion. Subscriber in the more general sense, including a cable subscriber, is defined in our rules and amended here to include subscribers to satellite service.

2. Analog Service Limitations; Receipt of Local Analog Service Required

38. The SHVERA requires that a subscriber "receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338" to be eligible to receive an out-of-market network station's significantly viewed analog signal. We believe this means that subscribers receiving "local-into-local" service from their satellite carrier are eligible to also receive significantly viewed signals, and that the fundamental intention is to assure that a subscriber is receiving the local affiliate of the same network as the significantly viewed station. We base this interpretation of Section 340 of the Act, 47 U.S.C. 340, on the limitation of this eligibility requirement only to significantly viewed "network" stations, as well as language in the House Commerce Committee Report. However, the statutory copyright license in Section 119(a)(3) of title 17 provides that the limitation applies to both superstations and network stations. Thus, it appears that a satellite carrier must be offering local-into-local service and a subscriber must be receiving this service as a pre-condition to offering an out-of-market significantly viewed station's signal to that subscriber (subject to the exception described below). We seek comment on our tentative conclusion.

39. Because the statute specifically applies to the receipt of local service "pursuant to Section 338," we believe that subscribers would not qualify for satellite retransmission of out-of-market significantly viewed signals if they are obtaining local stations via an over-the-air TV antenna, including one that is integrated with a satellite dish. It is not clear what the result would be if a subscriber is receiving local-into-local service but the local affiliate of the network with which the significantly viewed station is affiliated is not carried by the satellite carrier. Such situation could arise if the local station failed to request carriage, refused to grant retransmission consent, or otherwise did not qualify for carriage pursuant to Section 338. We tentatively conclude that a subscriber receiving local-into-local service in a market is eligible for out-of-market significantly viewed stations even if the local stations retransmitted by the satellite carrier exclude an affiliate of the network with which a significantly viewed station is affiliated. We do not think that a subscriber should be deprived of access to a significantly viewed station because the local station refused to grant retransmission consent or is otherwise ineligible for local carriage, but we seek comment on this tentative conclusion.

40. Although Section 340 of the Act, 47 U.S.C. 340, does not specifically restrict application of this subscriber eligibility requirement to markets in which satellite carriers are offering "local-into-local" service to subscribers, Section 119(a)(3)(B) of title 17 limits application of the statutory copyright license to the retransmission of significantly viewed stations to subscribers who receive local service pursuant to Section 122 of title 17. Therefore, we believe that the SHVERA, as a whole, contemplates that subscribers in a market in which "local-into-local" service is not being offered are not eligible for significantly viewed stations retransmitted by such carriers, except in the situations described in Section III.B.4., *infra*, in which there is no affiliate of a given network in the market. We seek comment on our tentative conclusions.

3. Digital Service Limitations; Receipt of Local Digital Service Required; Definitions of "Equivalent Bandwidth" and "Entire Bandwidth'

41. Similarly, to be eligible to receive an out-of-market network station's

significantly viewed digital signal, a satellite subscriber must be receiving a digital signal from a local affiliate of the station's same network via satellite. We note that most of the issues raised in our previous section about analog subscriber eligibility are also relevant to our discussion here regarding the general digital subscriber eligibility requirement. So as not to duplicate discussion of these issues, we seek comment on these issues as they relate to digital subscriber eligibility. Moreover, we tentatively conclude that these issues should be treated similarly with respect to the digital subscriber eligibility requirement. We seek comment on these issues and tentative conclusions.

42. In addition, the SHVERA specifies certain "bandwidth" requirements for the retransmission of the local network station's digital signal when a satellite carrier opts to retransmit the significantly viewed digital signal of an applicable affiliate station. Specifically, a satellite carrier's retransmission of a local network station's digital signal must either (1) occupy "at least the equivalent bandwidth as the digital signal retransmitted" or (2) comprise "the entire bandwidth of the digital signal broadcast by such local network station."

43. The SHVERA directs the Commission to define the terms "equivalent bandwidth" and "entire bandwidth." In formulating definitions for these terms, the Commission is required to ensure that a satellite carrier is not: (1) Prevented from using compression technology; (2) required to use the exact bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting; or (3) required to use the exact bandwidth or bit rate for a local broadcaster as it does for a distant broadcaster.

44. The concepts of "equivalent bandwidth" and "entire bandwidth" were created by Congress to prevent satellite carriage of a local network station's digital signal "in a less robust format" than the significantly viewed digital signal of an out-of-market network affiliate, such as by down-converting the local network station's digital signal from high-definition (HD) digital format to standard definition (SD) digital format while retaining the HD digital format for the affiliate's significantly viewed signal. The SHVERA, however, recognizes that not all local network stations will be broadcasting in HD or multicast format. Therefore, the SHVERA permits satellite carriage of an out-of-market network affiliate's significantly viewed digital signal in HD or multicast format while only carrying the local network station's signal in a single SD format when the local network station is only broadcasting in that single SD format. For example, if the local network station is broadcasting in multicast format, and the significantly viewed network affiliate is broadcasting in HD format, the satellite carrier may carry the HD signal of the significantly viewed network affiliate under the "equivalent bandwidth" requirement, provided that it carries the local network station's multicast signals. (The House Commerce Committee Report states that Section 340(b)(2)(B)(i)'s reference to "equivalent bandwidth" seeks "to ensure that the local affiliate's choice to multicast does not prevent the satellite carrier from retransmitting a significantly viewed signal of a distant affiliate of the network that chooses to broadcast in high-definition.") Another example is if the local network station is broadcasting in a single SD format, while the significantly viewed network affiliate is broadcasting in HD or multicast format. The "entire bandwidth" provision does not prevent carriage of the significantly viewed network affiliate in HD format. A satellite carrier may carry the HD or multicast signal of the significantly viewed network affiliate under the "entire bandwidth" requirement, provided that the satellite carrier carries the local network station's original SD format. (According to the House Commerce Committee Report, Section 340(b)(2)(B)(ii)'s reference to "entire bandwidth" was intended "to ensure that a satellite carrier could still retransmit a significantly viewed distant digital signal of a network affiliate in a more robust format than a digital signal of a local broadcaster of the same network so long as the satellite carrier is carrying the digital signal of the local affiliate in its original format.") We seek comment on these tentative conclusions.

45. We seek comment generally on the concepts of "equivalent bandwidth" and "entire bandwidth." While we believe the final order adopted pursuant to this *NPRM* will define these concepts as required by the statute, we do not believe it is necessary at this time to include definitions of these terms in our rules because they will, to some extent, depend upon specific circumstances in each case. The rules we propose provide that satellite carriers must abide by the "equivalent bandwidth" and "entire bandwidth" requirements. We believe that the choice of format by a satellite carrier in delivering the signal of the significantly viewed network affiliate will determine the format required for the signal of the local network station in order to be permitted to retransmit the significantly viewed signal in the relevant local community. We believe this may afford satellite carriers some flexibility with respect to the broadcast of multicast streams. For example, if a satellite carrier chooses to retransmit only a portion of the multicast signal of the significantly viewed network affiliate, it need only retransmit the local network station using the same amount of bandwidth. We seek comment on these issues and tentative conclusions.

46. We also seek comment on whether satellite carriers must use the same compression techniques for both the local network station and the significantly viewed network affiliate. We note that doing so may result in differences in real bandwidth and bit rate, depending on the programming content carried by the signal. For example, a significantly viewed network affiliate broadcasting a sporting event would use more bandwidth than a local network station broadcasting an interview (*i.e.*, talking head). In this example, should we apply the same compression standard to both stations, thereby precluding the significantly viewed sporting event? Instead, should only comparable content that uses a comparable bit rate be afforded equivalent bandwidth? Should we require only that the same amount of bandwidth be made available to the local network station, allowing the local station to choose the amount of bandwidth it needs? We seek comment on these issues. (The SHVERA provides that the "equivalent bandwidth" definition developed pursuant to new Section 340(h)(4), 47 U.S.C. 340(h)(4), will also apply to the provisions concerning "distant digital signals" of network stations in new Section 339(a)(2)(D)(iii)(II) of the Act, 47 U.S.C. 339(a)(2)(D)(iii)(II), as amended by Section 204 of the SHVERA.)

47. We note that the SHVERA expressly provides that the significantly viewed provisions pertaining to equivalent or entire bandwidth do not mandate carriage in the context of Section 338's "carry-one, carry-all" provisions. To avoid any ambiguity in this regard, the SHVERA requires that the Commission's definitions of equivalent and entire bandwidth do not affect (1) the definitions of "program related" and "primary video," or (2) a satellite carrier's carry-one, carry-all obligations. As discussed above, there is no requirement for a satellite carrier to carry the signal of a significantly viewed station. Thus, the provisions concerning

the carriage of the bandwidth of a local station's signal only come into play if and when a satellite carrier opts to carry a significantly viewed signal. Indeed, Section 340(d)(1) of the Act, 47 U.S.C. 340(d)(1), does not require carriage of a local network digital station at all, or in any particular format.

4. Exception to Subscriber Eligibility Limitations; Rule Not Applicable Where No Local Network Affiliates

48. The subscriber eligibility requirements in Section 340(b)(1) and (2) do not apply to the receipt of the signal of a significantly viewed network station for which there is no local network affiliate broadcasting in the relevant local market. This is meant as an exception to the requirement that subscribers must receive local service via satellite to be eligible to obtain significantly viewed stations. This exception permits a satellite carrier to carry a significantly viewed network affiliate where there is no local network station in a market. Should we require that local-into-local service be offered to subscribers in a market as a pre-condition to offering the signal of a significantly viewed station affiliated with a network that has no affiliate in the market in question? We seek comment on this question. We note that the statutory copyright license for significantly viewed carriage does not include language comparable to the exception in Section 340(b)(3). We seek comment on the effect of this difference between the copyright and Communications Act provisions on subscriber eligibility for significantly viewed signals.

49. We also consider the situation where a local network station is present in the market but is not broadcasting in digital format. In this case, subscribers would not have the opportunity to receive local digital service from the local network station. The station, however, may have a legitimate reason for not broadcasting in digital format. Because the station is present in the market, we believe the statute would prohibit subscribers from receiving significantly viewed stations in this situation. The legislative history suggests an intention to treat differently stations whose reason for failing to broadcast in digital is not excused by the Commission. (Notably, the House Commerce Committee Report: states: "Section 340(b)(3) does not allow provision of an out-of-market significantly viewed digital signal of a network broadcast station if a local affiliate from the same network is present in the market but not yet broadcasting a digital signal. Section 340(b)(3) operates in this fashion to ensure that a satellite carrier may not retransmit the out-of-market significantly viewed digital signal of a network broadcast station if an affiliate of that network is present in the local market but has never begun to offer a digital signal for a reason excused by the FCC.") We seek comment on these issues.

5. Privately Negotiated Waivers

50. Section 340(b)(4) permits a satellite carrier to privately negotiate with the local network station to obtain a waiver of the subscriber eligibility restrictions in Section 340(b). If such negotiations are successful, a satellite subscriber who is not receiving the local network affiliate via satellite may nevertheless receive the signal of a significantly viewed station affiliated with that network. It would seem from the statute that such a waiver could be as broad or as narrow as desired by the local network affiliate. According to the House Commerce Committee Report, pursuant to Section 340(b)(4), a local network affiliate would be able to waive the application of Sections 340(b)(1) or 340(b)(2) of the Act to one or more consumers in the local market, and with respect to one or more specific distant affiliates of the same network. It may do so as part of a negotiated agreement and for any reason, including common ownership among the stations.

51. In addition, the statutory copyright provisions, as amended by the SHVERA, describe the waiver process in greater detail. Subscribers may seek a waiver from the relevant local station through their satellite carrier. The statutory copyright license waiver is considered granted unless the local broadcaster acts within 30 days of receipt to reject the request. The statutory copyright license waiver provision sunsets on December 31, 2008, on which date no further waivers will be granted and those then in effect will terminate. We seek comment on the effect, if any, of this statutory copyright license waiver provision, in particular the sunset provision, on waivers granted pursuant to Section 340(b)(4).

52. We do not believe that Congress intended for the Commission to grant these waivers or preside over the waiver process of either provision. According to the House Commerce Committee Report, whether to grant a waiver is a decision to be made solely based on the broadcaster's own business judgment, and there is no requirement for stations to execute any particular document as part of the waiver process. Because such waivers are voluntary and expressly outside the Commission's purview, we tentatively conclude that there is no need for rules or procedures concerning waiver arrangements between stations and satellite carriers. We note, however, that the presence or absence of waivers could be relevant in an enforcement proceeding concerning significantly viewed carriage. In addition, based on the House Commerce Committee Report, we tentatively conclude that such waivers or agreements are not subject to the Section 325 good-faith negotiation requirement.

C. Certain Stations Deemed Significantly Viewed in an Eligible County

53. New Section 341(a) of the Act, 47 U.S.C. 341(a), as established by Section 211 of the SHVERA, authorizes the retransmission of certain stations deemed to be significantly viewed, in accordance with § 76.54 of our rules, "to subscribers in an eligible county." This provision limits an "eligible county" to very narrow circumstances, which we believe to be limited to the State of Oregon, based upon the specific reference to "41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003–2004." This provision specifies that these stations be "deemed significantly viewed" and thereby requires us to add stations in these eligible counties to the SV list. Because we do not know at this time which stations and counties might qualify, we are not including them now in the SV List in Appendix B, but we seek comment to identify and confirm the stations and counties that would meet this definition.

54. New Section 341(b) of the Act, 47 U.S.C. 341(b), prevents a satellite carrier from carrying "the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to unserved households located in that county." We believe this provision precludes the retransmission of a significantly viewed signal to a subscriber in an adjacent market if the adjacent market consists of only a part of one county. We believe that this provision applies only to the DMAs of Palm Springs and Bakersfield, because they are the only DMAs that appear to satisfy the definition. We seek comment on this interpretation of the scope and meaning of this provision.

D. Enforcement and Notice Provisions

1. Enforcement of Section 340

55. Section 340(f) of the Act, 47 U.S.C. 340(f), as added by Section 202 of the SHVERA, creates an enforcement mechanism for the new provisions

regarding satellite delivery of significantly viewed signals. Section 340(f)(1) contemplates that the Commission will respond to a complaint by issuing a "cease and desist order" and may provide for damages if requested and proven by the station filing the complaint. The SHVERA provides for monetary penalties up to $50 per subscriber, per station, per day if the station establishes that the satellite carrier committed the violation in bad faith, and provides that the Commission may impose similar damages on the complaining station if the Commission determines that the complaint was frivolous. The statute does not define "bad faith" or "frivolous," but there is some guidance in a floor statement by Subcommittee Chairman Upton. He explains that a satellite carrier that lacks a good faith belief that the carriage of the challenged signal was lawful or a broadcaster who seeks damages in bad faith would warrant a Commission finding of damages. He further notes that if the broadcaster filing the complaint does not seek damages, then a finding of damages against either party by the Commission would not be appropriate.

56. We are inclined to address allegations of bad faith or frivolousness on a case-by-case basis, but we seek comment on identifying particular circumstances that would generally warrant such a finding. For example, if the only violation of Section 340 of the Act, 47 U.S.C. 340, were the failure to notify all broadcast stations in a market 60 days prior to commencing carriage of the significantly viewed stations, would such conduct constitute bad faith by the satellite carrier? Would seeking damages for failure to notify one station constitute a frivolous complaint by a broadcaster? In addition, as noted above with respect to the SV List appended to this *NPRM*, we do not believe it would constitute bad faith for a satellite carrier to carry a station listed as significantly viewed in a community on the SV List while this proceeding is pending, even if the listing is later shown to be incorrect, provided the carrier follows the other statutory and regulatory requirements.

57. Section 340(f)(2), 47 U.S.C. 340(f)(2), requires the Commission to issue final determinations within 180 days of the filing of a complaint concerning Section 340. The statute permits but does not require the Commission to hold hearings to resolve genuine disputes over material facts. In light of the short time frame for resolving these complaints, the statutory specification of a "cease and desist" order as a remedy, and the express grant of discretion to the Commission to issue a final ruling based on written pleadings, we tentatively conclude that we will use our existing procedures for Petitions for Special Relief as the procedural framework for complaints concerning significantly viewed status. Because Section 340(f) expressly provides for issuance of a cease and desist order to remedy violations of the significantly viewed provisions but does not require a hearing, we conclude that we are not required to follow the provisions in Section 312(c) of the Act, 47 U.S.C. 312(c). The procedures for Petitions for Special Relief, which the Commission uses to process cable and satellite carriage complaints, as well as complaints concerning the exclusivity rules and other cable and satellite regulations, will afford the parties ample opportunity to raise and respond to allegations while ensuring that the Commission can complete action within the 180 day statutory deadline. We propose to require that parties follow the pleading requirements in § 76.7(a)(1) and (b)(1), 47 CFR 76.7(a)(1), (b)(1), for petitions, which will permit us to issue a ruling on complaints. We seek comment on this tentative conclusion.

58. Section 340(f)(3) and (4) provide that remedial action at the Commission pursuant to Section 340 of the Act, 47 U.S.C. 340, are in addition to and have no effect upon actions taken pursuant to title 17, the copyright provisions. The meaning of these provisions is clear that neither action nor inaction by the Commission will have any effect on the filing of a copyright infringement or other action under title 17, nor on the remedies ordered by the appropriate forum thereunder.

2. Notice Concerning Retransmission of Significantly Viewed Stations

59. Section 340(g) of the Act, 47 U.S.C. 340(g), requires satellite carriers to provide written notice to any television broadcast station in the relevant local market at least 60 days before retransmitting a significantly viewed signal into that local market pursuant to Section 340. The provision also requires satellite carriers to list on their websites all significantly viewed signals carried pursuant to Section 340.

60. Although the statute does not specify the manner of notice required in these circumstances, we tentatively conclude that these written notices must be sent to the station's principal place of business, as listed in the Commission's database, by certified mail, return receipt requested. We believe reliance on the information in the Commission's database is consistent with other provisions of the SHVERA. We believe that requiring that the notices be sent via certified mail, return receipt requested is consistent with our rules. We also propose to require satellite carriers to publish a list on their websites that will identify all of the significantly viewed signals they are carrying, by market and community. We seek comment on our proposed rules.

61. The SHVERA states that notice must be afforded to "any television broadcast station in such local market of such proposal." Given the breadth of this language, we tentatively conclude that this provision requires notice to stations in the relevant local market even if they are not affiliated with the same network of the significantly viewed station whose signal is being carried, regardless of whether they are carried by the satellite carrier as local stations pursuant to Section 338. We recognize that stations seemingly unaffected by the significantly viewed status of unaffiliated stations would nonetheless be entitled to receive such notice under our rules. We seek comment on our tentative conclusion.

IV. Procedural Matters

A. Initial Paperwork Reduction Act of 1995 Analysis

62. This *NPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"), and 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 proposed information collection requirements contained in this *NPRM*, as required by the PRA.

63. Written comments on the PRA proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before May 9, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; 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, ("SBPRA"), Pub. L. No. 107–198, 116 Stat 729 (2002), *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."

64. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov;* and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via Internet to *Kristy_L._LaLonde@omb.eop.gov,* or via fax at 202–395–5167.

65. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this *NPRM,* contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov.*

B. Ex Parte Rules

66. *Permit-But-Disclose.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation 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. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

C. Filing Requirements

67. *Comments and Replies.* Pursuant to §§ 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).

68. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

69. *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 (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- 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. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- 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 should be addressed to 445 12th Street, SW., Washington DC 20554.

70. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

71. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

72. *Additional Information.* For additional information on this proceeding, contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* or Eloise Gore, *Eloise.Gore@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Initial Regulatory Flexibility Act Analysis

73. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("*NPRM*"); *see* 5 U.S.C. 603. (The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").) 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 provided in Section IV.D. of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA); *see* 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

A. Need for, and Objectives of, the Proposed Rule Changes

74. Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA") creates Section 340 of the Communications Act of 1934, as amended, and amends the copyright laws to provide satellite carriers with the authority to offer Commission-determined "significantly-viewed"

signals of out-of-market broadcast stations to subscribers. Section 340 of the Act, 47 U.S.C. 340, directs the Commission, within 60 days of enactment of the SHVERA, to (1) publish and maintain a list of the stations and the communities containing such stations that are eligible for "significantly viewed" status, and (2) commence a rulemaking proceeding to implement new Section 340. This *NPRM* achieves these statutory objectives by opening the present proceeding and publishing a list of significantly viewed stations, and proposes rule changes to part 76 of the Commission's rules to implement Section 340's statutory authorization for satellite carriage of significantly viewed signals.

B. Legal Basis

75. The proposed action is authorized under Sections 1, 4(i) and (j), and 340 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 340.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

1. Entities Directly Affected By Proposed Rules

76. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted; *see* 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," small organization," and "small government jurisdiction;" *see* 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; *see* 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 SBA; *see* 15 U.S.C. 632. (Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.)

77. The proposed rules contained in this *NPRM*, as required by statute, are intended to permit the distribution of Commission-determined "significantly viewed" signals by statutorily defined "satellite carriers" to consumers. Therefore, "satellite carriers," which includes Direct Broadcast Satellite (DBS), will be directly and primarily affected by the proposed rules, if adopted. In addition, we believe the proposed rules, if adopted, will also directly affect television stations, which may be carried via satellite under the SHVERA if determined to be significantly viewed, and cable operators, which would share some of the new and revised rules with satellite carriers. We also believe that private cable operators (PCOs), also known as satellite master antenna television (SMATV) systems, may be directly affected because PCOs often use DBS video programming as part of their service package to subscribers. Therefore, in this IRFA, we consider, and invite comment on, the impact of the proposed rules on small television broadcast stations, small cable and satellite operators and other small entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

78. *Satellite Carriers.* The SHVERA defines the term "satellite carrier" by reference to the definition in the copyright title 17; *see* 17 U.S.C. 119(d)(6). This definition includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. (Part 100 of the Commission's rules was eliminated in 2002 and now both FSS and DBS satellite facilities are licensed pursuant to part 25 of the rules.) As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license. In the *NPRM*, we tentatively conclude that the definition of "satellite carrier" would include all three types of entities described above, but nonetheless request comment on this issue. Because the definition of "satellite carrier" will affect the type and number of entities impacted by the proposed rules, we again seek comment here, in the context of this IRFA.

79. *Direct Broadcast Satellite ("DBS") Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution; *see* 13 CFR 121.201, NAICS code 517510. This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DirecTV and EchoStar Communications Corporation ("EchoStar"), report annual revenues that are in excess of the threshold for a small business. (DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide; EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide; *see Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, FCC 05–13 (rel. Feb. 4, 2005) ("*2005 Cable Competition Report*").) A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $12.5 million, and thus does not qualify as a small business. (DBS, which provides service under the brand name VOOM, reported an estimated 25,000 subscribers.) The fourth DBS operator, Dominion Video Satellite, Inc. ("Dominion"), offers religious (Christian) programming and does not report its annual receipts. (Dominion, which provides service under the brand name Sky Angel, does not publicly disclose its subscribership numbers on an annualized basis.) The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated

$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

80. *Fixed-Satellite Service ("FSS").* The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites; *see* 47 CFR 2.1(c). The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in revenue annually; *see* 13 CFR 121.201, NAICS code 517510. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Two of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although we are not aware of any entities that might do so.

81. *Cable and Other Program Distribution.* Cable system operators fall within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in revenue annually; *see* 13 CFR 121.201, NAICS code 517510. According to the Census Bureau data for 1997, there were a total of 1,311 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more, but less than $25 million. (U.S. Census Bureau, 1997. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series—Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of $10 million was used to estimate the number of small business firms because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) In addition, limited preliminary census data for 2002 indicates that the total number of Cable and Other Program Distribution entities increased approximately 46 percent between 1997 and 2002. (U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513220 (issued Nov. 2004). The preliminary data indicate that the number of total "establishments" increased from 4,185 to 6,118. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.) The Commission estimates that the majority of providers in this category of Cable and Other Program Distribution are small businesses.

82. *Cable System Operators (Rate Regulation Standard).* The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide; *see* 47 CFR 76.901(e). (The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. For "regulatory simplicity," the Commission established the company size standard in terms of subscribers, rather than dollars; in the cable context, $100 million in annual regulated revenues equates to approximately 400,000 subscribers.) We last estimated that there were 1,439 cable operators that qualified as small cable companies at the end of 1995; *see* Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposals contained in this *NPRM.*

83. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000;" *see* 47 U.S.C. 543(m)(2). The Commission has determined that there are 67.7 million subscribers in the United States; *see* public notice, "FCC Announces New Subscriber Count for the Definition of Small Cable Operator," 16 FCC Rcd 2225 (2001) ("*2001 Subscriber Count PN*"). (In this public notice, the Commission established the threshold for determining whether a cable operator meets the definition of small cable operator at 677,000 subscribers, and determined that this threshold will remain in effect until the Commission issues a superceding public notice. We recognize that the number of cable subscribers was recently estimated by the Commission to be almost 65.9 million, as of June 2003; *see Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming,* 19 FCC Rcd 1606 (2004) ("*2004 Cable Competition Report*"). However, because the Commission has not issued a public notice subsequent to the 2001 Subscriber Count PN, we propose to rely on the subscriber count threshold established by the 2001 Subscriber Count PN.) Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate; *see* 47 CFR 76.901(f). Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act. (The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules; *see* 47 U.S.C. 573.)

84. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $12 million in annual receipts; *see* 13 CFR 121.201 (NAICS Code 515120 (adopted Oct. 2002)). Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound;" *see* NAICS Code 515120. (This category description continues, "These establishments operate television broadcasting studios and facilities for

the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199). According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of June 26, 2004, about 860 of the 1,270 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included; *see* 13 CFR 121.103(a)(1). ("[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.") Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television (LPTV) stations. Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

85. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

86. *Private Cable Operators (PCOs) or Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts; *see* 13 CFR 121.201, NAICS code 517510. Currently, there are approximately 135 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs; *see 2005 Cable Competition Report,* FCC 05–13. (Previously, the Commission reported that IMCC had 250 members; *see 2004 Cable Competition Report,* 19 FCC Rcd at 1666. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately 1.1 million subscribers; *see 2005 Cable Competition Report,* FCC 05–13. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs or SMATVs, we believe that a substantial number of PCO or SMATV operators qualify as small entities.

2. Entities Not Directly Affected By Proposed Rules

87. Because the SHVERA authorizes carriage of significantly viewed stations only by "satellite carriers," we do not believe that our proposed rules implementing the SHVERA will directly affect other multichannel video programming distributors (MVPDs), such as home satellite dish (HSD) services, multipoint distribution services (MDS)/multichannel multipoint distribution service (MMDS), Instructional Television Fixed Service (ITFS), local multipoint distribution service (LMDS) and open video systems (OVS). These other MVPDs were not included in the SHVERA and are therefore outside the scope of this IRFA. Nevertheless, although not required by the RFA, we invite comment from any small MVPDs which may be indirectly impacted from our proposed implementation of the SHVERA, but only to the extent that the impact on small entities can be minimized while fully implementing the SHVERA.

88. *Other Program Distribution.* The SBA-recognized definition of Cable and Other Program Distribution includes these other MVPDs, such as HSD, MDS/MMDS, ITFS, LMDS and OVS. This definition provides that a small entity is one with $12.5 million or less in annual receipts; *see* 13 CFR 121.201, NAICS code 517510. (This NAICS code applies to all services listed in this paragraph.) As previously noted, according to the Census Bureau data for 1997, there were a total of 1,311 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more, but less than $25 million. (U.S. Census Bureau, 1997. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series—Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of $10 million was used to estimate the number of small business firms because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) In addition, limited preliminary census data for 2002 indicates that the total number of Cable and Other Program Distribution entities increased approximately 46 percent between 1997 and 2002; *see* U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513220 (issued Nov. 2004). (The preliminary data indicate that the number of total "establishments" increased from 4,185 to 6,118. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.) The Commission estimates that the majority of providers in this

category of Cable and Other Program Distribution are small businesses.

89. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in revenue annually; *see* 13 CFR § 121.201, NAICS code 517510. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, between June 2003, and June 2004, HSD subscribership fell from 502,191 subscribers to 335,766 subscribers, a decline of more than 33 percent; *see 2005 Cable Competition Report,* FCC 05–13. (HSD subscribership declined more than 28 percent between June 2002 and June 2003; *see 2004 Cable Competition Report,* 19 FCC Rcd at 1654–55.) The Commission has no information regarding the annual revenue of the four C-Band distributors.

90. *Wireless Cable Systems.* Wireless cable systems use the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") frequencies in the 2 GHz band to transmit video programming and provide broadband services to subscribers. (MDS, also known as Multichannel Multipoint Distribution Service ("MMDS"), is regulated by part 21 of the Commission's rules; see 47 CFR part 21, subpart K; and has been renamed the Broadband Radio Service (BRS). ITFS systems are regulated by part 74 of the Commission's rules; see 47 CFR part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS). ITFS licensees, however, are permitted to lease spectrum for MDS operation.) Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $12.5 million in annual receipts, appears applicable to MDS, ITFS and LMDS. In addition, the Commission has defined small MDS and LMDS entities in the context of Commission license auctions.

91. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years; *see* 47 CFR 21.961(b)(1). (MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996.) This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities; *see* 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of $12.5 million or less); *see* 13 CFR 121.201, NAICS code 517910.) MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, we estimate that there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

92. While SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. (In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000; *see* 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.) There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

93. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. (The Commission has held two LMDS auctions: Auction Nos. 17 and 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA; *see* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998). In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

94. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

95. *Open Video Systems ("OVS").* The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $ 12.5 million or less in annual receipts; *see* 47 U.S.C. 573, 13 CFR 121.201, NAICS code 517510. The

Commission has certified 25 OVS operators with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services; *see 2005 Cable Competition Report,* FCC 05–13. As of June 2003, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households; *see 2004 Cable Competition Report.* Among BSPs, however, those operating under the OVS framework are in the minority, with approximately eight percent operating with an OVS certification; *see 2005 Cable Competition Report,* FCC 05–13. Serving approximately 460,000 of these subscribers, Affiliates of Residential Communications Network, Inc. ("RCN") is currently the largest BSP and 11th largest MVPD. (WideOpenWest is the second largest BSP and 15th largest MVPD, with cable systems serving about 288,000 subscribers as of September 2003. The third largest BSP is Knology, which currently serves approximately 174,957 subscribers as of June 2004; *see 2005 Cable Competition Report*, FCC 05–13.) RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

96. The SHVERA was enacted to permit satellite carriage of Commission-determined "significantly-viewed" signals of out-of-market broadcast stations to consumers. The SHVERA allows satellite carriers and broadcast stations to obtain "significantly-viewed" status for satellite carriage pursuant to Section 340 of the Act, 47 U.S.C. 340, and thus does not impose any mandatory reporting, recordkeeping and other compliance requirements, unless a satellite carrier and station choose to take advantage of the SHVERA's provisions. The proposed rule changes that we believe will directly affect reporting, recordkeeping and other compliance requirements are described below.

97. This *NPRM* proposes that satellite carriers and broadcast stations seeking a "significantly viewed" designation for a station and the community containing such station pursuant to Section 340 of the Act, 47 U.S.C. 340, will follow the same petition process now in place for cable operators (and broadcast stations), as required by §§ 76.5, 76.7 and 76.54 of the Commission's rules; *see* 47 CFR 76.5, 76.7, 76.54. Therefore, entities seeking a "significantly viewed" designation would file a petition pursuant to the pleading requirements in § 76.7(a)(1) and use the method described in § 76.54 to demonstrate that the station is significantly viewed as defined in § 76.5(i). Parties filing such petitions must also comply with the existing notification requirements of § 76.54(c), 47 CFR 76.54(c).

98. Furthermore, this *NPRM* proposes to (1) create a limited right for a station or distributor to assert nonduplication and exclusivity rights with respect to a station carried by a satellite carrier as significantly viewed; (2) allow that significantly viewed station to assert the significantly viewed exception, just as a station would with respect to cable carriage; and (3) allow the station or distributor asserting exclusivity to petition the Commission for a waiver from the exception. The assertion of these rights will require affected parties to file § 76.7 petitions.

99. This *NPRM* also proposes to rely on the Commission's existing § 76.7 petition process as the procedural framework for the filing of complaints filed pursuant to new Section 340 of the Act, 47 U.S.C. 340. Thus, we propose that interested parties that wish to report Section 340 violations may file a Petition for Special Relief under § 76.7; 47 CFR 76.7.

100. As required by Section 340(g)(1), this *NPRM* proposes a new rule, proposed § 76.54(e), to require satellite carriers seeking to retransmit significantly viewed signals pursuant to new Section 340 of the Act, 47 U.S.C. 340, to provide 60 days written notice to all stations located in the local market. As required by Section 340(g)(2), this *NPRM* also proposes a new rule, proposed § 76.54(f), to require satellite carriers retransmitting significantly viewed stations pursuant to new Section 340 of the Act, 47 U.S.C. 340, to publish a list of all such stations on their website. These proposed rules do not impose any burden on broadcast stations, but rather are intended to protect the rights of broadcast stations, including small stations.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

101. 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 or 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 any part thereof, for small entities; *see* 5 U.S.C. 603(c)(1)–(c)(4).

102. With respect to the implementation of new Section 340, the SHVERA does not offer much flexibility with respect to minimizing its impact on small entities. In seeking regulatory parity with cable operators, Congress sought to apply to satellite carriers the existing regulatory framework concerning the distribution of significantly viewed signals; *see* 17 U.S.C. 119(a)(3). Accordingly, the SHVERA authorizes satellite carriage of significantly viewed stations using the same framework in place for the cable carriage context that has been in effect as of April 15, 1976; *see* 17 U.S.C. 119(a)(3). Therefore, the Commission does not have discretion to choose an alternate means of implementing the SHVERA.

103. Notably, the nature of new Section 340 of the Act, 47 U.S.C. 340, is permissive, meaning only satellite carriers that choose to carry significantly viewed stations would be impacted by our proposed implementation of the statute. Likewise, only television broadcast stations seeking carriage as significantly viewed would be impacted. The compliance requirements of cable operators with respect to carriage of significantly viewed stations are not changed.

104. The statute's compliance requirements primarily impact satellite carriers, such as DBS providers. As previously noted, there are now only four DBS licensees, none of which are small entities. Small businesses do not generally have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Moreover, the statute confers a benefit to satellite carriers, enabling them to carry significantly viewed stations.

105. Nevertheless, to the extent they are affected, we urge small broadcast stations and small cable and satellite operators to provide data on the impact of the proposals and issues raised in the *NPRM,* including how we might tailor our proposals to address and minimize the impact on small businesses. We

expect that, whichever alternatives are chosen, the Commission will seek to minimize any adverse effects on small entities, to the extent permitted by statute.

106. We believe that the SHVERA will benefit some number of small broadcast stations by offering them the opportunity to be a significantly viewed station that will be delivered to more viewers. We recognize, however, that there is also the possibility that small in-market stations will face a competitive impact from the entry of out-of-market significantly viewed stations. We do not believe it is possible to measure whether small stations are more or less likely to benefit in this regard, but invite comment on this question.

107. While the statute does not impose any requirements on small cable operators, it is possible that such small entities could face a competitive impact because of the benefit conferred to satellite carriers. In fact, the express intent of the statute was to level the competitive playing field between cable operators and satellite providers; *see* 17 U.S.C. 119(a)(3). Congress, however, recognized that the SHVERA may impact the competitiveness of small cable operators, and thus directed the Commission to conduct an inquiry in a separate proceeding on the impact of specific provisions of the Communications Act of 1934, as amended, the SHVERA provisions, and Commission rules on competition in the MVPD market; *see* Section 208 of SHVERA. The Commission is required to submit a report to Congress on the results of its inquiry no later than nine months after SHVERA's enactment date (*i.e.*, September 8, 2005). Accordingly, the Commission has issued a public notice to initiate this inquiry; *see* public notice, "Media Bureau Seeks Comment For Inquiry Required By the on Rules Affecting Competition In the Television Marketplace," MB Docket No. 05–28, DA 05–169 (rel. Jan. 25, 2005) (Comments are due March 1, 2005; replies are due March 16, 2005.).

1. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

108. None.

2. Report to Congress

109. The Commission will send a copy of the *NPRM*, including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996; *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *NPRM* and IRFA (or summaries thereof) will also be published in the **Federal Register**; *see* 5 U.S.C. 604(b).

VI. Ordering Clauses

110. Accordingly, *it is ordered* that pursuant to Sections 202 and 204 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, and Sections 1, 4(i) and (j), and 340 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 340, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

111. *It is further ordered* that the Reference Information Center, Consumer Information Bureau, 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 76

Cable television, Multichannel video programming distribution, Satellite television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the FCC proposes to amend 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

2. Amend § 76.5 by revising paragraph (ee) and adding paragraph (gg) to read as follows:

§ 76.5 Definitions.

* * * * *

(ee) *Subscribers.* (1) *Cable subscriber.* A member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it.

(2) *Satellite subscriber.* A person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

* * * * *

[OPTION ONE]

(gg) *Satellite community.* Comprised of one or more five-digit zip code areas in which one or more television broadcast stations are proposed or deemed to be significantly viewed pursuant to paragraph (i) of this section and § 76.54. Satellite communities apply only in areas in which there is no pre-existing cable community, as defined in paragraph (dd) of this section.

[OR,]

[OPTION TWO]

(gg) *Satellite community.* A separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of any such unincorporated community may be defined by one or more five-digit zip code areas. Satellite communities apply only in areas in which there is no pre-existing cable community, as defined in as defined in paragraph (dd) of this section.

* * * * *

3. Amend § 76.54 by revising paragraphs (a), (b) and (c), and adding paragraphs (e), (f), (g), (h) and (i), to read as follows:

§ 76.54 Significantly viewed signals; method to be followed for special showings.

(a) Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix B of the memorandum opinion and order on reconsideration of the Cable Television Report and Order (Docket 18397 et al.), FCC 72–530, and those listed in the Significantly Viewed List, Appendix B of the SHVERA Report and Order Implementing Section 340 of the Communications Act, __ FCC Rcd __ (2005).

(b) Significant viewing in a cable television or satellite community for signals not shown as significantly viewed under paragraphs (a) or (d) of this section may be demonstrated by an independent professional audience survey of non-cable television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12

months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes non-cable television homes from each community that are proportional to the population.

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour (and, with respect to a survey pertaining to a station broadcasting only a digital signal, the noise limited service contour, as defined in § 73.622(e) of this chapter) the cable or satellite community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least (30) days prior to the initial survey period. Such notice shall include the name of the survey organization and a description of the procedures to be used. Objections to survey organizations or procedures shall be served on the party sponsoring the survey within twenty (20) days after receipt of such notice.

* * * * *

(e) Satellite carriers that intend to retransmit the signal of a significantly viewed television broadcast station to a subscriber located outside such station's local market, as defined by § 76.55(e), must provide written notice to all television broadcast stations that are assigned to the same local market as the intended subscriber at least 60 days before commencing retransmission of the significantly viewed station. Such written notice must be sent via certified mail, return receipt requested, to the address for such station(s) as listed in the consolidated database maintained by the Federal Communications Commission.

(f) Satellite carriers that retransmit the signal of a significantly viewed television broadcast station to a subscriber located outside such station's local market must list all such stations and the communities to which they are retransmitted on their Web site.

(g) Signals of significantly viewed television broadcast stations may not be retransmitted by satellite carriers to subscribers who do not subscribe to local-into-local service pursuant to § 76.66; except that a satellite carrier may retransmit a significantly viewed signal of a television broadcast station to a subscriber located in a local market in which:

(1) There is no station affiliated with the same television network as the station whose signal is significantly viewed; or

(2) The station affiliated with the same television network as the station whose signal is significantly viewed does not request carriage or does not grant retransmission consent pursuant to § 76.66.

(h) In addition to the requirement of paragraph (g) of this section, signals of significantly viewed network stations that originate as digital signals may not be retransmitted to subscribers unless the satellite carrier retransmits the digital signal of the local network station, which is affiliated with the same television network as the network station whose signal is significantly viewed, in either:

(1) At least the equivalent bandwidth of the significantly viewed station; or

(2) The entire bandwidth of the digital signal broadcast by such local station.

(i) For purposes of paragraphs (g) and (h) of this section, television network and network station are as defined in 47 U.S.C. 339(d).

4. Amend § 76.122 by revising paragraphs (a) and (j) to read as follows:

§ 76.122 Satellite network non-duplication.

(a) Upon receiving notification pursuant to paragraph (c) of this section, a satellite carrier shall not deliver, to subscribers within zip code areas located in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation or on a station carried pursuant to § 76.54 when the network non-duplication rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (j), (k) or (l) of this section.

* * * * *

(j) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64 or as a significantly viewed station pursuant to § 76.54:

(1) Within the station's local market;

(2) If the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection unless a waiver of the significantly viewed exception is granted pursuant to § 76.7; or

(3) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

* * * * *

5. Amend § 76.123 by revising paragraphs (a) and (k) to read as follows:

§ 76.123 Satellite syndicated program exclusivity.

(a) Upon receiving notification pursuant to paragraph (d) of this section, a satellite carrier shall not deliver, to subscribers located within zip code areas in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation or on a station carried pursuant to § 76.54 when the syndicated program exclusivity rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (k), (l) and (m) of this section.

* * * * *

(k) A satellite carrier is not required to delete the programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64 or as a significantly viewed station pursuant to § 76.54:

(1) Within the station's local market;

(2) If the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection unless a waiver of the significantly viewed exception is granted pursuant to § 76.7; or

(3) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

* * * * *

Note: The following Appendix is *not* to be included in the Code of Federal Regulations.

Appendix [1]—Significantly Viewed List (as of December 7, 2004)

The stations listed below are "significantly viewed" in the relevant counties and/or communities as indicated. The stations are listed by state and subdivided by the county in which they are significantly viewed. Stations added on a community-by-community basis after 1972 are listed at the end of each state next to the community in which they obtained significantly viewed status. The station listing includes the current (and former) call signs, as well as the analog channel number and city of license. Stations with a plus sign (+) under individual counties are those stations added to the list after the publication of the Commission's original 1972 list. See Reconsideration of the Cable Television Report and Order, 36 FCC 2d 326 (1972). Stations listed with a pound

[1] This list of significantly viewed stations will be published and maintained on the Commission's Internet website at *http://www.fcc.gov/mb/*. The Commission will update the list posted on the Internet within 10 business days after taking an action to modify the list.

sign (#) have been the subject of application of the Commission's exclusivity rules and are subject to programming deletions in the indicated communities.

ALABAMA

Autauga
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WCOV–TV, 20, Montgomery, AL
WNCF, 32, Montgomery, AL (formerly WKAB)

Baldwin
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WJTC, 44, Pensacola, FL

Barbour
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
+WXTX, 54, Columbus, GA
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL (formerly WDAU)
WSFA, 12, Montgomery, AL

Bibb
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
+WDBB, 17, Bessemer, AL
WIAT, 42, Birmingham, AL (formerly WBMG)

Blount
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WHNT–TV, 19, Huntsville, AL
+WZDX, 54, Huntsville, AL

Bullock
WSFA, 12, Montgomery, AL
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA

Butler
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL

Calhoun
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WJSU–TV, 40, Anniston, AL (formerly WHMA)

Chambers
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
+WXTX, 54, Columbus, GA

Cherokee
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WBRC, 6, Birmingham, AL
+WTTO, 21, Birmingham, AL

Chilton
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WIAT, 42, Birmingham, AL (formerly WBMG)
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL

Choctaw
WTOK–TV, 11, Meridian, MS

Clarke
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WAKA, 8, Selma, AL

Clay
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
WRBL, 3, Columbus, GA

Cleburne
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)

Coffee
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL (formerly WDAU)
WSFA, 12, Montgomery, AL

Colbert
WHDF, 15, Florence, AL (formerly WOWL)
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL & WYUR)
+WZDX, 54, Huntsville, AL

Conecuh
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL

Coosa
WBRC, 6, Birmingham, AL
WSFA, 12, Montgomery, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)

Covington
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL (formerly WDAU)

Crenshaw
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WCOV–TV, 20, Montgomery, AL
WTVY, 4, Dothan, AL

Cullman
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
+WTTO, 21, Birmingham, AL
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
+WZDX, 54, Huntsville, AL

Dale
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WSFA, 12, Montgomery, AL

Dallas
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WCOV–TV, 20, Montgomery, AL
WNCF, 32, Montgomery, AL (formerly WKAB)
WBRC, 6, Birmingham, AL

De Kalb
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
+WPXH, 44, Gadsden, AL (formerly WNAL)
+WZDX, 54, Huntsville, AL

Elmore
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WCOV–TV, 20, Montgomery, AL
WNCF, 32, Montgomery, AL (formerly WKAB)

Escambia
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL

Etowah
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
+WZDX, 54, Huntsville, AL
WJSU–TV, 40, Anniston, AL (formerly WHMA)

Fayette
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS

Franklin
WBRC, 6, Birmingham, AL
+WTTO, 21, Birmingham, AL
WCBI–TV, 4, Columbus, MS
WTVA, 9, Tupelo, MS (formerly WTWV)
WHNT–TV, 19, Huntsville, AL
+WZDX, 54, Huntsville, AL

Geneva
WTVY, 4, Dothan, AL
WDHN, 18, Dothan, AL
+WDFX–TV, 34, Ozark, AL (formerly WDAU)
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL

Greene
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
WCFT–TV, 33, Tuscaloosa, AL
WTOK–TV, 11, Meridian, MS

Hale
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
+WTTO, 21, Birmingham, AL
WCFT–TV, 33, Tuscaloosa, AL
WTOK–TV, 11, Meridian, MS

Henry
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL

Houston
WTVY, 4, Dothan, AL
WDHN, 18, Dothan, AL
+WDFX–TV, 34, Ozark, AL (formerly WDAU)
WJHG–TV, 7, Panama City, FL
WMBB, 13, Panama City, FL

Jackson

WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
+WDSI–TV, 61, Chattanooga, TN
+WZDX, 54, Huntsville, AL

Jefferson
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
+WTTO, 21, Birmingham, AL
WIAT, 42, Birmingham, AL (formerly WBMG)

Lamar
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL

Lauderdale
WHDF, 15, Florence, AL (formerly WOWL)
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
+WZDX, 54, Huntsville, AL

Lawrence
WHNT–TV, 19, Huntsville, AL
+WYLE, 26, Florence, AL (formerly WTRT)
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
+WZDX, 54, Huntsville, AL
WBRC, 6, Birmingham, AL

Lee
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
+WXTX, 54, Columbus, GA
WSFA, 12, Montgomery, AL

Limestone
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
+WZDX, 54, Huntsville, AL

Lowndes
WSFA, 12, Montgomery, AL
WCOV–TV, 20, Montgomery, AL
WNCF, 32, Montgomery, AL (formerly WKAB)

Macon
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WCOV–TV, 20, Montgomery, AL
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
+WXTX, 54, Columbus, GA

Madison
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
+WZDX, 54, Huntsville, AL

Marengo
WTOK–TV, 11, Meridian, MS
+WAKA, 8, Selma, AL
+WDBB, 17, Bessemer, AL

Marion
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS

Marshall
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
+WZDX, 54, Huntsville, AL
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL

Mobile
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WJTC, 44, Pensacola, FL

Monroe
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WAKA, 8, Selma, AL

Montgomery
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WCOV–TV, 20, Montgomery, AL
WNCF, 32, Montgomery, AL (formerly WKAB)

Morgan
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
+WZDX, 54, Huntsville, AL
WBRC, 6, Birmingham, AL
+WTTO, 21, Birmingham, AL

Perry
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL

Pickens
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
+WTTO, 21, Birmingham, AL
WCBI–TV, 4, Columbus, MS

Pike
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL (formerly WDAU)

Randolph
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
+WXTX, 54, Columbus, GA
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)

Russell
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WLTZ, 38, Columbus, GA (formerly WYEA)
+WXTX, 54, Columbus, GA

St. Clair
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL

Shelby
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
+WTTO, 21, Birmingham, AL
WIAT, 42, Birmingham, AL (formerly WBMG)

Sumter
WTOK–TV, 11, Meridian, MS

Talladega
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
WIAT, 42, Birmingham, AL (formerly WBMG)

Tallapoosa
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL

Tuscaloosa
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WCFT–TV, 33, Tuscaloosa, AL

Walker
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WDBB, 17, Bessemer, AL
WIAT, 42, Birmingham, AL (formerly WBMG)

Washington
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL

Wilcox
+WAKA, 8, Selma, AL
WSFA, 12, Montgomery, AL
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL

Winston
WBRC, 6, Birmingham, AL
WVTM–TV, 13, Birmingham, AL (formerly WAPI)
+WTTO, 21, Birmingham, AL
WIAT, 42, Birmingham, AL (formerly WBMG)
WHNT–TV, 19, Huntsville, AL

Adamsburg—WHNT–TV, WAAY–TV, WAFF
Anniston—WTTO
Collbran—WHNT–TV, WAAY–TV, WAFF
Fort Payne—WHNT–TV, WAAY–TV, WAFF
Gadsden—WTTO
Glenco—WTTO
Henegar—WHNT–TV, WAAY–TV, WAFF
Ider—WHNT–TV, WAAY–TV, WAFF
Jacksonville—WTTO
Pine Ridge—WHNT–TV, WAAY–TV, WAFF
Pisgah—WHNT–TV, WAAY–TV, WAFF
Rainbow City—WTTO
Russellville—WAFF
Sylvania—WHNT–TV, WAAY–TV, WAFF
Valley Head—WHNT–TV, WAAY–TV, WAFF
White Hall—WHNT–TV, WAAY–TV, WAFF
Unincorporated portions of DeKalb County—WHNT–TV, WAAY–TV, WAFF
Unincorporated portions of Jackson County—WHNT–TV, WAAY–TV, WAFF

Unincorporated portions of Franklin County (north of Russellville)—WAFF

ARIZONA

Apache
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KOLD–TV, 13, Tucson, AZ
- KOB–TV, 4, Albuquerque, NM
- KOAT–TV, 7, Albuquerque, NM
- KRQE, 13, Albuquerque, NM (formerly KGGM)

Cochise
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KOLD–TV, 13, Tucson, AZ

Coconino
- KNAZ–TV, 2, Flagstaff, AZ (formerly KOAI)
- KTVK, 3, Phoenix, AZ
- KPHO–TV, 5, Phoenix, AZ
- KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
- KPNX, 12, Phoenix, AZ (formerly KTAR)

Gila
- KTVK, 3, Phoenix, AZ
- KPHO–TV, 5, Phoenix, AZ
- KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
- KPNX, 12, Phoenix, AZ (formerly KTAR)

Graham
- KPNX, 12, Phoenix, AZ (formerly KTAR)
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KOLD–TV, 13, Tucson, AZ

Greenlee
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KOLD–TV, 13, Tucson, AZ

La Paz
- +KPHO–TV, 5, Phoenix, AZ
- +KECY–TV, 9, El Centro, CA
- +KYMA, 11, Yuma, AZ
- +KSWT, 13, Yuma, AZ (formerly KYEL)

Maricopa
- KTVK, 3, Phoenix, AZ
- KPHO–TV, 5, Phoenix, AZ
- KSAZ–TV, 10, Phoenix. AZ (formerly KOOL)
- KPNX, 12, Phoenix, AZ (formerly KTAR)
- +KNXV–TV, 15, Phoenix, AZ

Mohave
- KTVK, 3, Phoenix, AZ
- KPHO–TV, 5, Phoenix, AZ
- KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
- KPNX, 12, Phoenix, AZ (formerly KTAR)
- KVBC. 3, Las Vegas, NV (formerly KORK)

Navajo
- KNAZ–TV, 2, Flagstaff, AZ (formerly KOAI)
- KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KOLD–TV, 13, Tucson, AZ

Pima East
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KMSB–TV, 11, Tucson, AZ (formerly KZAZ)
- KOLD–TV, 13, Tucson, AZ
- +KTTU–TV, 18, Tucson, AZ

Pima West
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KOLD–TV, 13, Tucson, AZ
- +KTTU–TV, 18, Tucson, AZ
- KPHO–TV, 5, Phoenix, AZ

Pinal
- KTVK, 3, Phoenix, AZ
- KPHO–TV, 5, Phoenix, AZ
- KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
- KPNX, 12, Phoenix, AZ (formerly KTAR)
- +KNXV–TV, 15, Phoenix, AZ
- KVOA, 4, Tucson, AZ
- +KTTU–TV, 18, Tucson, AZ

Santa Cruz
- KVOA, 4, Tucson, AZ
- KGUN, 9, Tucson, AZ
- KMSB–TV, 11, Tucson, AZ (formerly KZAZ)
- KOLD–TV, 13, Tucson, AZ
- +KTTU–TV, 18, Tucson, AZ
- KPHO–TV, 5, Phoenix, AZ
- XHFA, 2, Mexico

Yavapai
- KTVK, 3, Phoenix, AZ
- KPHO–TV, 5, Phoenix, AZ
- KSAZ–TV, 10, Phoenix, AZ (formerly KSAZ)
- KPNX, 12, Phoenix, AZ (formerly KTAR)

Yuma
- KPHO–TV, 5, Phoenix, AZ
- +KYMA, 11, Yuma, AZ
- KSWT, 13, Yuma, AZ (formerly KBLU & KYEL)
- KECY–TV, 9, El Centro, CA (formerly KECC)

ARKANSAS

Arkansas
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR
- KLRT, 16, Little Rock, AR

Ashley
- KNOE–TV, 8, Monroe, LA
- KTVE, 10, Monroe, LA

Baxter
- KYTV, 3, Springfield, MO
- KOLR, 10, Springfield, MO (formerly KTTS)
- KDEB–TV, 27, Springfield, MO (formerly KMTC)
- KSPR, 33, Springfield, MO

Benton
- KOAM–TV, 7, Pittsburg, KS
- KODE–TV, 12. Joplin, MO
- KSNF, 16, Joplin, MO (formerly KUHI)
- KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
- KOTV, 6, Tulsa, OK
- KTUL, 8, Tulsa, OK
- +KOLR, 10. Springfield, MO

Boone
- KYTV, 3, Springfield, MO
- KOLR, 10, Springfield, MO (formerly KTTS)
- +KSPR, 33, Springfield, MO

Bradley
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR
- KTVE, 10, Monroe, LA

Calhoun
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KNOE–TV, 8, Monroe, LA
- KTVE, 10, Monroe, LA

Carroll
- KYTV, 3, Springfield, MO
- KOLR, 10, Springfield, MO (formerly KTTS)
- +KSPR, 33, Springfield, MO

Chicot
- KNOE–TV, 8, Monroe, LA
- KTVE, 10, Monroe, LA
- WABG–TV, 6, Greenwood, MS

Clark
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR
- +KLRT, 16, Little Rock, AR

Clay
- WREG–TV, 3, Memphis, TN (formerly WREC)
- WMC–TV, 5, Memphis, TN
- WHBQ–TV, 13, Memphis, TN
- KAIT–TV, 8, Jonesboro, AR

Cleburne
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR
- +KLRT, 16, Little Rock, AR

Cleveland
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR

Columbia
- KTBS–TV, 3, Shreveport, LA
- KTAL–TV, 6, Shreveport, LA
- KSLA–TV, 12, Shreveport, LA
- +KMSS–TV, 33, Shreveport, LA

Conway
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR
- +KLRT, 16, Little Rock, AR

Craighead
- KAIT–TV, 8, Jonesboro, AR
- WREG–TV, 3, Memphis, TN (formerly WREC)
- WMC–TV, 5, Memphis, TN
- WHBQ–TV, 13, Memphis, TN
- +WPTY–TV, 24, Memphis, TN

Crawford
- KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
- KTUL, 8, Tulsa, OK

Crittenden
- WREG–TV, 3, Memphis, TN (formerly WREC)
- WMC–TV, 5, Memphis, TN
- WHBQ–TV, 13, Memphis, TN
- +WLMT, 30, Memphis, TN

Cross
- WREG–TV, 3, Memphis. TN (formerly WREC)
- WMC–TV, 5, Memphis, TN
- WHBQ–TV, 13, Memphis, TN
- +WLMT, 30, Memphis, TN
- +KAIT–TV, 8, Jonesboro, AR

Dallas
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR

Desha
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR
- +KASN, 38, Pine Bluff, AR
- KTVE, 10, Monroe, LA

Drew
- KARK–TV, 4, Little Rock, AR
- KATV, 7, Little Rock, AR
- KTHV, 11, Little Rock, AR

KTVE, 10, Monroe, LA
Faulkner
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
+KASN, 38, Pine Bluff, AR
Franklin
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
KARK–TV, 4, Little Rock, AR
KTHV, 11, Little Rock, AR
Fulton
KYTV, 3, Springfield, MO
+KOLR, 10, Springfield, MO
KAIT–TV, 8, Jonesboro, AR
Garland
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
+KASN, 38, Pine Bluff, AR
Grant
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
Greene
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN
KAIT–TV, 8, Jonesboro, AR
Hempstead
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Hot Springs
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KASN, 38, Pine Bluff, AR
Howard
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
Independence
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KAIT–TV, 8, Jonesboro, AR
Izard
KARK–TV, 4, Little Rock, AR
KTHV, 11, Little Rock, AR
KYTV, 3, Springfield, MO
+KOLR, 10, Springfield, MO
+KAIT–TV, 8, Jonesboro, AR
Jackson
KARK–TV, 4, Little Rock, AR
KTHV, 11, Little Rock, AR
KAIT–TV, 8, Jonesboro, AR
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
Jefferson
KARK–TV, 4, Little Rock, AR
KATV. 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
+KASN, 38, Pine Bluff, AR
Johnson
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
Lafayette
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Lawrence
KAIT–TV, 8, Jonesboro, AR
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
Lee
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN
KATV, 7, Little Rock, AR
Lincoln
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
Little River
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
Logan
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
KARK–TV, 4, Little Rock, AR
KTHV, 11, Little Rock, AR
Lonoke
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
+KASN, 38, Pine Bluff, AR
Madison
KYTV, 3, Springfield, MO
+KOLR, 10, Springfield, MO
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
Marion
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
+KSPR, 33, Springfield, MO
KARK–TV, 4, Little Rock, AR
KTHV, 11, Little Rock, AR
Miller
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Mississippi
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN
+WLMT, 30, Memphis, TN
+KAIT–TV, 8, Jonesboro, AR
Monroe
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock. AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
Montgomery
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
Nevada
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
Newton
KYTV, 3, Springfield, MO
KARK–TV, 4, Little Rock, AR
KTHV, 11, Little Rock, AR
Ouachita
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
KTVE, 10, Monroe, LA
Perry
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
Phillips
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
KATV, 7, Little Rock, AR
Pike
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
Poinsett
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WLMT, 30, Memphis, TN
KAIT–TV, 8, Jonesboro, AR
Polk
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
KTAL–TV, 6 Shreveport, LA
Pope
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
Prairie
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
Pulaski
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
KASN, 38, Pine Bluff, AR (formerly KJTM)
Randolph
KAIT–TV, 8, Jonesboro, AR
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
St. Francis
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN
+WLMT, 30, Memphis, TN
KATV, 7, Little Rock, AR
+KAIT–TV, 8, Jonesboro, AR
Saline
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR

KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
+KASN, 38, Pine Bluff, AR
Scott
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
KARK–TV, 4, Little Rock, AR
KTUL, 8, Tulsa, OK
Searcy
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
KYTV, 3, Springfield, MO
Sebastian
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
KTUL, 8, Tulsa, OK
Sevier
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
Sharp
KAIT–TV, 8, Jonesboro, AR
KARK–TV, 4, Little Rock, AR
WMC–TV, 5, Memphis, TN
Stone
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
Union
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
KATV, 7, Little Rock, AR
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
Van Buren
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
Washington
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
KODE–TV, 12, Joplin, MO
+KOLR, 10, Springfield, MO
White
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
+KLRT, 16, Little Rock, AR
+KASN, 38, Pine Bluff, AR
Woodruff
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
Yell
KARK–TV, 4, Little Rock, AR
KATV, 7, Little Rock, AR
KTHV, 11, Little Rock, AR
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)

CALIFORNIA

Alameda East
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KICU–TV, 36, San Jose, CA (formerly KGSC)
Alameda West
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KBWB, 20, San Francisco, CA (formerly KEMO)
KBHK–TV, 44, San Francisco, CA
Alpine
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV
Amador
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
+KTXL, 40, Sacramento, CA
Butte
KRCR–TV, 7, Redding, CA
KHSL–TV, 12, Chico, CA
+KNVN, 24, Chico, CA (formerly KCPM)
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
+KTXL, 40, Sacramento, CA
Calaveras
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KTXL, 40, Sacramento, CA
Colusa
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KTXL, 40, Sacramento, CA
KRCR–TV, 7, Redding, CA
KHSL–TV, 12, Chico, CA
Contra Costa East
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
KTVU, 2, Oakland, CA
KPIX–TV, 5, San Francisco, CA
Contra Costa West
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KBWB, 20, San Francisco, CA (formerly KEMO)
KBHK–TV, 44, San Francisco, CA
Del Norte
KIEM–TV, 3, Eureka, CA
KVIQ–TV, 6, Eureka, CA
El Dorado East
Over 90% cable penetration.
El Dorado West
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
+KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
Fresno
KSEE, 24, Fresno, CA (formerly KMJ)
+KMPH, 26, Visalia, CA
KFSN–TV, 30, Fresno, CA (formerly KFRE)
KGPE, 47, Fresno, CA (formerly KJEO)
Glenn
KRCR–TV, 7, Redding, CA
KHSL–TV, 12, Chico, CA
+KNVN, 24, Chico, CA (formerly KCPM)
Humboldt
KIEM–TV, 3, Eureka, CA
KVIQ–TV, 6, Eureka, CA
Imperial
KECY–TV, 9, El Centro, CA (formerly KECC)
KCOP, 13, Los Angeles, CA
+KYMA, 11, Yuma, AZ
KSWT, 13, Yuma, AZ (formerly KBLU)
XHBC, 3, Mexico
Inyo
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KOLO–TV, 8, Reno, NV
Kern East
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Kern West
KGET, 17, Bakersfield, CA (formerly KJTV)
KERO–TV, 23, Bakersfield, CA
KBAK–TV, 29, Bakersfield, CA
+KUVI, 45, Bakersfield, CA (formerly KUZZ)
+KMPH, 26, Visalia, CA
Kings
KSEE, 24, Fresno, CA (formerly KMJ)
KFSN–TV, 30, Fresno, CA (formerly KFRE)
KGPE, 47, Fresno, CA (formerly KJEO)
KERO–TV, 23, Bakersfield, CA
KBAK–TV, 29, Bakersfield, CA
+KUVI, 45, Bakersfield, CA (formerly KUZZ)
Lake
KCRA–TV, 3, Sacramento, CA
KOVR, 13, Stockton, CA
KTVU, 2, Oakland, CA
Lassen
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV
+KAME–TV, 21, Reno, NV
Los Angeles
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Madera
KSEE, 24, Fresno, CA (formerly KMJ)
+KMPH, 26, Visalia, CA
KFSN–TV, 30, Fresno, CA (formerly KFRE)
KGPE, 47, Fresno, CA (formerly KJEO)
Marin
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
Mariposa
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA

KSEE, 24, Fresno, CA (formerly KMJ)
KFSN–TV, 30, Fresno, CA (formerly KFRE)
KGPE, 47, Fresno, CA (formerly KJEO)
Mendocino
KTVU, 2, Oakland, CA
KRON–TV, 4 San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KIEM–TV, 3, Eureka, CA
Merced
KSEE, 24, Fresno, CA (formerly KMJ)
+KMPH, 26, Visalia, CA
KFSN–TV, 30, Fresno, CA (formerly KFRE)
KGPE, 47, Fresno, CA (formerly KJEO)
+KTXL, 40, Sacramento, CA
Modoc
KRCR–TV, 7, Redding, CA
KOTI, 2, Klamath Falls, OR
KTVL, 10, Medford, OR (formerly KMED)
KOLO–TV, 8, Reno, NV
Mono
KOLO–TV, 8, Reno, NV
KCRA–TV, 3, Sacramento, CA
KTVU, 2, Oakland, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
Monterey East
KSBW, 8, Salinas, CA
KNTV, 11, San Jose, CA
+KCBA, 35, Salinas, CA
KION, 46, Monterey, CA (formerly KMST)
#KTVU, 2, Oakland, CA [2]
Monterey West
KSBW, 8, Salinas, CA
KNTV, 11, San Jose, CA
+KCBA, 35, Salinas, CA
KION, 46, Monterey, CA (formerly KMST)
#KTVU, 2, Oakland, CA [3]
Napa North
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
Napa South
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KBWB, 20, San Francisco, CA (formerly KEMO)
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
Nevada East
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
+KTXL, 40, Sacramento, CA
KOLO–TV, 8, Reno, NV
KTVU, 2, Oakland, CA
Nevada West
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
+KTXL, 40, Sacramento, CA
Orange North
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Orange South
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Placer East
KOLO–TV, 8, Reno, NV
Placer West
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
Plumas
KCRA–TV, 3, Sacramento, CA
KTXL, 40, Sacramento, CA
KHSL–TV, 12, Chico, CA
Riverside East
KTVK, 3, Phoenix, AZ
KPHO–TV, 5, Phoenix, AZ
KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
KPNX, 12, Phoenix, AZ (formerly KTAR)
+KYMA, 11, Yuma, AZ
Riverside West
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Riverside Central
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Sacramento
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
San Benito
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KSBW, 8, Salinas, CA
KNTV, 11, San Jose, CA
+KCBA, 35, Salinas, CA
San Bernardino East
KTVK, 3, Phoenix, AZ
KPHO–TV, 5, Phoenix, AZ
KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
KPNX, 12, Phoenix, AZ (formerly KTAR)
San Bernardino West
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
San Diego
XETV, 6, San Diego, CA
KFMB–TV, 8, San Diego, CA
KGTV, 10, San Diego, CA (formerly KOGO)
+XEWT–TV, 12, San Diego, CA
KNSD, 39, San Diego, CA (formerly KCST)
+KUSI–TV, 51, San Diego, CA
+KSWB–TV, 69, San Diego, CA (formerly KTTY)
#KNBC, 4, Los Angeles, CA [4]
#KCOP, 13, Los Angeles, CA [5]
San Francisco
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KBWB, 20, San Francisco, CA (formerly KEMO)
San Joaquin
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
San Luis Obispo
KSBY, 6, San Luis Obispo, CA
KEYT–TV, 3, Santa Barbara, CA
KCOY–TV, 12, Santa Maria, CA
San Mateo
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KBWB, 20, San Francisco, CA (formerly KEMO)
KBHK–TV, 44, San Francisco, CA
Santa Barbara North
KEYT–TV, 3, Santa Barbara, CA
KCOY–TV, 12, Santa Maria, CA
KSBY, 6, San Luis Obispo, CA
Santa Barbara South
KEYT–TV, 3, Santa Barbara, CA
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA

[2] Affected communities are Carmel-by-the-Sea, Del Rey Oaks, Marina, Monterey, unincorporated portions of Monterey County (including Carmel Valley Village), Pacific Grove, Pebble Beach (including Del Monte Forest), Salinas, Sand City, and Seaside, CA.

[3] *See* footnote 1.

[4] Affected community is San Diego, CA.

[5] Affected communities are Bonsall, Camp Pendleton, Cardiff by the Sea, Encinitas, Escondido, Oceanside, Romona, Rancho Santa Fe, San Luis Rey, San Marcos, Solana Beach, Valley Center, and Vista, CA (served by Cox Communications North); Alpine, Bonita, Chula Vista, El Cajon, Imperial Beach, Jamul, La Mesa, Lakeside, Lemon Grove, National City, Pine Valley, Poway, San Diego, San Ysidro, Santee, and Spring Valley, CA (served by Cox Communications South); Del Mar, La Jolla, Poway, and San Diego, CA (served by Southwestern Cable).

KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Santa Clara East
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KBWB, 20, San Francisco, CA (formerly KEMO)
KBHK–TV, 44, San Francisco, CA
KSBW, 8, Salinas, CA
KNTV, 11, San Jose, CA
Santa Clara West
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
KBWB, 20, San Francisco, CA (formerly KEMO)
KBHK–TV, 44, San Francisco, CA
KNTV, 11, San Jose, CA
Santa Cruz
KSBW, 8, Salinas, CA
KNTV, 11, San Jose, CA
+KCBA, 35, Salinas, CA
KION, 46, Monterey, CA (formerly KMST)
#KTVU, 2, Oakland, CA [6]
Shasta
KRCR–TV, 7, Redding, CA
KHSL–TV, 12, Chico, CA
+KNVN, 24, Chico, CA (formerly KCPM)
Sierra
KRNV, 4, Reno, NV (formerly KCRL)
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
Siskiyou
KRCR–TV, 7, Redding, CA
KHSL–TV, 12, Chico, CA
KTVL, 10, Medford, OR (formerly KMED)
Solano East
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
Solano West
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
Sonoma North
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
Sonoma South
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
KPIX–TV, 5, San Francisco, CA
KGO–TV, 7, San Francisco, CA
Stanislaus
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
Sutter
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
+KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
KHSL–TV, 12, Chico, CA
KTVU, 2, Oakland, CA
Tehama
KRCR–TV, 7, Redding, CA
KHSL–TV, 12, Chico, CA
+KNVN, 24, Chico, CA (formerly KCPM)
Trinity
KRCR–TV, 7, Redding, CA
KHSL–TV, 12, Chico, CA
Tulare
KSEE, 24, Fresno, CA (formerly KMJ)
KFSN–TV, 30, Fresno, CA (formerly KFRE)
KGPE, 47, Fresno, CA (formerly KJEO)
KGET, 17, Bakersfield, CA (formerly KJTV)
KERO–TV, 23, Bakersfield, CA
KBAK–TV, 29, Bakersfield, CA
+KUVI, 45, Bakersfield, CA (formerly KUZZ)
Tuolumne
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
+KTXL, 40, Sacramento, CA
KSBW, 8, Salinas, CA
KTVU, 2, Oakland, CA
KRON–TV, 4, San Francisco, CA
Ventura
KCBS–TV, 2, Los Angeles, CA (formerly KNXT)
KNBC, 4, Los Angeles, CA
KTLA, 5, Los Angeles, CA
KABC–TV, 7, Los Angeles, CA
KCAL–TV, 9, Los Angeles, CA (formerly KHJ)
KTTV, 11, Los Angeles, CA
KCOP, 13, Los Angeles, CA
Yolo
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
Yuba
KCRA–TV, 3, Sacramento, CA
KXTV, 10, Sacramento, CA
KOVR, 13, Stockton, CA
+KMAX–TV, 31, Sacramento, CA (formerly KRBK)
KTXL, 40, Sacramento, CA
+KQCA, 58, Stockton, CA (formerly KSCH)
KHSL–TV, 12, Chico, CA
Camp Pendleton (southern portion)—KTLA
Carlsbad—KTLA (including La Costa in unin. aeas of San Diego County)
Danville—KCRA–TV, KXTV, KRON–TV, KGO–TV
Del Mar—KTLA
Encinitas—KTLA
Encinitas—KTLA (portion including parts of Cardiff & Leucadio in unin. aeas of San Diego County)
Escondido —KTLA
Gustine—KSEE, KFSN–TV, KGPE, KCRA–TV, KOVR, KXTV,
KMPH,
Lafayette—KCRA–TV, KXTV, KRON–TV, KGO–TV
Lodi—KICU–TV
Los Banos—KSEE, KFSN–TV, KGPE, KCRA–TV, KOVR, KXTV, KMPH
Martinez—KCRA–TV, KXTV, KRON–TV, KGO–TV
Moraga—KCRA–TV, KXTV, KRON–TV, KGO–TV
Newman—KSEE, KFSN–TV, KGPE, KCRA–TV, KOVR, KXTV, KMPH
Oceanside—KTLA
Orinda—KCRA–TV, KXTV, KRON–TV, KGO–TV
Patterson—KSEE, KFSN–TV, KGPE, KCRA–TV, KOVR, KXTV, KMPH
Pleasant Hill—KCRA–TV, KXTV, KRON–TV, KGO–TV
Ramona—KTLA
San Marcos—KTLA
San Ramon (portions)—KCRA–TV, KXTV, KRON–TV, KGO–TV
Solana Beach (portions)—KTLA
Vista (portions)—KTLA
Walnut Creek (including Rossmoor)—KCRA–TV, KXTV, KRON–TV, KGO–TV
Unincorporated areas of Contra Costa County—KCRA–TV, KXTV, KRON–TV, KGO–TV
Unincorporation portions of San Diego County—KTLA (including Rancho Santa Fe, Whispering Palms & certain unnamed county areas)
Unincorporated areas of San Diego County—KTLA (including Fallbrook area, Lake San Marcos & others)
Unincorporated areas of San Joaquin County—KICU–TV
Unincorporated portions of Stanislaus County—KSEE, KFSN–TV, KGPE, KCRA–TV, KOVR, KXTV. KMPH

COLORADO

Adams
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
+KDVR, 31, Denver, CO
Alamosa
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
KRDO–TV, 13, Colorado Springs, CO
Arapahoe
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
+KDVR, 31, Denver, CO
Archuleta
KOB–TV, 4, Albuquerque, NM

[6] Affected communities are Santa Cruz, Scott's Valley, and unincorporated areas of Santa Cruz County (including the following communities: Aptos, Ben Lomond, Bonny Dune, Boulder Creek, Brookdale, Davenport, Felton, La Selva Beach, Live Oak, Lompico, Mt. Herman, Rio Del Mar, Soquel, and Zayante), CA.

KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)

Baca
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Bent
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Boulder
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
+KDVR, 31, Denver, CO

Chaffee
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
KOAA–TV, 5, Pueblo, CO

Cheyenne
KBSH–TV, 7, Hays, KS (formerly KAYS)
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Clear Creek
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)

Conejos
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)

Costilla
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)

Crowley
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Custer
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Delta
KREX–TV, 5, Grand Junction, CO
KREY–TV, 10, Montrose, CO
KUSA–TV, 9, Denver, CO (formerly KBTV)

Denver
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
+KDVR, 31, Denver, CO

Dolores
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)

Douglas
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
KRDO–TV, 13, Colorado Springs, CO

Eagle
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)

Elbert
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

El Paso
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
+KXRM–TV, 21, Colorado Springs, CO

Fremont
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Garfield
KREX–TV, 5, Grand Junction, CO
+KJCT–TV, 8, Grand Junction, CO
KCNC–TV, 4, Denver, CO (formerly KOA)

Gilpin
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)

Grand
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)

Gunnison
KOAA–TV, 5, Pueblo, CO
KUSA–TV, 9, Denver, CO (formerly KBTV)
KREX–TV, 5, Grand Junction, CO
KREY–TV, 10, Montrose, CO

Hinsdale
KREX–TV, 5, Grand Junction, CO
KOAA–TV, 5, Pueblo, CO

Huerfano
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Jackson
KCNC–TV, 4, Denver, CO (formerly KOA)
KGWN–TV, 5, Cheyenne, WY (formerly KFBC)

-2≤Jefferson
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
+KDVR, 31, Denver, CO

Kiowa
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
KBSH–TV, 7, Hays, KS (formerly KAYS)

Kit Carson
KBSH–TV, 7, Hays, KS (formerly KAYS)

Lake
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)

La Plata
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
KREZ–TV, 6, Durango, CO

Larimer
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
+KDVR, 31, Denver, CO
KGWN–TV, 5, Cheyenne, WY (formerly KFBC)

Las Animas
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO

Lincoln
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)

Logan
KTVS, 3, Sterling, CO

Mesa
KREX–TV, 5, Grand Junction, CO
+KJCT–TV, 8, Grand Junction, CO

Mineral
KOAA–TV, 5, Pueblo, CO
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)

Moffat
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)

Montezuma
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)

Montrose
+KJCT–TV, 8, Grand Junction, CO
KREY–TV, 10, Montrose, CO
KOAA–TV, 5, Pueblo, CO
KUSA–TV, 9, Denver, CO (formerly KBTV)
KUTV, 2, Salt Lake City, UT

Morgan
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KDVR, 31, Denver, CO
KTVS, 3, Sterling, CO

Otero
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
+KXRM–TV, 21, Colorado Springs, CO

Ouray
KREX–TV, 5, Grand Junction, CO

Park
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)

Phillips
KTVS, 3, Sterling, CO
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Pitkin
Not available.

Prowers
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
KSNG, 11, Garden City, KS (formerly KGLD)

Pueblo
KOAA–TV, 5, Pueblo, CO
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
+KXRM–TV, 21, Colorado Springs, CO

Rio Blanco
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Rio Grande
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE 13, Albuquerque, NM (formerly KGGM)
Routt
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
Saguache
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
KOAA–TV, 5, Pueblo, CO
San Juan
KREX–TV, 5, Grand Junction, CO
San Miguel
KREX–TV, 5, Grand Junction, CO
Sedgwick
KTVS, 3, Sterling, CO
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE
Summit
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
Teller
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
Washington
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
KTVS, 3, Sterling, CO
Weld
KWGN–TV, 2, Denver, CO
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
+KTVD, 20, Denver, CO
+KDVR, 31, Denver, CO
Yuma
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)
KTVS, 3, Sterling, CO
KHGI–TV, 13, Kearney, NE (formerly KHOL)

CONNECTICUT

Fairfield
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
WTNH–TV, 8, New Haven, CT (formerly WNHC)
+WTXX, 20, Waterbury, CT
Hartford
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, New Haven, CT (formerly WNHC)
WUVN, 18, Hartford, CT (formerly WHCT)
+WTXX, 20, Waterbury, CT
WVIT, 30, New Britain, CT (formerly WHNB)
+WCTX, 59, New Haven, CT (formerly WBNE)
+WTIC–TV, 61, Hartford, CT
Litchfield
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, New Haven, CT (formerly WNHC)
+WTXX, 20, Waterbury,CT
WVIT, 30, New Britain, CT (formerly WHNB)
+WTIC–TV, 61, Hartford, CT
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WPIX, 11, New York, NY
Middlesex
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, New Haven, CT (formerly WNHC)
+WTXX, 20, Waterbury, CT
WVIT, 30, New Britain, CT (formerly WHNB)
+WCTX, 59, New Haven, CT (formerly WBNE)
+WTIC–TV, 61, Hartford, CT
WNYW, 5, New York, NY (formerly WNEW)
+WHPX, 26, New London, CT (formerly WTWS)
New Haven
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, New Haven, CT (formerly WNHC)
+WTXX, 20, Waterbury, CT
+WVIT, 30, New Britain, CT
+WCTX, 59, New Haven, CT (formerly WBNE)
+WTIC–TV, 61, Hartford, CT
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
#WABC–TV, 7, New York, NY [7]
#WWOR–TV, 9, New York, NY (formerly WOR) [8]
WPIX, 11, New York, NY
New London
WTEV, 6, Providence, RI–New Bedford, MA (WLNE)
WJAR, 10, Providence, RI–New Bedford, MA
WPRI, 12, Providence, RI–New Bedford, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, New Haven, CT (formerly WNHC)
+WTXX, 20, Waterbury, CT
+WTIC–TV, 61, Hartford, CT
+WHPX, 26, New London, CT (formerly WTWS)
Tolland
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, New Haven, CT (formerly WNHC)
WVIT, 30, New Britain, CT (formerly WHNB)
+WCTX, 59, New Haven, CT (formerly WBNE)
+WTIC–TV, 61, Hartford, CT
WBZ–TV, 4, Boston, MA
WGGB–TV, 40, Springfield, MA (formerly WHYN)
+WHPX, 26, New London, CT (formerly WTWS)
Windham
WLNE–TV, 6, Providence, RI (formerly WTEV)
WJAR, 10, Providence, RI
WPRI–TV, 12, Providence, RI
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA
WHDH–TV, 7, Boston, MA (formerly WNAC)
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, Hartford, CT (formerly WNHC)
+WTXX, 20, Waterbury, CT
+WTIC–TV, 61, Hartford, CT
+WHPX, 26, New London, CT (formerly WTWS)
Ashford—WVIT, WHPX, WBZ–TV, WCVB
Bridgewater—WABC–TV
Brooklyn—WVIT, WHPX, WBZ–TV, WCVB
Canterbury—WVIT, WHPX, WBZ–TV, WCVB
Chaplin—WVIT, WHPX, WBZ–TV, WCVB
Columbia—WVIT, WHPX, WBZ–TV, WCVB
Coventry—WVIT, WHPX, WBZ–TV, WCVB
Eastford—WVIT, WHPX, WBZ–TV, WCVB
Hampton—WVIT, WHPX, WBZ–TV, WCVB
Kent—WABC–TV
Lebanon—WVIT, WHPX, WBZ–TV, WCVB
Mansfield—WVIT, WHPX, WBZ–TV, WCVB
New Milford—WABC–TV
Pomfret—WVIT, WHPX, WBZ–TV, WCVB
Roxbury—WABC–TV
Scotland—WVIT, WHPX, WBZ–TV, WCVB
Thompson—WVIT, WHPX, WBZ–TV, WCVB
Washington—WABC–TV
Willingham—WVIT, WHPX, WBZ–TV, WCVB
Windham—WVIT, WHPX, WBZ–TV, WCVB
Woodstock—WVIT, WHPX, WBZ–TV, WCVB

DELAWARE

Kent
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA ?
+WPSG, 57, Philadelphia, PA (formerly WGBS)
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
+WMDT, 47, Salisbury, MD
New Castle
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 47, Altoona, PA (formerly ch. 48)
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Sussex
WBOC–TV, 16, Salisbury, MD
+WMDT, 47, Salisbury, MD

[7] Affected community is New Haven, CT.
[8] Affected community is New Haven, CT.

#WMAR–TV, 2, Baltimore, MD [9]
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
#WTTG, 5, Washington, DC [10]
Bowers Beach—WTTG, WJZ–TV, WBOC–TV, WMDT
Camden—WTXF–TV
Cheswold—WTXF–TV
Clayton—WTXF–TV
Dover—WTXF–TV
Farmington—WTTG, WJZ–TV, WBOC–TV, WMDT
Felton—WTTG, WJZ–TV, WBOC–TV, WMDT
Frederica—WTTG, WJZ–TV, WBOC–TV, WMDT
Harrington—WTTG, WJZ–TV, WBOC–TV, WMDT
Hartly—WTTG, WJZ–TV, WBOC–TV, WMDT
Houston—WTTG, WJZ–TV, WBOC–TV, WMDT
Kenton—WTTG, WJZ–TV, WBOC, WMDT
Leipsic—WTXF–TV, WTTG, WJZ–TV, WBOC–TV, WMDT
Little Creek—WTXF–TV, WTTG, WJZ–TV, WBOC–TV, WMDT
Magnolia—WTTG, WJZ–TV, WBOC–TV, WMDT
Smyrna—WTXF–TV
Viola—WTTG, WJZ–TV, WBOC–TV, WMDT
Woodside—WTXF–TV
Wyoming—WTXF–TV
Unincorporated areas of Kent County—WTXF–TV, WTTG, WJZ–TV, WBOC–TV, WMDT

DISTRICT OF COLUMBIA

WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC

FLORIDA

Alachua
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WESH, 2, Daytona Beach, FL
+WOGX, 51, Ocala, FL
Baker
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
Bay
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL
+WPGX, 28, Panama City, FL
WTVY, 4, Dothan, AL
Bradford
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
Brevard
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WKCF, 18, Clermont, FL
+WOFL, 35, Orlando, FL
+WRBW, 65, Orlando, FL
Broward
WFOR–TV, 4, Miami, FL (formerly WTVJ)
WSVN, 7, Miami, FL (formerly WCKT)
WPLG, 10, Miami, FL
WLTV, 23, Miami, FL (formerly WAJA)
+WBFS–TV, 33, Miami, FL
+WBZL, 39, Miami, FL (formerly WDZL)
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
+WFLX, 29, West Palm Beach, FL
Calhoun
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL
+WPGX, 28, Panama City, FL
WTVY, 4, Dothan, AL
WCTV, 6, Tallahassee, FL
Charlotte
WFLA–TV, 8, Tampa, FL
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
+WVEA–TV, 62, Venice, FL (formerly WBSV)
WINK–TV, 11, Fort Myers, FL
+WFTX, 36, Cape Coral, FL
Citrus
WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS, 28, Tampa, FL
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WOGX, 51, Ocala, FL
Clay
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
+WAWS–TV, 30, Jacksonville, FL
+WTEV–TV, 47, Jacksonville, FL
Collier
+WFTX, 36, Cape Coral, FL
+WTVK, 46, Naples, FL
Columbia
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
Dade
WFOR–TV, 4, Miami, FL (formerly WTVJ)
WTVJ, 6, Miami, FL (formerly WCIX)
WSVN, 7, Miami, FL (formerly WCKT)
WPLG, 10, Miami, FL
WLTV, 23, Miami, FL (formerly WAJA)
+WBFS–TV, 33, Miami, FL
De Soto
WFLA–TV, 8, Tampa, FL
WTVT, 13, Tampa, FL
WTOG, 44, St. Petersburg, FL
WINK–TV, 11, Fort Myers, FL
+WFTX, 36, Cape Coral, FL
Dixie
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WESH, 2, Daytona Beach, FL
WCTV, 6, Tallahassee, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
Duval
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
+WAWS–TV, 30, Jacksonville, FL
+WTEV–TV, 47, Jacksonville, FL
Escambia
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WJTC, 44, Pensacola, FL
Flagler
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
WJXT, 4, Jacksonville, FL
Franklin
WCTV, 6, Tallahassee, FL
WJHG–TV, 7, Panama City, FL
Gadsden
WCTV, 6, Tallahassee, FL
+WTLH, 49, Bainbridge, GA
WTVY, 4, Dothan, AL
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL
Gilchrist
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WESH, 2, Daytona Beach, FL
Glades
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
WINK–TV, 11, Fort Myers, FL
WFOR–TV, 4, Miami, FL (formerly WTVJ)
Gulf
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL
+WPGX, 28, Panama City, FL
WTVY, 4, Dothan, AL
WCTV, 6, Tallahassee, FL
Hamilton
WJXT, 4, Jacksonville, FL
WCTV, 6, Tallahassee, FL
Hardee
WFLA–TV, 8, Tampa, FL
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL
Hendry
WINK–TV, 11, Fort Myers, FL
WBBH–TV, 20, Fort Myers, FL
+WFTX, 36, Cape Coral, FL
+WTVK, 46, Naples, FL
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
+WFLX, 29, West Palm Beach, FL
Hernando
WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL
Highlands
WFLA–TV, 8, Tampa, FL
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WINK–TV, 11, Fort Myers, FL
Hillsborough

[9] Affected communities are Delmar and unincorporated areas of Sussex County, DE.
[10] Affected communities are Delmar and unincorporated areas of Sussex County, DE.

WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL

Holmes
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL (formerly WDAU)
WJHG–TV, 7, Panama City, FL
+WPGX, 28, Panama City, FL

Indian River
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
+WFLX, 29, West Palm Beach, FL
WTVX, 34, Fort Pierce, FL
+WOFL, 35, Orlando, FL

Jackson
WTVY, 4, Dothan, AL
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL
+WPGX, 28, Panama City, FL
WCTV, 6, Tallahassee, FL

Jefferson
WCTV, 6, Tallahassee, FL
+WTLH, 49, Bainbridge, GA
WALB–TV, 10, Albany, GA

Lafayette
WCTV, 6, Tallahassee, FL

Lake
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WOFL, 35, Orlando, FL
+WKCF, 18, Clermont, FL
+WFTS–TV, 28, Tampa, FL

Lee
WINK–TV, 11, Fort Myers, FL
WBBH–TV, 20, Fort Myers, FL
+WFTX, 36, Cape Coral, FL
+WTVK, 46, Naples, FL

Leon
WCTV, 6, Tallahassee, FL
+WTLH, 49, Bainbridge, GA
WALB–TV, 10, Albany, GA
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL

Levy
WESH, 2, Daytona Beach, FL
WJXT, 4, Jacksonville, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WOGX, 51, Ocala, FL

Liberty
WCTV, 6, Tallahassee, FL
WJHG–TV, 7, Panama City, FL
+WPGX, 28, Panama City, FL

Madison
WCTV, 6, Tallahassee, FL
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA

Manatee
WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL

Marion
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WOFL, 35, Orlando, FL
+WKCF, 18, Clermont, FL
+WOGX, 51, Ocala, FL

Martin
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
+WFLX, 29, West Palm Beach, FL
WFOR–TV, 4, Miami, FL (formerly WTVJ)

Monroe
WFOR–TV, 4, Miami, FL (formerly WTVJ)
WTVJ, 6, Miami, FL (formerly WCIX)
WSVN, 7, Miami, FL (formerly WCKT)
WPLG, 10, Miami, FL

Nassau
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
+WAWS–TV, 30, Jacksonville, FL
+WTEV–TV, 47, Jacksonville, FL

Okaloosa
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WJTC, 44, Pensacola, FL
WJHG–TV, 7, Panama City, FL

Okeechobee
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
+WFLX, 29, West Palm Beach, FL

Orange
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WRBW, 65, Orlando, FL
+WKCF, 18, Clermont, FL

Osceola
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WOFL, 35, Orlando, FL
+WRBW, 65, Orlando, FL
+WKCF, 18, Clermont, FL

Palm Beach
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
+WFLX, 29, West Palm Beach, FL
WFOR–TV, 4, Miami, FL (formerly WTVJ)
WSVN, 7, Miami, FL (formerly WCKT)
WPLG, 10, Miami, FL
+WBFS–TV, 33, Miami, FL

Pasco
WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL

Pinellas
WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL

Polk
WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WOFL, 35, Orlando, FL

Putnam
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
+WAWS–TV, 30, Jacksonville, FL
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
+WOGX, 51, Ocala, FL

St. Johns
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
+WAWS–TV, 30, Jacksonville, FL
+WTEV–TV, 47, Jacksonville, FL

St. Lucie
WPTV, 5, West Palm Beach, FL
WPEC, 12, West Palm Beach, FL (formerly WEAT)
+WFLX, 29, West Palm Beach, FL
WTVX, 34, Fort Pierce, FL
+WOPX, 56, Melbourne, FL (formerly WAYK)

Santa Rosa
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
+WJTC, 44, Pensacola, FL

Sarasota
WFLA–TV, 8, Tampa, FL
WTSP, 10, St. Petersburg, FL (formerly WLCY)
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL
WTOG, 44, St. Petersburg, FL
+WVEA–TV, 62, Venice, FL (formerly WBSV)
+WFTX, 36, Cape Coral, FL

Seminole
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WRBW, 65, Orlando, FL
+WKCF, 18, Clermont, FL

Sumter
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
WFLA–TV, 8, Tampa, FL
WTVT, 13, Tampa, FL
+WFTS–TV, 28, Tampa, FL

Suwannee
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WCTV, 6, Tallahassee, FL

Taylor
WCTV, 6, Tallahassee, FL
+WTWC, 40, Tallahassee, FL

Union
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)

WJWB, 17, Jacksonville, FL (formerly WJKS)
Volusia
WESH, 2, Daytona Beach, FL
WKMG–TV, 6, Orlando, FL (formerly WDBO)
WFTV, 9, Orlando, FL
+WOFL, 35, Orlando, FL
+WRBW, 65, Orlando, FL
+WKCF, 18, Clermont, FL
Wakulla
WCTV, 6, Tallahassee, FL
+WTLH, 49, Bainbridge, GA
WJHG–TV, 7, Panama City, FL
Walton
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL
+WPGX, 28, Panama City, FL
WTVY, 4, Dothan, AL
WEAR–TV, 3, Pensacola, FL
Washington
WTVY, 4, Dothan, AL
WJHG–TV, 7, Panama City, FL
+WMBB, 13, Panama City, FL
+WPGX, 28, Panama City, FL
Avon Park—WFTV
Boca Raton—WBFS–TV
Boynton Beach—WBFS–TV
Cooper City—WFLX
Dania—WFLX
Davie—WFLX
Delray Beach—WBFS–TV
Greenacres—WBFS–TV
Hallandale—WFLX
Hollywood—WFLX
Lake Clarke Shores—WBFS–TV
Lake Worth—WBFS–TV
Lantana—WBFS–TV
Port Charlotte—WZVN–TV (formerly WEVU)
Punta Gorda—WZVN–TV (formerly WEVU)
Sebring—WFTV
Unincorporated Boca Raton—WBFS–TV
Unincorporated Boynton Beach—WBFS–TV
Unincorporated Delray Beach—WBFS–TV
Unincorporated Lake Worth—WBFS–TV
Unincorporated West Palm Beach—WBFS–TV

GEORGIA

Appling
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
WJBF, 6, Augusta, GA
WJXT, 4, Jacksonville, FL
WCSC–TV, 5, Charleston, SC
Atkinson
WALB–TV, 10, Albany, GA
WCTV, 6, Tallahassee, FL
Bacon
WALB–TV, 10, Albany, GA
WJXT, 4, Jacksonville, FL
WSAV–TV, 3, Savannah, GA
Baker
WALB–TV, 10, Albany, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WTVY, 4, Dothan, AL
WCTV, 6, Tallahassee, FL
Baldwin
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
+WPGA, 58, Perry, GA
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
Banks
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
Barrow
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
Bartow
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WATL, 36, Atlanta, GA
+WPXA, 14, Rome, GA (formerly WTLK)
Ben Hill
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
+WSST–TV, 55, Cordele, GA
WMAZ–TV, 13, Macon, GA
Berrien
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WCTV, 6, Tallahassee, FL
Bibb
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
WMGT, 41, Macon, GA (formerly WCWB)
+WPGA, 58, Perry, GA
#WSB–TV, 2, Atlanta, GA [11]
WTVM, 9, Columbus, GA
Bleckley
WMAZ–TV, 13, Macon, GA
Brantley
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
Brooks
WCTV, 6, Tallahassee, FL
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
Bryan
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
Bulloch
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savanah, GA
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
Burke
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
Butts
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Calhoun
WALB–TV, 10, Albany, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WTVY, 4, Dothan, AL
WCTV, 6, Tallahassee, FL
Camden
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
Candler
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
Carroll
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Catoosa
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Charlton
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WJWB, 17, Jacksonville, FL (formerly WJKS)
Chatham
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
Chattahoochee
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Chattooga
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
+WPXA, 14, Rome, GA (formerly WTLK)
Cherokee
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Clarke
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WYFF, 4, Greenville, SC (formerly WFBC)
+WHNS, 21, Greenville, SC
Clay
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WTVY, 4, Dothan, AL
Clayton
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Clinch
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
WALB–TV, 10, Albany, GA
WCTV, 6, Tallahassee, FL
Cobb
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)

[11] Affected communities are Macon, Payne City and unincorporated Bibb County, GA.

WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Coffee
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
+WGVP, 44, Valdosta, GA (formerly WVGA)
Colquitt
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WCTV, 6, Tallahassee, FL
+WTXL–TV, 27, Tallahassee, FL
Columbia
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WAGT, 26, Augusta, GA (formerly WATU)
+WFXG, 54, Augusta, GA
Cook
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WCTV, 6, Tallahassee, FL
Coweta
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WATL, 36, Atlanta, GA
Crawford
WMAZ–TV, 13, Macon, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WSB–TV, 2, Atlanta, GA
Crisp
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WMAZ–TV, 13, Macon, GA
Dade
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Dawson
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Decatur
WCTV, 6, Tallahassee, FL
+WTLH, 49, Bainbridge, GA
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WTVY, 4, Dothan, AL
+WMBB, 13, Panama City, FL
De Kalb
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Dodge
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
+WPGA, 58, Perry, GA
WALB–TV, 10, Albany, GA
Dooly
WMAZ–TV, 13, Macon, GA
WALB–TV, 10, Albany, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Dougherty
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WCTV, 6, Tallahassee, FL
Douglas
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Early
WTVY, 4, Dothan, AL
+WDFX–TV, 34, Ozark, AL
WTVM, 9, Columbus, GA
WCTV, 6, Tallahassee, FL
WALB–TV, 10, Albany, GA
Echols
WCTV, 6, Tallahassee, FL
WALB–TV, 10, Albany, GA
Effingham
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
Elbert
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
WJBF, 6, Augusta, GA
Emanuel
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
Evans
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJBF, 6, Augusta, GA
Fannin
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WATL, 36, Atlanta, GA
Fayette
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WATL, 36, Atlanta, GA
Floyd
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
+WPXA, 14, Rome, GA (formerly WTLK)
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga,TN
Forsyth
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Franklin
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
Fulton
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Gilmer
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Glascock
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
Glynn
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
+WAWS–TV, 30, Jacksonville, FL
Gordon
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
+WPXA, 14, Rome, GA (formerly WTLK)
Grady
WCTV, 6, Tallahassee, FL
+WTLH, 49, Bainbridge, GA
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
Greene
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WJBF, 6, Augusta, GA
Gwinnett
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Habersham
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
Hall
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Hancock
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WMAZ–TV, 13, Macon, GA
Haralson
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Harris
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WSB–TV, 2, Atlanta, GA
Hart
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
Heard
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)

Henry
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WATL, 36, Atlanta, GA
Houston
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
WMGT, 41, Macon, GA (formerly WCWB)
+WPGA, 58, Perry, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Irwin
WALB–TV, 10, Albany, GA
WCTV, 6, Tallahassee, FL
Jackson
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WYFF, 4, Greenville, SC (formerly WFBC)
Jasper
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
WMAZ–TV, 13, Macon, GA
Jeff Davis
WALB–TV, 10, Albany, GA
WJXT, 4, Jacksonville, FL
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
Jefferson
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
Jenkins
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
Johnson
WMAZ–TV, 13, Macon, GA
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
Jones
WMAZ–TV, 13, Macon, GA
WMGT, 41, Macon, GA (formerly WCWB)
+WPGA, 58, Macon, GA
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Lamar
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WMAZ–TV, 13, Macon, GA
Lanier
WALB–TV, 10, Albany, GA
WCTV, 6, Tallahassee, FL
Laurens
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
WMGT, 41, Macon, GA (formerly WCWB)
Lee
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
Liberty
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
Lincoln
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
WYFF, 4, Greenville, SC (formerly WFBC)
Long
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
Lowndes
WCTV, 6, Tallahassee, FL
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
Lumpkin
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
McDuffie
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
McIntosh
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJXT, 4, Jacksonville, FL
Macon
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WALB–TV, 10, Albany, GA
WMAZ–TV, 13, Macon, GA
Madison
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Marion
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Meriwether
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Miller
WTVY, 4, Dothan, AL
WALB–TV, 10, Albany, GA
WCTV, 6, Tallahassee, FL
Mitchell
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WCTV, 6, Tallahassee, FL
Monroe
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WMAZ–TV, 13, Macon, GA
Montgomery
WMAZ–TV, 13, Macon, GA
WJBF, 6, Augusta, GA
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
Morgan
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Murray
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WSB–TV, 2, Atlanta, GA
+WPXA, 14, Rome, GA (formerly WTLK)
Muscogee
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WLTZ, 38, Columbus, GA (formerly WYEA)
+WXTX, 54, Columbus, GA
Newton
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WATL, 36, Atlanta, GA
Oconee
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Oglethorpe
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WJBF, 6, Augusta, GA
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
Paulding
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WATL, 36, Atlanta, GA
Peach
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
WMGT, 41, Macon, GA (formerly WCWB)
+WPGA, 58, Macon, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Pickens
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Pierce
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
Pike
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Polk
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
+WPXA, 14, Rome, GA (formerly WTLK)
Pulaski
WMAZ–TV, 13, Macon, GA
+WPGA, 58, Macon, GA
WRBL, 3, Columbus, GA
Putnam
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA

WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WMAZ–TV, 13, Macon, GA
Quitman
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WSFA, 12, Montgomery, AL
Rabun
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Randolph
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WALB–TV, 10, Albany, GA
WTVY, 4, Dothan, AL
Richmond
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WAGT, 26, Augusta, GA (formerly WATU)
+WFXG, 54, Augusta, GA
Rockdale
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Schley
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WALB–TV, 10, Albany, GA
Screven
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
Seminole
WTVY, 4, Dothan, AL
WALB–TV, 10, Albany, GA
WCTV, 6, Tallahassee, FL
Spalding
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WATL, 36, Atlanta, GA
Stephens
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Stewart
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Sumter
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
+WSST–TV, 55, Cordele, GA
Talbot
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Taliaferro
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WAGA, 5, Atlanta, GA
Tattnall
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
Taylor
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WMAZ–TV, 13, Macon, GA
Telfair
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
Terrell
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
Thomas
WCTV, 6, Tallahassee, FL
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
Tift
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WCTV, 6, Tallahassee, FL
Toombs
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
Towns
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WRCB–TV, 3, Chattanooga, TN
Treutlen
WMAZ–TV, 13, Macon, GA
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
Troup
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Turner
WALB–TV, 10, Albany, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WCTV, 6, Tallahassee, FL
Twiggs
WMAZ–TV, 13, Macon, GA
WMGT, 41, Macon, GA (formerly WCWB)
+WPGA, 58, Perry, GA
Union
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WRCB–TV, 3, Chattanooga, TN
Upson
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
+WXTX, 54, Columbus, GA
WMAZ–TV, 13, Macon, GA
Walker
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Walton
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
WTBS, 17, Atlanta, GA (formerly WTCG)
WATL, 36, Atlanta, GA
Ware
WJXT, 4, Jacksonville, FL
WTLV, 12, Jacksonville, FL (formerly WFGA)
Warren
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WAGT, 26, Augusta, GA (formerly WATU)
+WFXG, 54, Augusta, GA
Washington
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
WMAZ–TV, 13, Macon, GA
+WGXA, 24, Macon, GA
+WPGA, 58, Perry, GA
Wayne
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WJCL, 22, Savannah, GA
WJXT, 4, Jacksonville, FL
Webster
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Wheeler
WMAZ–TV, 13, Macon, GA
WJBF, 6, Augusta, GA
White
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Whitfield
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
Wilcox
WMAZ–TV, 13, Macon, GA
WALB–TV, 10, Albany, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
Wilkes
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WYFF, 4, Greenville, SC (formerly WFBC)
+WHNS, 21, Greenville, SC
Wilkinson
WMAZ–TV, 13, Macon, GA
WMGT, 41, Macon, GA (formerly WCWB)
+WPGA, 58, Perry, GA
Worth
WALB–TV, 10, Albany, GA
+WFXL, 31, Albany, GA
WRBL, 3, Columbus, GA
WTVM, 9, Columbus, GA
WCTV, 6, Tallahassee, FL
Athens—WTBS, WATL
Bishop—WTBS, WATL
Bogart—WTBS, WATL
Buford—WTBS, WATL, WGCL–TV
Flowery Branch—WTBS, WATL, WGCL–TV
Gainesville—WTBS, WATL, WGCL–TV
LaGrange—WTBS
North High Shoals—WTBS, WATL
Oakwood—WTBS, WATL, WGCL–TV
Portions of Gwinnett County—WTBS, WATL, WGCL–TV
Portions of Hall County—WTBS, WATL, WGCL–TV

Watkinsville—WTBS, WATL
Winterville—WTBS, WATL
Unincorporated areas of Clarke County—WTBS, WATL
Unincorporated areas of Oconee County—WTBS, WATL
Unincorporated areas of Troup County—WTBS

HAWAII

Hawaii 1
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Hawaii 2
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Hawaii 3
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu. HI
Hawaii 4
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Hawaii 5
KITV, 4, Honolulu, HI (formerly KHVH)
Honolulu 1
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Honolulu 2
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
KHNL, 13, Honolulu, HI (formerly KIKU)
Honolulu 3
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Honolulu 4
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
KHNL, 13, Honolulu, HI (formerly KIKU)
Kauai
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Maui 1
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
KHNL, 13, Honolulu, HI (formerly KIKU)
Maui 2
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Maui 3
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI
Maui 4
KHON–TV, 2, Honolulu, HI
KITV, 4, Honolulu, HI (formerly KHVH)
KGMB, 9, Honolulu, HI

IDAHO

Ada
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Adams
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Bannock
KIDK, 3, Idaho Falls, ID (formerly KID)
KPVI, 6, Pocatello, ID (formerly KTLE, KPTO)
KIFI–TV, 8, Idaho Falls, ID
Bear Lake
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Benewah
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Bingham
KIDK, 3, Idaho Falls, ID (formerly KID)
+KPVI, 6, Pocatello, ID
KIFI–TV, 8, Idaho Falls, ID
Blaine
KMVT, 11, Twin Falls, ID
KIDK, 3, Idaho Falls, ID (formerly KID)
Boise
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Bonner
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Bonneville
KIDK, 3, Idaho Falls, ID (formerly KID)
+KPVI, 6, Pocatello, ID
KIFI–TV, 8, Idaho Falls, ID
Boundary
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Butte
KIDK, 3, Idaho Falls, ID (formerly KID)
KIFI–TV, 8, Idaho Falls, ID
Camas
KMVT, 11, Twin Falls, ID
Canyon
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Caribou
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
KIDK, 3, Idaho Falls, ID (formerly KID)
KIFI–TV, 8, Idaho Falls, ID
Cassia
KMVT, 11, Twin Falls, ID
KIDK, 3, Idaho Falls, ID (formerly KID)
KPVI, 6, Pocatello, ID (formerly KTLE, KPTO)
KIFI–TV, 8, Idaho Falls, ID
Clark
KIDK, 3, Idaho Falls, ID (formerly KID)
KIFI–TV, 8, Idaho Falls, ID
Clearwater
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
KLEW–TV, 3, Lewiston, ID
Custer
KIDK, 3, Idaho Falls, ID (formerly KID)
KIFI–TV, 8, Idaho Falls, ID
Elmore
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Franklin
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Fremont
KIDK, 3, Idaho Falls, ID (formerly KID)
KIFI–TV, 8, Idaho Falls, ID
Gem
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Gooding
KMVT, 11, Twin Falls, ID
+KKVI, 35, Twin Falls, ID
Idaho
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
KLEW–TV, 3, Lewiston, ID
Jefferson
KIDK, 3, Idaho Falls, ID (formerly KID)
KIFI–TV, 8, Idaho Falls, ID
Jerome
KMVT, 11, Twin Falls, ID
+KKVI, 35, Twin Falls, ID
Kootenai
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
+KAYU–TV, 28, Spokane, WA
Latah
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
+KAYU–TV, 28, Spokane, WA
KLEW–TV, 3, Lewiston, ID
Lemhi
KIDK, 3, Idaho Falls, ID (formerly KID)
KECI–TV, 13, Missoula, MT (formerly KGVO)
Lewis
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Lincoln
KMVT, 11, Twin Falls, ID
Madison
KIDK, 3, Idaho Falls, ID (formerly KID)
+KPVI, 6, Pocatello, ID
KIFI–TV, 8, Idaho Falls, ID
Minidoka
KMVT, 11, Twin Falls, ID
KIDK, 3, Idaho Falls, ID (formerly KID)
+KPVI, 6, Pocatello, ID
KIFI–TV, 8, Idaho Falls, ID
Nez Perce
KLEW–TV, 3, Lewiston, ID
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Oneida
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Owyhee
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Payette
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Power
KIDK, 3, Idaho Falls, ID (formerly KID)
KPVI, 6, Pocatello, ID (formerly KTLE, KPTO)
KIFI–TV, 8, Idaho Falls, ID
Shoshone
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Teton
KIDK, 3, Idaho Falls, ID (formerly KID)

KIFI–TV, 8, Idaho Falls, ID
Twin Falls
KMVT, 11, Twin Falls, ID
+KKVI, 35, Twin Falls, ID
KTVB, 7, Boise, ID
+KTRV, 12, Nampa, ID
Valley
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
+KTRV, 12, Nampa, ID
Washington
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID

ILLINOIS

Adams
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
+KTVO, 3, Ottumwa, IA
Alexander
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Bond
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Boone
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
WIFR, 23, Freeport, IL (formerly WCEE)
+WQRF–TV, 39, Rockford, IL
WGN–TV, 9, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WMSN–TV, 47, Madison, WI
Brown
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
Bureau
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
+WYZZ–TV, 43, Bloomington, IL
Calhoun
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Carroll
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
WREX–TV, 13, Rockford, IL
Cass
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
WHOI, 19, Peoria, IL (formerly WIRL)
WMBD–TV, 31, Peoria, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
Champaign
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICD, 15, Champaign, IL
Christian
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
Clark
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WTTV, 4, Bloomington, IN
Clay
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WTVW, 7, Evansville, IN
KMOV, 4, St. Louis, MO (formerly KMOX)
+WPXS 13, Mount Vernon, IL (formerly WCEE)
Clinton
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Coles
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WAND, 17, Decatur, IL
+WRSP–TV, 55, Springfield, IL
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
Cook
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL
Crawford
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Cumberland
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
DeKalb
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
WIFR–TV, 23, Freeport, IL (formerly WCEE)
+WQRF–TV, 39, Rockford, IL
De Witt
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
WEEK–TV, 25, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
Douglas
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WAND, 17, Decatur, IL
Du Page
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL
Edgar
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
WTTV, 4, Bloomington, IN
WCIA, 3, Champaign, IL
Edwards
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Effingham
WCIA, 3, Champaign, IL
+WRSP–TV, 55, Springfield, IL
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Fayette
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Ford
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WAND, 17, Decatur, IL
+WRSP–TV, 55, Springfield, IL
+WYZZ–TV, 43, Bloomington, IL
Franklin
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
+KBSI, 23, Cape Girardeau, MO
+WTCT, 27, Marion, IL
Fulton
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
Gallatin
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
Greene
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Grundy
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
Hamilton
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
WTVW, 7, Evansville, IN
+WEVV, 44, Evansville, IN
Hancock
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
+KTVO, 3, Ottumwa, IA
Hardin

WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO

Henderson
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL

Henry
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA

Iroquois
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL

Jackson
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
+KBSI, 23, Cape Girardeau, MO
+WTCT, 27, Marion, IL
KPLR–TV, 11, St. Louis, MO

Jasper
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
+WPXS, 13, Mount Vernon, IL (formerly WCEE)

Jefferson
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
+KBSI, 23, Cape Girardeau, MO

Jersey
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO

Jo Daviess
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
WISC–TV, 3, Madison, WI
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
+WQRF–TV, 39, Rockford, IL

Johnson
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Kane
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL

Kankakee
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL

Kendall
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL

Knox
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL

Lake
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL

La Salle
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
+WPWR–TV, 50, Chicago, IL
WHBF–TV, 4, Rock Island, IL
WEEK–TV, 25, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL

Lawrence
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WTVW, 7, Evansville, IN
+WPXS, 13, Mount Vernon, IL (formerly WCEE)

Lee
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
WGN–TV, 9, Chicago, IL
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
WIFR, 23, Freeport, IL (formerly WCEE)

Livingston
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
+WPWR–TV, 50, Chicago, IL
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
WCIA, 3, Champaign, IL

Logan
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL

McDonough
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA

McHenry
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL

McLean
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
+WRSP–TV, 55, Springfield, IL

Macon
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL

Macoupin
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
+WRSP–TV, 55, Springfield, IL

Madison
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO

Marion
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)

Marshall
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
+WTCT, 27, Marion, IL

Mason
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
+WRSP–TV, 55, Springfield, IL

Massac
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Menard
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL

Mercer
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)

WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
Monroe
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Montgomery
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerlyn KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
Morgan
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVI, 2, St. Louis, MO
KPLR–TV, 11, St. Louis, MO
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
Moultrie
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
Ogle
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
WIFR, 23, Freeport, IL (formerly WCEE)
+WQRF–TV, 39, Rockford, IL
Peoria
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
Perry
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
WSIL–TV, 3, Harrisburg, IL
KFVS–TV, 11, Cape Girardeau, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Piatt
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
Pike
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVI, 2, St. Louis, MO
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Pope
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
Pulaski
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Putnam
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
Randolph
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
+KBSI, 23, Cape Girardeau, MO
Richland
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WTVW, 7, Evansville, IN
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Rock Island
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
St. Clair
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Saline
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
+WTCT, 27, Marion, IL
+WEVV, 44, Evansville, IN
Sangamon
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
+WRSP–TV, 55, Springfield, IL
Schuyler
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
Scott
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVI, 2, St. Louis, MO
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Shelby
WCIA, 3, Champaign, IL
WAND, 17, Decatur, IL
WICS, 20, Springfield, IL
Stark
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
Stephenson
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
WIFR, 23, Freeport, IL (formerly WCEE)
+WQRF–TV, 39, Rockford, IL
WISC–TV, 3, Madison, WI
+WMSN–TV, 47, Madison, WI
Tazewell
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL
+WRSP–TV, 55, Springfield, IL
Union
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Vermilion
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WAND, 17, Decatur, IL
WTWO, 2, Terre Haute, IN
Wabash
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
Warren
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
Washington
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Wayne
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
White
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
Whiteside
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
+WQRF–TV, 39, Rockford, IL
Will
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL
Williamson
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+WPXS, 13, Mount Vernon, IL (formerly WCEE)
+KBSI, 23, Cape Girardeau, MO
+WTCT, 27, Marion, IL
Winnebago
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
WIFR, 23, Freeport, IL (formerly WCEE)
+WQRF–TV, 39, Rockford, IL
Woodford
WHOI, 19, Peoria, IL (formerly WIRL)
WEEK–TV, 25, Peoria, IL
WMBD–TV, 31, Peoria, IL
+WYZZ–TV, 43, Bloomington, IL

Rockton Village—WMSN–TV
South Beloit—WMSN–TV

INDIANA

Adams
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN

Allen
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN

Bartholomew
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WXIN, 59, Indianapolis, IN

Benton
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WTTK, 29, Kokomo, IN
+WXIN, 59, Indianapolis, IN
WGN–TV, 9, Chicago, IL
WLFI–TV, 18, Lafayette, IN
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL

Blackford
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WTTK, 29, Kokomo, IN
+WXIN, 59, Indianapolis, IN
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN

Boone
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Brown
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13 Indianapolis, IN (formerly WLWI)

Carroll
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
+WXIN, 59, Indianapolis, IN
WLFI–TV, 18, Lafayette, IN

Cass
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WTTK, 29, Kokomo, IN
+WXIN, 59, Indianapolis, IN
WLFI–TV, 18, Lafayette, IN

Clark
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Clay
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)

Clinton
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Crawford
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
WTVW, 7, Evansville, IN

Daviess
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WTVW, 7, Evansville, IN
WTTV, 4, Bloomington, IN

Dearborn
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
+WRGT–TV, 45, Dayton, OH

Decatur
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)

De Kalb
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN

Delaware
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Dubois
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WTTV, 4, Bloomington, IN
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
+WDRB, 41, Louisville, KY
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN

Elkhart
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
+WHME–TV, 46, South Bend, IN

Fayette
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Floyd
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Fountain
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WTHR, 13, Indianapolis, IN (formerly WLWI)
WCIA, 3, Champaign, IL
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN

Franklin
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WTTV, 4, Bloomington, IN
+WRGT–TV, 45, Dayton, OH

Fulton
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
+WHME–TV, 46, South Bend, IN
+WTTK, 29, Kokomo, IN

Gibson
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN

Grant
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
+WFFT–TV, 55, Fort Wayne, IN

Greene
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
WTVW, 7, Evansville, IN
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WTHR, 13, Indianapolis, IN (formerly WLWI)
Hamilton
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
Hancock
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Indianapolis, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
Harrison
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN
Hendricks
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
Henry
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WXIN, 59, Indianapolis, IN
Howard
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
Huntington
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
Jackson
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
Jasper
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
+WPWR–TV, 50, Chicago, IL
Jay
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
+WRGT–TV, 45, Dayton, OH
Jefferson
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WTTV, 4, Bloomington, IN
Jennings
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
Johnson
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
Knox
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
WTVW, 7, Evansville, IN
Kosciusko
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
+WFFT–TV, 55, Fort Wayne, IN
La Grange
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
Lake
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL
La Porte
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
Lawrence
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
+WDRB, 41, Louisville, KY
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
Madison
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
Marion
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
Marshall
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
WGN–TV, 9, Chicago, IL
Martin
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WTVW, 7, Evansville, IN
WTTV, 4, Bloomington, IN
WAVE, 3, Louisville, KY
+WDRB, 41, Louisville, KY
Miami
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)

+WTTK, 29, Kokomo, IN
+WXIN, 59, Indianapolis, IN
WNDU–TV, 16, South Bend, IN

Monroe
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WXIN, 59, Indianapolis, IN
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN

Montgomery
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Morgan
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WXIN, 59, Indianapolis, IN

Newton
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
+WGBO–TV, 66, Joliet, IL

Noble
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
WNDU–TV, 16, South Bend. IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
+WHME–TV, 46, South Bend, IN

Ohio
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Orange
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
WTTV, 4, Bloomington, IN

Owen
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN

Parke
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WTHR, 13, Indianapolis, IN (formerly WLWI)

Perry
WTVW, 7, Evansville. IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
+WDRB, 41, Louisville, KY

Pike
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WTTV, 4, Bloomington, IN
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN

Porter
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WFLD, 32, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL

Posey
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN

Pulaski
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL

Putnam
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WXIN, 59, Indianapolis, IN
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN

Randolph
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
+WXIN, 59, Indianapolis, IN
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH

Ripley
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WTTV, 4, Bloomington, IN

Rush
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WXIN, 59, Indianapolis, IN

St. Joseph
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
WGN–TV, 9, Chicago, IL

Scott
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN
WTTV, 4, Bloomington, IN

Shelby
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Spencer
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN

Starke
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL

Steuben
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
WWMT, 3, Kalamazoo, MI (formerly WKZO)
+WSYM–TV, 47, Lansing, MI

Sullivan
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
WTTV, 4, Bloomington, IN

Switzerland
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH

Tippecanoe
WLFI–TV, 18, Lafayette, IN
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Marion, IN (formerly WMCC)
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Tipton
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WTTK, 29, Kokomo, IN
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN

Union
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH

WXIX–TV, 19, Cincinnati, OH
WHIO–TV, 7, Dayton, OH
WPTD, 16, Dayton, OH (formerly WKTR)
WTTV, 4, Bloomington, IN
Vanderburg
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
Vermillion
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WTHR, 13, Indianapolis, IN (formerly WLWI)
WCIA, 3, Champaign, IL
Vigo
WTWO, 2, Terre Haute, IN
WTHI–TV, 10, Terre Haute, IN
+WBAK–TV, 38, Terre Haute, IN
WTTV, 4, Bloomington, IN
Wabash
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WNDY–TV, 23, Indianapolis, IN (formerly WMCC)
+WTTK, 29, Kokomo, IN
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
Warren
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WTHR, 13, Indianapolis, IN (formerly WLWI)
WCIA, 3, Champaign, IL
WICD, 15, Champaign, IL
WTHI–TV, 10, Terre Haute, IN
Warrick
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
Washington
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
WDRB, 41, Louisville, KY
WTTV, 4, Bloomington, IN
Wayne
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
Wells
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
White
WTTV, 4, Bloomington, IN
WRTV, 6, Indianapolis, IN (formerly WFBM)
WISH–TV, 8, Indianapolis, IN
WTHR, 13, Indianapolis, IN (formerly WLWI)
+WTTK, 29, Kokomo, IN
+WHMB–TV, 40, Indianapolis, IN
+WXIN, 59, Indianapolis, IN
WGN–TV, 9, Chicago, IL
WLFI–TV, 18, Lafayette, IN
Whitley
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
Battleground—WXIN
Bloomington—WYZZ–TV
Centerville—WXIX–TV
Dayton—WXIN
Lafayette—WXIN
Mishawaka—WGN–TV, WFLD
Osceola—WGN–TV, WFLD
Richmond—WXIX–TV
Roseland—WGN–TV, WFLD
South Bend—WGN–TV, WFLD
Spring Grove—WXIX–TV
West Lafayette—WXIN
Unincorporated areas os St. Joseph County—WGN–TV, WFLD
Unincorporated areas of Wayne County—WXIX–TV

IOWA

Adair
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
Adams
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
Allamakee
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WKBT, 8, La Crosse, WI
+WLAX, 25, La Crosse, WI
KTTC, 10, Rochester, MN (formerly KROC)
Appanoose
KTVO, 3, Ottumwa, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
Audubon
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
Benton
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
Black Hawk
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
Boone
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
Bremer
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
Buchanan
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
Buena Vista
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
Butler
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
KIMT, 3, Mason City, IA (formerly KGLO)
Calhoun
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
+KDSM–TV, 17, Des Moines, IA
KVFD, 21, Fort Dodge, IA
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Carroll
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
WOWT, 6, Omaha, NE (formerly WOW)
Cass
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE
Cedar
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
Cerro Gordo
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
Cherokee
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Chickasaw
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
KIMT, 3, Mason City, IA (formerly KGLO)
KTTC, 10, Rochester, MN (formerly KROC)
Clarke
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
Clay
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Clayton
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
Clinton

WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA

Crawford
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA

Dallas
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA

Davis
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL

Decatur
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
KTVO, 3, Ottumwa, IA

Delaware
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA

Des Moines
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
+KYOU–TV, 15, Ottumwa, IA

Dickinson
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KEYC–TV, 12, Mankato, MN
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)

Dubuque
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
KFXB, 40, Dubuque, IA (formerly KDUB)

Emmet
KEYC–TV, 12, Mankato, MN
KAAL, 6, Austin, MN (formerly KAUS)
KCAU–TV, 9, Sioux City, IA

Fayette
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA

Floyd
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA

Franklin
KIMT, 3, Mason City, IA (formerly KGLO)
KTTC, 10, Rochester, MN (formerly KROC)
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WOI–TV, 5, Ames, IA
+KDSM–TV, 17, Des Moines, IA

Fremont
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE

Greene
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA

Grundy
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
+KDSM–TV, 17, Des Moines, IA

Guthrie
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA

Hamilton
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA

Hancock
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)

Hardin
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA

Harrison
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Henry
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA

Howard
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA

Humboldt
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
+KDSM–TV, 17, Des Moines, IA
KVFD, 21, Fort Dodge, IA

Ida
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA

Iowa
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
+KYOU–TV, 15, Ottumwa, IA

Jackson
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA

Jasper
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA

Jefferson
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA (formerly KOIA)
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KCRG–TV, 9, Cedar Rapids, IA
KWQC–TV, 6, Davenport, IA (formerly WOC)
KHQA–TV, 7, Hannibal, MO

Johnson
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
+KYOU–TV, 15, Ottumwa, IA

Jones
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
+KLJB–TV, 18, Davenport, IA

Keokuk
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WHO–TV, 13, Des Moines, IA
KTVO, 3, Ottumwa, IA

Kossuth
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KVFD, 21, Fort Dodge, IA
KEYC–TV, 12, Mankato, MN

Lee
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA

Linn
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA

Louisa
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA

Lucas
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA

Lyon
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)

KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Madison
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
Mahaska
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
KTVO, 3, Ottumwa, IA
Marion
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
Marshall
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
Mills
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Mitchell
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
Monona
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Monroe
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA
Montgomery
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Muscatine
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
O'Brien
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Oceola
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Page
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Palo Alto
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KVFD, 21, Fort Dodge, IA
KEYC–TV, 12, Mankato, MN
Plymouth
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
Pocahontas
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
KVFD, 21, Fort Dodge, IA
Polk
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
Pottawattamie
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Poweshiek
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
Ringgold
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
WOWT, 6, Omaha, NE (formerly WOW)
KQTV, 2, St. Joseph, MO
Sac
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
WOWT, 6, Omaha, NE (formerly WOW)
Scott
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
WQAD–TV, 8, Moline, IL
+KLJB–TV, 18, Davenport, IA
Shelby
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Sioux
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Story
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
Tama
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
Taylor
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE
Union
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
KETV, 7, Omaha, NE
Van Buren
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA (formerly KOIA)
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
Wapello
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA (formerly KOIA)
Warren
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
+KDSM–TV, 17, Des Moines, IA
Washington
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WHBF–TV, 4, Rock Island, IL
KWQC–TV, 6, Davenport, IA (formerly WOC)
+KLJB–TV, 18, Davenport, IA
Wayne
KCCI, 8, Des Moines, IA (formerly KRNT)
WHO–TV, 13, Des Moines, IA
KTVO, 3, Ottumwa, IA
Webster
WOI–TV, 5, Ames, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
+KDSM–TV, 17, Des Moines, IA
KVFD, 21, Fort Dodge, IA
Winnebago
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
KEYC–TV, 12, Mankato, MN
Winneshiek
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WKBT, 8, La Crosse, WI
+WLAX, 25, La Crosse, WI
KIMT, 3, Mason City, IA (formerly KGLO)
KTTC, 10, Rochester, MN (formerly KROC)
Woodbury
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
Worth
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
Wright
WOI–TV, 5, Ames, IA
+KDSM–TV, 17, Des Moines, IA
KVFD, 21, Fort Dodge, IA
KIMT, 3, Mason City, IA (formerly KGLO)

KANSAS

Allen
- KOAM–TV, 7, Pittsburg, KS
- KODE–TV, 12, Joplin, MO

Anderson
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO
- WIBW–TV, 13, Topeka, KS

Atchison
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO
- +KSMO–TV, 62, Kansas City, MO
- KQTV, 2, St. Joseph, MO
- KSNT, 27, Topeka, KS (formerly KTSB)

Barber
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
- KTEN, 10, Ada, OK

Barton
- KSNC, 2, Great Bend, KS (formerly KCKT)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Bourbon
- KOAM–TV, 7, Pittsburg, KS
- KODE–TV, 12, Joplin, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)

Brown
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO
- KQTV, 2, St. Joseph, MO
- WIBW–TV, 13, Topeka, KS
- +KTKA–TV, 49, Topeka, KS

Butler
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
- +KSAS–TV, 24, Wichita, KS

Chase
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
- WIBW–TV, 13, Topeka, KS

Chautauqua
- KJRH, 2, Tulsa, OK (formerly KTEW)
- KOTV, 6, Tulsa, OK
- KTUL, 8, Tulsa, OK

Cherokee
- KOAM–TV, 7, Pittsburg, KS
- KODE–TV, 12, Joplin, MO
- KSNF, 16, Joplin, MO (formerly KUHI)

Cheyenne
- KBSH–TV, 7, Hays, KS (formerly KAYS)
- KSNK, 8, McCook, NE (formerly KOMC)
- KHGI–TV, 13, Kearney, NE (formerly KHOL)

Clark
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KSNG, 11, Garden City, KS (formerly KGLD)
- KUPK–TV, 13, Garden City, KS

Clay
- WIBW–TV, 13, Topeka, KS
- KSNB–TV, 4, Superior, NE (formerly KHTL)

Cloud
- KSNB–TV, 4, Superior, NE (formerly KHTL)
- KOLN, 10, Lincoln, NE
- WIBW–TV, 13, Topeka, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Coffey
- WIBW–TV, 13, Topeka, KS
- +KTKA–TV, 49, Topeka, KS
- KOAM–TV, 7, Pittsburg, KS
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO

Comanche
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KUPK–TV, 13, Garden City, KS

Cowley
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
- +KSAS–TV, 24, Wichita, KS

Crawford
- KOAM–TV, 7, Pittsburg, KS
- KODE–TV, 12, Joplin, MO
- KSNF, 16, Joplin, MO (formerly KUHI)

Decatur
- KSNK, 8, McCook, NE (formerly KOMC)
- KHGI–TV, 13, Kearney, NE (formerly KHOL)

Dickinson
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
- WIBW–TV, 13, Topeka, KS

Doniphan
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO
- +KSMO–TV, 62, Kansas City, MO
- KQTV, 2, St. Joseph, MO

Douglas
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO
- +KSMO–TV, 62, Kansas City, MO (formerly KZKC)
- WIBW–TV, 13, Topeka, KS

Edwards
- KSNC, 2, Great Bend, KS (formerly KCKT)
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KBSH–TV, 7, Hays, KS (formerly KAYS)
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Elk
- KJRH, 2, Tulsa, OK (formerly KTEW)
- KOTV, 6, Tulsa, OK
- KTUL, 8, Tulsa, OK
- KOAM–TV, 7, Pittsburg, KS
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS

Ellis
- KSNC, 2, Great Bend, KS (formerly KCKT)
- KBSH–TV, 7, Hays, KS (formerly KAYS)

Ellsworth
- KSNC, 2, Great Bend, KS (formerly KCKT)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Finney
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KSNG, 11, Garden City, KS (formerly KGLD)
- KUPK–TV, 13, Garden City, KS

Ford
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KSNG, 11, Garden City, KS (formerly KGLD)
- KUPK–TV, 13, Garden City, KS

Franklin
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO
- +KSMO–TV, 62, Kansas City, MO
- WIBW–TV, 13, Topeka, KS

Geary
- WIBW–TV, 13, Topeka, KS
- +KTKA–TV, 49, Topeka, KS
- KAKE–TV, 10, Wichita, KS

Gove
- KBSH–TV, 7, Hays, KS (formerly KAYS)
- KSNK, 8, McCook, NE (formerly KOMC)

Graham
- KBSH–TV, 7, Hays, KS (formerly KAYS)
- KSNK, 8, McCook, NE (formerly KOMC)

Grant
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KSNG, 11, Garden City, KS (formerly KGLD)
- KUPK–TV, 13, Garden City, KS

Gray
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KSNG, 11, Garden City, KS (formerly KGLD)
- KUPK–TV, 13, Garden City, KS

Greeley
- KBSH–TV, 7, Hays, KS (formerly KAYS)
- KSNG, 11, Garden City, KS (formerly KGLD)

Greenwood
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- WIBW–TV, 13, Topeka, KS

Hamilton
- KSNG, 11, Garden City, KS (formerly KGLD)
- KUPK–TV, 13, Garden City, KS

Harper
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Harvey
- KSNW, 3, Wichita, KS (formerly KARD)
- KAKE–TV, 10, Wichita, KS
- KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
- +KSAS–TV, 24, Wichita, KS

Haskell
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KSNG, 11, Garden City, KS (formerly KGLD)
- KUPK–TV, 13, Garden City, KS

Hodgeman
- KSNC, 2, Great Bend, KS (formerly KCKT)
- KBSD–TV, 6, Ensign, KS (formerly KTVC)
- KBSH–TV, 7, Hays, KS (formerly KAYS)
- KUPK–TV, 13, Garden City, KS

Jackson
- WIBW–TV, 13, Topeka, KS
- KSNT, 27, Topeka, KS (formerly KTSB)
- +KTKA–TV, 49, Topeka, KS
- WDAF–TV, 4, Kansas City, MO
- KCTV, 5, Kansas City, MO (formerly KCMO)
- KMBC–TV, 9, Kansas City, MO

+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
KQTV, 2, St. Joseph, MO

Jefferson
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO
KQTV, 2, St. Joseph, MO

Jewell
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE

Johnson
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KSHB–TV, 41, Kansas City, MO (formerly KBMA)
KCIT, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)

Kearny
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Kingman
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Kiowa
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Labette
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)

Lane
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Leavenworth
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KSHB–TV, 41, Kansas City, MO (formerly KBMA)
KCIT, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)

Lincoln
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Linn
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KOAM–TV, 7, Pittsburg, KS

Logan
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)

Lyon
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS

McPherson
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
+KSAS–TV, 24, Wichita, KS

Marion
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Marshall
WIBW–TV, 13, Topeka, KS
+KTKA–TV, 49, Topeka, KS
KSNB, 4, Superior, NE (formerly KHTL)
KOLN, 10, Lincoln, NE

Meade
KBSD–TV 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Miami
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KSHB–TV, 41, Kansas City, MO (formerly KBMA)
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)

Mitchell
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNB–TV, 4, Superior, NE (formerly KHTL)

Montgomery
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO

Morris
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS

Morton
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Nemaha
WIBW–TV, 13, Topeka, KS
+KTKA–TV, 49, Topeka, KS
WDAF–TV, 4, Kansas City, MO
KQTV, 2, St. Joseph, mO

Neosho
KOAM–TV 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)

Ness
KSNC, 2, Great Bend, KS (formerly KCKT)
KKBSH–TV, 7, Hutchinson, KS (formerly KAYS)

Norton
KBSH–TV, 7, Hutchinson, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Osage
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO

Osborne
KSNC, 2,Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNB, 4, Superior, NE (formerly KHTL)

Ottawa
KSNC, 2, Great Bend, KS (formerly KCKT)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
KSNB, 4, Superior, NE (formerly KHTL)

Pawnee
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)
KAKE–TV 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Phillips
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KBSH–TV, 7, Hays, KS (formerly KAYS)

Pottawatomie
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS

Pratt
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Rawlins
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Reno
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
+KSAS–TV, 24, Wichita, KS

Republic
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE

Rice
KSNC, 2, Great Bend, KS (formerly KCKT)
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
+KSAS, 24, Wichita, KS

Riley
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS

Rooks
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)

Rush
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)

Russell
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)

Saline

KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Scott
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Sedgwick
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 11, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
+KSAS–TV, 24, Wichita, KS

Seward
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Shawnee
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS
WDAF–TV, 4, Kansas City, MO
#KCTV, 5, Kansas City, MO (formerly KCMO) [12]
#KMBC–TV, 9, Kansas City, MO [13]

Sheridan
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)

Sherman
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)

Smith
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Stafford
KSNC, 2, Great Bend, KS (formerly KCKT)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)

Stanton
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Stevens
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Sumner
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
KWCH–TV, 12, Hutchinson, KS (formerly KTVH)
+KSAS–TV, 24, Wichita, KS

Thomas
KBSH–TV, 7, Ensign, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)

Trego
KSNC, 2, Great Bend, KS (formerly KCKT)
KBSH–TV, 7, Hays, KS (formerly KAYS)

Wabaunsee
WIBW–TV, 13, Topeka, KS
KSNT, 27, Topeka, KS (formerly KTSB)
+KTKA–TV, 49, Topeka, KS
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO

Wallace
KBSH–TV, 7, Hays, KS (formerly KAYS)

Washington
KSNB–TV, 4, Superior, NE (formerly KHTL)
KOLN, 10, Lincoln, NE
WIBW–TV, 13, Topeka, KS

Wichita
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS

Wilson
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KOTV, 6, Tulsa, OK

Woodson
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
WIBW–TV, 13, Topeka, KS

Wyandotte
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KSHB–TV, 41, Kansas City, MO (formerly KBMA)
KCIT, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)

KENTUCKY

Adair
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WTVF, 5, Nashville, TN (formerly WLAC)

Allen
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Anderson
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexingto, KY (formerly WBLG)

Ballard
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Barren
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN

Bath
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH

Bell
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN

Boone
WLWT, 5, Cincinnat, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnat, OH
+WSTR–TV, 64, Cincinnati, OH
+WRGT–TV, 45, Dayton, OH

Bourbon
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH

Boyd
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Boyle
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
+WDK–TV, 56, Danville, KY
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY

Bracken
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Breathitt
WSAZ–TV, 3, Huntington, WV
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

Breckinridge
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
WTVW, 7, Evansville, IN

Bullitt
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Butler
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WBKO, 13, Bowling Green, KY
WTVW, 7, Evansville, IN
+KSAS–TV, 24, Wichita, KS ?

Caldwell
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)

Calloway
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
WSMV, 4, Nashville, TN (formerly WSM)

[12] Affected community is Topeka, KS.

[13] Affected communities are Topeka, Auburn and unincorporated portions of Shawnee County (including the areas known as Berryton and Tecumseh), KS.

WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Campbell
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
+WRGT–TV, 45, Dayton, OH

Carlisle
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Carroll
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
WTTV, 4, Bloomington, IN
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY

Carter
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV

Casey
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY

Christian
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN

Clark
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 62, Lexington, KY (formerly WBLG)
+WDKY–TV, 56, Danville, KY

Clay
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN

Clinton
WSMV 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 8, Nashville, TN (formerly WSIX)

Crittenden
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
WTVW, 7, Evansville, IN
+WEVV, 44, Evansville, IN

Cumberland
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Daviess
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN

Edmonson
WSMV 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WBKO, 13, Bowling Green, KY

Elliott
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Charleston.WV (formerly WHTN)

Estill
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

Fayette
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
+WDKY–TV, 56, Danville, KY

Fleming
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WLEX–TV, 18, Lexington, KY
+WDKY–TV, 56, Danville, KY

Floyd
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Franklin
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
WKRC–TV, 12, Cincinnati, OH
WLEX–TV, 18, Lexington, OH
WKYT–TV, 27, Lexington, OH
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
+WDKY–TV, 56, Danville, KY

Fulton
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Gallatin
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Garrard
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

Grant
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Graves
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Grayson
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
+WDRB, 41, Louisville, KY
WBKO, 13, Bowling Green, KY
WTVW, 7, Evansville, IN

Green
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Greenup
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Hancock
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY

Hardin
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY

Harlan
WATE–TV 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WLOS, 13, Asheville, NC

Harrison
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WLEX–TV, 18, Lexington, KY
+WDKY–TV, 56, Danville, KY

Hart
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WBKO, 13, Bowling Green, KY
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
+WDRB, 41, Louisville, KY

Henderson
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN

Henry
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH

Hickman
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Hopkins
WTVW, 7, Evansville, IN
+WFI–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WSMV, 4, Nashville, TN (formerly WSM)
WTVF 5, Nashville, TN (formerly WLAC)
WPSD–TV, 6, Paducah, KY

Jackson
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (WBLG)
+WLJC–TV, 65, Beattyville, KY
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN

Jefferson

WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Jessamine
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

Johnson
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)

Kenton
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati. OH

Knott
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
WSAZ–TV, 3, Huntington, WV
WLOS, 13, Greenville, SC
WLEX–TV, 18, Lexington, KY

Knox
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WKXT)
WBIR–TV, 10, Knoxville, TN

Larue
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY

Laurel
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN

Lawrence
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)

Lee
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WCYB–TV, 5, Bristol, VA

Leslie
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
WBIR–TV, 10, Knoxville, TN

Letcher
WOWK–TV, 13, Huntington, TN (formerly WHTN)
WCYB–TV, 5, Bristol, VA

Lewis
WSAZ–TV, 3, Huntington, WV
+WVAH–TV, 23, Charleston, WV (formerly ch. 23)
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH

Lincoln
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

Livingston
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Logan
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Lyon
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO

McCracken
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

McCreary
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WKXT)
WBIR–TV, 10, Knoxville, TN

McLean
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WTVF, 5, Nashville, TN (formerly WLAC)

Madison
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

Magoffin
WSAZ–TV, 3, Huntington, WV

Marion
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Marshall
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO

Martin
WSAZ–TV, 3, Huntington, WV
WCH–TVS, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)

Mason
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Meade
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Menifee
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

2≤Mercer
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
+WDRB, 41, Louisville, KY

Metcalfe
WSMV 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Monroe
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Montgomery
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)

Morgan
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)

Muhlenberg
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN
WBKO, 13, Bowling Green, KY
WTVW, 7, Evansville, IN
+WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN

Nelson
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Nicholas
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Ohio
WTVW, 7, Evansville, IN
+WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WBKO, 13, Bowling Green, KY
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)

Oldham
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN

Owen
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY

Owsley
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WATE–TV, 6, Knoxville, TN.

Pendleton
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Perry
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
Pike
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WVVA, 6, Bluefield, WV (formerly WHIS)
Powell
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
Pulaski
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
Robertson
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WLEX–TV, 18, Lexington, KY
Rockcastle
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
Rowan
WSAZ–TV, 3, Huntington, WV
+WVAH–TV, 11, Charleston, WV
Russell
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WHAS–TV, 11, Louisville, KY
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WDKY–TV, 56, Danville, KY
Scott
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
Shelby
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN
Simpson
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Spencer
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
Taylor
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
+WDRB, 41, Louisville, KY
+WFTE, 58, Salem, IN
Todd
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Trigg
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WPSD–TV, 6, Paducah, KY
Trimble
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
WTTV, 4, Bloomington, IN
Union
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
Warren
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
#WKRN–TV, 2, Nashville, TN (formerly WSIX) [14]
+WZTV, 17, Nashville, TN
+WXMT, 30, Nashville, TN (formerly WCAY)
WBKO, 13, Bowling Green, KY
Washington
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY
WLKY–TV, 32, Louisville, KY
+WDRB, 41, Louisville, KY
Wayne
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
Webster
WTVW, 7, Evansville, IN
WFIE–TV, 14, Evansville, IN
WEHT, 25, Evansville, IN
+WEVV, 44, Evansville, IN
Whitley
WATE–TV, 6, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WKXT)
WBIR–TV, 10, Knoxville, TN
Wolfe
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston. WV
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
Woodford
WLEX–TV, 18, Lexington, KY
WKYT–TV, 27, Lexington, KY
+WDKY–TV, 56, Danville, KY
WTVQ–TV, 36, Lexington, KY (formerly WBLG)
WAVE, 3, Louisville, KY
WHAS–TV, 11, Louisville, KY

LOUISIANA

Acadia
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KADN, 15, Lafayette, LA (KADN) (formerly KLNI)
KALB–TV, 5, Alexandria, LA
Allen
KATC, 3, Lafayette, LA
KLF–TV, 10, Lafayette, LA
KALB–TV, 5, Alexandria, LA
KPLC–TV, 7, Lake Charles, LA
+KVHP, 29, Lake Charles, LA
Ascension
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
Assumption
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
Avoyelles
KALB–TV, 5, Alexandria, LA
+KLAX–TV, 31, Alexandria, LA
WAFB, 9, Baton Rouge, LA
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
Beauregard
KJAC–TV, 4, Port Arthur, TX
KFDM–TV, 6, Beaumont, TX
KALB–TV, 5, Alexandria, LA
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KPLC–TV, 7, Lake Charles, LA
+KVHP, 29, Lake Charles, LA
Bienville
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
Bossier
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Caddo
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Calcasieu
KPLC–TV, 7, Lake Charles, LA
+KVHP, 29, Lake Charles, LA
KJAC–TV, 4, Port Arthur, TX
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
Caldwell
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
Cameron
KPLC–TV, 7, Lake Charles, LA
KJAC–TV, 4, Port Arthur, TX
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
Catahoula
KNOE–TV, 8, Monroe, LA
KALB–TV, 5, Alexandria, LA

[14] Affected community is Bowling Green, KY.

Claiborne
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
Concordia
KNOE–TV, 8, Monroe, LA
KALB–TV, 5, Alexandria, LA
DeSoto
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
East Baton Rouge
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
East Carroll
KNO–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
WABG–TV, 6, Greenwood, MS
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
East Feliciana
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
Evangeline
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KALB–TV, 5, Alexandria, LA
Franklin
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
Grant
KAL–TV, 5, Alexandria, LA
KNOE–TV, 8, Monroe, LA
Iberia
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KADN, 15, Lafayette, LA (formerly KLNI)
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
Iberville
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
Jackson
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
KTBS–TV, 3, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
Jefferson
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
Jefferson Davis
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KPLC–TV, 7, Lake Charles, LA
+KVHP, 29, Lake Charles, LA
Lafayette
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KADN, 15, Lafayette, LA (formerly KLNI)
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
Lafourche
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
WAFB, 9, Baton Rouge, LA
LaSalle
KNOE–TV, 8, Monroe, LA
KALB–TV, 5, Alexandria, LA
Lincoln
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
KTBS–TV, 3, Shreveport, LA
Livingston
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
WWL–TV, 4, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
Madison
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS
KNOE–TV, 8, Monroe, LA
Morehouse
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
Natchitoches
KTBS–TV, 3, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
KALB–TV, 5, Alexandria, LA
KNOE–TV, 8, Monroe, LA
Orleans
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
WGNO, 26, New Orleans, LA (WGNO) (formerly WWOM)
+WNOL–TV, 38, New Orleans, LA
Ouachita
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
Plaquemines
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
Pointe Coupee
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
Rapides
KAL–TV, 5, Alexandria, LA
KLFY–TV, 10, Lafayette, LA
KNOE–TV, 8, Monroe, LA
Red River
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Richland
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
WLBT–TV, 3, Jackson, MS
Sabine
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
KALB–TV, 5, Alexandria, LA
St. Bernard
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
St. Charles
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
St. Helena
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
St. James
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
St. John the Baptist
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
WAFB, 9, Baton Rouge, LA
St. Landry
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KALB–TV, 5, Alexandria, LA
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
St. Martin
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KADN, 15, Lafayette, LA (formerly KLNI)
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
St. Mary
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
St. Tammany
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
Tangipahoa
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
Tensas
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
KNOE–TV, 8, Monroe, LA
Terrebonne
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA

+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
Union
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
Vermilion
KATC, 3, Lafayette, LA
KLFY–TV, 10, Lafayette, LA
KADN, 15, Lafayette, LA (formerly KLNI)
Vernon
KALB–TV, 5, Alexandria, LA
KTBS–TV, 3, Shreveport, LA
+KVHP, 29, Lake Charles, LA
Washington
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
WLOX–TV, 13, Biloxi, MS
Webster
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Texarkana, TX
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
West Baton Rouge
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WVLA, 33, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
West Carroll
KNOE–TV, 8, Monroe, LA
KTVE, 10, Monroe, LA
West Feliciana
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
KATC, 3, Lafayette, LA
Winn
KNOE–TV, 8, Monroe, LA
KALB–TV, 5, Alexandria, LA
Broussard—KPLC–TV
Carencro—KPLC–TV
Duson—KPLC–TV
Lafayette—KPLC–TV
Lafayette Parish (including unincorporated area known as Milton)—KPLC–TV
Maurice—KPLC–TV
Scott—KPLC–TV
Youngsville—KPLC–TV

MAINE

Androscoggin
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WPXT, 51, Portland, ME
Aroostook
WAGM–TV, 8, Presque Isle, ME
CHSJ, 4, Canada
Cumberland
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WPXT, 51, Portland, ME
Franklin
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
WABI–TV, 5, Bangor, ME
Hancock
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
WVII–TV, 7, Bangor, ME (formerly WEMT)
Kennebec
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WPXT, 51, Portland, ME
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
Knox
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
WVII–TV, 7, Bangor, ME (formerly WEMT)
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
Lincoln
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WPXT, 51, Portland, ME
Oxford
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WPXT, 51, Portland, ME
WABI–TV, 5, Bangor, ME
Penobscot
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
WVII–TV, 7, Bangor, ME (formerly WEMT)
Piscataquis
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
WVII–TV, 7, Bangor, ME (formerly WEMT)
Sagadahoc
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WPXT, 51, Portland, ME
Somerset
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
WVII–TV, 7, Bangor, ME (formerly WEMT)
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
Waldo
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
WVII–TV, 7, Bangor, ME (formerly WEMT)
Washington
WLBZ, 2, Bangor, ME
WABI–TV, 5, Bangor, ME
WVII–TV, 7, Bangor, ME (formerlyWEMT)
CHSJ, 4, Canada
York
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WPXT, 51, Portland, ME
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
Berwick—WCSH, WPXG, WMUR–TV, WFXT
Elliot—WCSH, WPXG, WMUR–TV, WFXT
Kittery—WCSH, WPXG, WMUR–TV, WFXT
South Berwick—WCSH, WPXG, WMUR–TV, WFXT

MARYLAND

Allegany
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WJAC–TV, 6, Johnstown, PA
Anne Arundel
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
Baltimore including Baltimore City
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
WTTG, 5, Washington, DC
+WDCA, 20, Washington, DC
Calvert
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
+WDCA, 20, Washington, DC
WMAR–TV, 2, Baltimore, MD
Caroline
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WTTG, 5, Washington, DC
Carroll
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
Cecil
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WGAL, 8, Lancaster, PA
Charles
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
Dorchester
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD

WBOC–TV, 16, Salisbury, MD
+WMDT, 47, Salisbury, MD
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)

Frederick
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
+WDCA, 20, Washington, DC
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD

Garrett
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WJAC–TV, 6, Johnstown, PA
+WWCP–TV, 8, Johnstown, PA

Harford
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WTTG, 5, Washington, DC

Howard
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC

Kent
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WUSA, 9, Washington, DC (formerly WTOP)

Montgomery
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC

Prince Georges
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC

Queen Annes
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WTTG, 5, Washington, DC

St. Marys
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
+WDCA, 20, Washington, DC
WMAR–TV, 2, Baltimore, MD

Somerset
WBOC–TV, 16, Salisbury, MD
+WMDT, 47, Salisbury, MD
WTTG, 5, Washington, DC

Talbot
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
+WNUV, 54, Baltimore, MD
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)

Washington
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
+WDCA, 20, Washington, DC
WHAG–TV, 25, Hagerstown, MD
WMAR–TV, 2, Baltimore, MD

Wicomico
WBOC–TV, 16, Salisbury, MD
+WMDT, 47, Salisbury, MD
#WMAR–TV, 2, Baltimore, MD [15]
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
WTTG, 5, Washington, DC

Worcester
WBOC–TV, 16, Salisbury, MD
WMDT, 47, Salisbury, MD
#WTTG, 5, Washington, DC [16]

Barclay—WJZ–TV, WBOC–TV, WMDT, WTTG
Betterton—WBFF
Brookview—WJZ–TV, WBOC–TV, WMDT, WTTG
Centreville—WBFF, WNUV
Chestertown—WBFF
Church Hill—WBFF, WNUV
Denton—WJZ–TV, WBOC–TV, WMDT, WTTG
East New Market—WJZ–TV, WBOC–TV, WMDT, WTTG
Eldorado—WJZ–TV, WBOC–TV, WMDT, WTTG
Federalsburg—WJZ–TV, WBOC–TV, WMDT, WTTG
Galena—WBFF
Galestown—WJZ–TV, WBOC–TV, WMDT, WTTG
Goldsboro—WJZ–TV, WBOC–TV, WMDT, WTTG
Greensboro—WJZ–TV, WBOC–TV, WMDT, WTTG
Henderson—WJZ–TV, WBOC–TV, WMDT, WTTG
Hillsboro—WJZ–TV, WBOC–TV, WMDT, WTTG
Hurlock—WJZ–TV, WBOC–TV, WMDT, WTTG
Mardela Springs—WJZ–TV, WBOC–TV, WMDT, WTTG
Marydel—WJZ–TV, WBOC–TV, WMDT, WTTG
Millington—WBFF, WNUV
Preston—WJZ–TV, WBOC–TV, WMDT, WTTG
Queen Anne—WJZ–TV, WBOC–TV, WMDT, WTTG
Ridgely—WJZ–TV, WBOC–TV, WMDT, WTTG
Secretary—WJZ–TV, WBOC–TV, WMDT, WTTG
Sharptown—WJZ–TV, WBOC–TV, WMDT, WTTG
Sudlersville—WBFF, WNUV
Templeville—WJZ–TV, WBOC–TV, WMDT, WTTG
Vienna—WJZ–TV, WBOC–TV, WMDT, WTTG
Unincorporated areas of Caroline County—WJZ–TV, WBOC–TV, WMDT, WTTG
Unincorporated areas of Dorchester County—WJZ–TV, WBOC–TV, WMDT, WTTG
Unincorporated areas of Kent County—WBFF
Unincorporated areas of Queen Annes County—WBFF, WNUV

MASSACHUSETTS

Barnstable
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
+WZBU, 58, Vineyard, MA (formerly WCVX)
WLNE–TV, 6, Providence, RI (formerly WTEV)
WJAR, 10, Providence, RI
WPRI–TV, 12, Providence, RI

Berkshire
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
WFSB, 3, Hartford, CT (formerly WTIC)
+WTIC–TV, 61, Hartford, CT

Bristol
WLNE–TV, 6, Providence, RI (formerly WTEV)
WJAR, 10, Providence, RI
WPRI–TV, 12, Providence, RI
+WNAC–TV, 64, Providence, RI
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Cambridge, MA (formerly WKBG)

Dukes
WLNE–TV, 6, Providence, RI (formerly WTEV)
WJAR, 10, Providence, RI
WPRI–TV, 12, Providence, RI
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)

Essex
WBZ–TV, 4, Boston, MA

[15] Affected communities are Salisbury, Delmar, Fruitland, Hebron and unincorporated areas of Wicomico County, MD.

[16] Affected communities are Salisbury, Delmar, Fruitland, Hebron and unincorporated areas of Wicomico County, MD.

WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Boston, MA (formerly WKBG)
+WBPX, 68, Boston, MA (formerly WQTV)
Franklin
WWLP, 22, Springfield, MA
WGGB–TV, 40, Springfieldm MA (formerly WHYN)
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WFSB, 3, Hartford, CT (formerly WTIC)
+WTXX, 20, Waterbury, CT
+WTIC–TV, 61, Hartford, CT
Hampden
WWLP, 22, Springfield, MA
WGGB–TV, 40, Springfield, MA (formerly WHYN)
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, Hartford, CT (formerly WNHC)
+WTXX, 20, Waterbury, CT
WVIT, 30, Hartford, CT (formerly WHNB)
+WTIC–TV, 61, Hartford, CT
Hampshire
WWLP, 22, Springfield, MA
WGGB–TV, 40, Springfield, MA (formerly WHYN)
WFSB, 3, Hartford, CT (formerly WTIC)
+WTXX, 20, Waterbury, CT
+WVIT, 30, Hartford, CT
+WTIC–TV, 61, Hartford, CT
Middlesex
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Boston, MA (formerly WKBG)
+WBPX, 68, Boston, MA (formerly WQTV)
Nantucket
WLNE–TV, 6, Providence, RI (formerly WTEV)
WJAR, 10, Providence, RI
WPRI–TV, 12, Providence, RI
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerlyWHDH)
Norfolk
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Boston, MA (formerly WKBG)
+WBPX, 68, Boston, MA (formerly WQTV)
Plymouth
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV. 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Boston, MA (formerly WKBG)
+WBPX, 68, Boston, MA (formerly WQTV)
WLNE–TV, 6, Providence, RI (formerly WTEV)
WJAR, 10, Providence, RI
WPRI–TV, 12, Providence, RI
Suffolk
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Boston, MA (formerly WKBG)
+WBPX, 68, Boston, MA (formerly WQTV)
Worcester
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Boston, MA (formerly WKBG)
WJAR, 10, Providence, RI
WPRI–TV, 12, Providence, RI
WHLL, 27, Worcester, MA (formerly WSMW)
Acushnet—WFXT
Barnstable—WFXT, WSBK–TV, WBZ–TV, WCVB–TV, WHDH–TV, WLVI–TV, WLNE–TV, WJAR
Bourne—WFXT, WSBK–TV
Brewster—WBZ–TV, WCVB–TV, WHDH–TV, WSBK–TV, WLNE–TV
Chatham—WFXT, WSBK–TV, WBZ–TV, WCVB–TV, WHDH–TV, WLVI–TV, WLNE–TV, WJAR
Dartmouth—WFXT
Dennis—WFXT, WSBK–TV, WBZ–TV, WCVB–TV, WHDH–TV, WLVI–TV, WLNE–TV, WJAR
Eastham—WBZ–TV, WCVB–TV, WHDH–TV, WSBK–TV, WLNE–TV
Fairhaven—WFXT
Fall River—WFXT
Falmouth—WSBK–TV, WLVI–TV, WBPX
Harwich—WFXT, WSBK–TV, WBZ–TV, WCVB–TV, WHDH–TV, WLVI–TV, WLNE–TV, WJAR
Marion—WFXT
Mattapoisett—WFXT
New Bedford—WFXT
Orleans—WBZ–TV, WCVB–TV, WHDH–TV, WSBK–TV, WLNE–TV
Provincetown—WBZ–TV, WCVB–TV, WHDH–TV, WSBK–TV, WLNE–TV
Rochester—WFXT
Sandwich—WFXT, WSBK–TV
Truro—WBZ–TV, WCVB–TV, WHDH–TV, WSBK–TV, WLNE–TV
Wareham—WFXT
Wellfleet—WBZ–TV, WCVB–TV, WHDH–TV, WSBK–TV, WLNE–TV
Yarmouth—WFXT, WSBK–TV, WBZ–TV, WCVB–TV, WHDH–TV, WLVI–TV, WLNE–TV, WJAR

MICHIGAN

Alcona
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
Alger
WLUC–TV, 6, Marquette, MI
WFRV–TV, 5, Green Bay, WI
Allegany
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
Alpena
WPBN–TV, 7, Traverse City, MI
+WGTQ, 8, Sault Ste. Marie, MI
WWTV, 9, Cadillac, MI
Antrim
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WFXV, 45, Vanderbilt, MI (formerly WGKU)
Arenac
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
WWTV, 9, Cadillac, MI
Baraga
WLUC–TV, 6, Marquette, MI
Barry
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)
Bay
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
WEYI–TV, 25, Saginaw, MI (formerly WKNX)
+WSMH, 66, Flint, MI
Benzie
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
Berrien
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
Branch
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
+WOTV, 41, Battle Creek, MI (formerly WUHQ)
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
+WSYM–TV, 47, Lansing, MI
Calhoun
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
+WOTV, 41, Battle Creek, MI (formerly WUHQ)
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
+WSYM–TV, 47, Lansing, MI
Cass
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
WGN–TV, 9, Chicago, IL
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
Charlevoix
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WGTU, 29, Traverse City, MI
+WFVX, 45, Vanderbilt, MI (formerly WGKU)
Cheboygan
WPBN–TV, 7, Traverse City, MI

WWTV, 9, Cadillac, MI
+WFVX, 45, Vanderbilt, MI (formerly WGKU)

Chippewa
WPBN–TV, 7, Traverse City, MI
+WGTQ, 8, Traverse City, MI
WWTV, 9, Cadillac, MI
CJIC, 2, Canada

Clare
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)

Clinton
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
+WSYM–TV, 47, Lansing, MI
+WLAJ, 53, Lansing, MI
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WSMH, 66, Flint, MI
WOOD–TV, 8, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI

Crawford
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
WFVX, 45, Vanderbilt, MI (formerly WGKU)

Delta
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
WLUC–TV, 6, Marquette, MI

Dickinson
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
WLUC–TV, 6, Marquette, MI

Eaton
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
+WSYM–TV, 47, Lansing, MI
+WLAJ, 53, Lansing, MI
WJRT–TV, 12, Flint, MI
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI

Emmet
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WGTU, 29, Traverse City, MI
+WFVX, 45, Vanderbilt, MI (formerly WGKU)

Genesee
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WSMH, 66, Flint, MI
WJBK, 2, Detroit, MI
#WDIV, 4, Detroit, MI (formerly WWJ) [17]
WXYZ–TV, 7, Detroit, MI
WKBD–TV, 50, Detroit, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)

Gladwin
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
WWTV, 9, Cadillac, MI

Gogebic
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)

Grand Traverse
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WGTU, 29, Traverse City, MI

Gratiot
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WSMH, 66, Flint, MI
WOOD–TV, 8, Grand Rapids, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)
+WSYM–TV, 47, Lansing, MI

Hillsdale
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
+WSYM–TV, 47, Lansing, MI
+WLAJ, 53, Lansing, MI
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
+WUPW, 36, Toledo, OH

Houghton
WLUC–TV, 6, Marquette, MI
WFRV–TV, 5, Green Bay, WI

Huron
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WSMH, 66, Flint, MI

Ingham
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
+WSYM–TV, 47, Lansing, MI
+WLAJ, 53, Lansing, MI
WJRT–TV, 12, Flint, MI
WWMT, 3, Kalamazoo, MI (formerly WKZO)
#WOOD–TV, 8, Grand Rapids, MI [18]

Ionia
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
WJRT–TV, 12, Flint, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)
+WSYM–TV, 47, Lansing, MI

Iosco
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WBKB–TV, 11, Alpena, MI

Iron
WLUC–TV, 6, Marquette, MI
WFRV–TV, 5, Green Bay, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)

Isabella
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WSMH. 66, Flint, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WWTV, 9, Cadillac, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)

Jackson
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
WSYM–TV, 47, Lansing, MI
WLAJ, 53, Lansing, MI
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI

Kalamazoo
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
+WOTV, 41, Battle Creek, MI (formerly WUHQ)

Kalkaska
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)

Kent
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI

Keweenaw
WLUC–TV, 6, Marquette, MI
CKPR, 2, Canada

Lake
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
WZZM–TV, 13, Grand Rapids, MI

Lapeer
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WSMH, 66, Flint, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)

Leelanau
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI

Lenawee
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
WKBD–TV, 50, Detroit, MI
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH

Livingston
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
WKBD–TV, 50, Detroit, MI
WJRT–TV, 12, Flint, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)
+WSYM–TV, 47, Lansing, MI

Luce
WPBN–TV, 7, Traverse City, MI
+WGTQ, 8, Sault Ste. Marie, MI
WWTV, 9, Cadillac, MI
WFRV–TV, 5, Green Bay, WI
WLUC–TV, 6, Marquette, MI
CJIC, 2, Canada

Mackinac
WPBN–TV, 7, Traverse City, MI
+WGTQ, 8, Sault Ste. Marie, MI
WWTV, 9, Cadillac, MI
WFRV–TV, 5, Green Bay, WI
CJIC, 2, Canada

Macomb
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
WKBD–TV, 50, Detroit, MI

Manistee
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)
WZZM–TV, 13, Grand Rapids, MI

[17] Affected community is Flint, MI.

[18] Affected communities are Lansing and East Lansing, MI.

WBAY–TV, 2, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Marquette
WLUC–TV, 6, Marquette, MI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Mason
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)
WZZM–TV, 13, Grand Rapids, MI
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Mecosta
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)
WZZM–TV, 13, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
Menominee
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WGBA, 26, Green Bay, WI
+WACY, 32, Appleton, WI (formerly WXGZ)
WLUC–TV, 6, Marquette, MI
Midland
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WAQP, 49, Saginaw, MI
+WSMH, 66, Flint, MI
WWTV, 9, Cadillac, MI
Missaukee
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
Monroe
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
WKBD–TV, 50, Detroit, MI
WTOL–TV, 11 Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
Montcalm
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
WJRT–TV, 12, Flint, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WWTV, 9, Cadillac, MI
Montmorency
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
Muskegon
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
+WXMI, 17, Grand Rapids, MI
Newaygo
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
Oakland
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
+WXON, 20, Detroit, MI
WKBD–TV, 50, Detroit, MI
Oceana
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WZZM–TV, 13, Grand Rapids, MI
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
Ogemaw
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
WWTV, 9, Cadillac, MI
Ontonagon
WLUC–TV, 6, Marquette, MI
KDLH, 3, Duluth, MN (formerly KDAL)
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
Osceola
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)
WNEM–TV, 5, Bay City, MI
WZZM–TV, 13, Grand Rapids, MI
Oscoda
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
WNEM–TV, 5, Bay City, MI
Otsego
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WGTU, 29, Traverse City, MI
+WFVX, 45, Vanderbilt, MI (formerly WGKU)
Ottawa
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
Presque Isle
WPBN–TV, 7, Traverse City, MI
+WGTQ, 8, Sault Ste. Marie, MI
WWTV, 9, Cadillac, MI
+WBKB–TV, 11, Alpena, MI
Roscommon
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
WNEM–TV, 5, Bay City, MI
Saginaw
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
WEYI–TV, 25, Saginaw, MI (formerly WKNX)
+WSMH, 66, Flint, MI
St. Clair
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
+WXON, 20, Detroit, MI
WKBD–TV, 50, Detroit, MI
St. Joseph
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WNDU–TV, 16, South Bend, IN
WSBT–TV, 22, South Bend, IN
WSJV, 28, Elkhart, IN
+WHME–TV, 46, South Bend, IN
+WSYM–TV, 47, Lansing, MI
Sanilac
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
CFPL, 10, Canada
Schoolcraft
WLUC–TV, 6, Marquette, MI
WFRV–TV, 5, Green Bay, WI
Shiawassee
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
+WSMH, 66, Flint, MI
WLNS–TV, 6, Lansing, MI (formerly WJIM)
WILX–TV, 10, Lansing, MI
+WSYM–TV, 47, Lansing, MI
Tuscola
WNEM–TV, 5, Bay City, MI
WJRT–TV, 12, Flint, MI
WEYI–TV, 25, Saginaw, MI (formerly WKNX)
+WAQP, 49, Saginaw, MI
+WSMH, 66, Flint, MI
Van Buren
WWMT, 3, Kalamazoo, MI (formerly WKZO)
WOOD–TV, 8, Grand Rapids, MI
WZZM–TV, 13, Grand Rapids, MI
Washtenaw
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
WKBD–TV, 50, Detroit, MI
Wayne
WJBK, 2, Detroit, MI
WDIV, 4, Detroit, MI (formerly WWJ)
WXYZ–TV, 7, Detroit, MI
CBET, 9, Canada (formerly CKLW)
WKBD–TV, 50, Detroit, MI
Wexford
WPBN–TV, 7, Traverse City, MI
WWTV, 9, Cadillac, MI
+WGTU, 29, Traverse City, MI
+WFQX, 33, Cadillac, MI (formerly WGKI)
Ann Arbor—WXON
Ann Arbor Township—WXON
Barton Hills—WXON
Bennington Township—WEYI–TV
Brighton—WXON
Brighton Township—WXON
Caledonia Township—WEYI–TV
Corunna—WEYI–TV
Genoa Township—WXON
Green Oak Township—WXON
Howell—WXON
Oceola Township—WXON
Owosso—WEYI–TV
Owosso Township—WEYI–TV
Pittsfield Township—WXON
Rush Township (portions)—WEYI–TV
Scio Township—WXON
Superior Township—WXON
Van Buren Township—WXON
Webster Township—WXON
Ypsilanti—WXON
Ypsilanti Township—WXON

MINNESOTA

Aitkin
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
KCCW–TV, 12, Walker, MN (formerly KNMT)
Anoka
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis; MN
KARE, 11, Minneapolis, MN (formerly WTCN)

+KLGT, 23, Minneapolis, MN (formerly KTMA)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Becker
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)

Beltrami
KCCW–TV, 12, Walker, MN (formerly KNMT)
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
KVLY–TV, 11, Fargo, ND (formerly KTHI)

Benton
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
KCCO–TV, 7, Alexandria, MN (formerly KCMT)

Big Stone
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KELO–TV, 11, Sioux Falls, SD

Blue Earth
KEYC–TV, 12, Mankato, MN
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+WFTC, 29, Minneapolis, MN (formerly KITN)
KAAL, 6, Austin, MN (formerly KAUS)

Brown
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+WFTC, 29, Minneapolis, MN (formerly KITN)
KEYC–TV, 12, Mankato, MN
KAAL, 6, Austin, MN (formerly KAUS)

Carlton
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN

Carver
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Cass
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KCCW–TV, 12, Walker, MN (formerly KNMT)
KDLH, 3, Duluth, MN (formerly KDAL)
WDIO–TV, 10, Duluth, MN

Chippewa
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
+KSAX, 42, Alexandria, MN
WCCO–TV, 4, Minneapolis, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)

Chisago
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Clay
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)

Clearwater
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)

Cook
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
CKPR, 2, Canada

Cottonwood
KEYC–TV, 12, Mankato, MN
KSTP–TV, 5, St. Paul, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
KAAL, 6, Austin, MN (formerly KAUS)

Crow Wing
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KCCW–TV, 12, Walker, MN (formerly KNMT)
+KSAX, 42, Alexandria, MN
KDLH, 3, Duluth, MN (formerly KDAL)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Dakota
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis (formerly KTMA)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Dodge
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN

Douglas
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
+KSAX, 42, Alexandria, MN

Faribault
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
KEYC–TV, 12, Mankato, MN

Fillmore
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
WKBT, 8, La Crosse, WI
+WLAX, 25, La Crosse, WI

Freeborn
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)

Goodhue
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly KARE)
+WFTC, 29, Minneapolis, MN (formerly KITN)

Grant
KCCO–TV, 7, Alexandria, MN (formerly KCMT)

Hennepin
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
KLGT, 23, Minneapolis, MN (formerly KTMA)
KPXM, 41, St.Cloud, MN (formerly KXLI)

Houston
WKBT, 8, La Crosse, WI
+WLAX, 25, La Crosse, WI
KTTC, 10, Rochester, MN (formerly KROC)

Hubbard
KCCW–TV, 12, Walker, MN (formerly KNMT)

Isanti
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Itasca
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
KCCW–TV, 12, Walker, MN (formerly KNMT)

Jackson
KEYC–TV, 12, Mankato, MN
KCAU–TV, 9, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)

Kanabec
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Kandiyohi
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
KCCO–TV, 7, Alexandria, MN (formerly KCMT)

Kittson
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
KNRR, 12, Pembina, ND (formerly KCND)
CBWT, 6, Canada
CKY, 7, Canada (formerly CJAY)

Koochiching
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
CBWT, 6, Canada

Lac Qui Parle
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
+KSAX, 42, Alexandria, MN
KELO–TV, 11, Sioux Falls, SD

Lake
KDLH, 3, Duluth, MN (formerly KDAL)

KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Lake of the Woods
CBWT, 6, Canada
Le Sueur
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
KEYC–TV, 12, Mankato, MN
Lincoln
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Lyon
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KEYC–TV, 12, Mankato, MN
McLeod
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
Mahnomen
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Marshall
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
KNRR, 12, Pembina, ND (formerly KCND)
CBWT, 6, Canada
Martin
KEYC–TV, 12, Mankato, MN
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
Meeker
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
Mille Lacs
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
Morrison
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
Mower
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
Murray
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Nicollet
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
KEYC–TV, 12, Mankato, MN
Nobles
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KCAU–TV, 9, Sioux City, IA
Norman
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Olmsted
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
Otter Tail
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
Pennington
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Pine
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
Pipestone
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Polk
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Pope
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
Ramsey
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
Red Lake
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Redwood
KEYC–TV, 12, Mankato, MN
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
Renville
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KEYC–TV, 12, Mankato, MN
Rice
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, MinneapoliS–, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+WFTC, 29, Minneapolis, MN (formerly KITN)
Rock
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KCAU–TV, 9, Sioux City, IA
Roseau
KNRR, 12, Pembina, ND (formerly KCND)
WDAZ–TV, 8, Devils Lake, ND
CBWT, 6, Canada
CKY, 7, Canada (CKY) (formerly CJAY)
St. Louis
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Scott
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
Sherburne
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St.Cloud, MN (formerly KXLI)
Sibley
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+WFTC, 29, Minneapolis, MN (formerly KITN)
KEYC–TV, 12, Mankato, MN
Stearns
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)

+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)
KCCO–TV, 7, Alexandria, MN (formerly KCMT)

Steele
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)
KEYC–TV, 12, Mankato, MN
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)

Stevens
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KELO–TV, 11, Sioux Falls, SD

Swift
KCCO–TV, 7, Alexandria, MN (formerly KCMT)

Todd
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
+KSAX, 42, Alexandria, MN
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Traverse
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KXJB–TV, 4, Valley City, ND
KELO–TV, 11, Sioux Falls, SD

Wabasha
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)

Wadena
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KCCW–TV, 12, Walker, MN (formerly KNMT)
+KSAX, 42, Alexandria, MN

Waseca
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
KEYC–TV, 12, Mankato, MN
KIMT, 3, Mason City, IA (formerly KGLO)
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)

Washington
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Watonwan
KEYC–TV, 12, Mankato, MN
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+WFTC, 29, Minneapolis, MN (formerly KITN)
KAAL, 6, Austin, MN (formerly KAUS)

Wilkin
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)

Winona
WKBT, 8, La Crosse, WI
+WLAX, 25, La Crosse, WI
KAAL, 6, Austin, MN (formerly KAUS)
KTTC, 10, Rochester, MN (formerly KROC)

Wright
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+WFTC, 29, Minneapolis, MN (formerly KITN)
+KPXM, 41, St. Cloud, MN (formerly KXLI)

Yellow Medicine
WCCO–TV, 4, Minneapolis, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
KELO–TV, 11, Sioux Falls, SD

Byron—#KSTP–TV,[19] KMSP–TV, WCCO–TV, KARE
Cascade—KSTP–TV, KMSP–TV, WCCO–TV
Eyota—#KSTP–TV, KMSP–TV, WCCO–TV, KARE
Haverhill—KSTP–TV, KMSP–TV, WCCO–TV
Kasson—KSTP–TV, KMSP–TV, WCCO–TV, KARE
Marion—KSTP–TV, KMSP–TV, WCCO–TV
Oronoco—KSTP–TV, KMSP–TV, WCCO–TV
Rochester—#KSTP–TV, KMSP–TV, WCCO–TV
Rochester Township—KSTP–TV, KMSP–TV, WCCO–TV
Stewartville—#KSTP–TV, KMSP–TV, WCCO–TV

MISSISSIPPI

Adams
KNOE–TV, 8, Monroe, LA
KALB–TV, 5, Alexandria, LA
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS

Alcorn
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN

Amite
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
WLBT–TV, 3, Jackson, MS

Attala
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WABG–TV, 6, Greenwood, MS

Benton
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN

Bolivar
WABG–TV, 6, Greenwood, MS
WLBT–TV, 3, Jackson, MS
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN

Calhoun
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WCBI–TV, 4, Columbus, MS
WABG–TV, 6, Greenwood, MS
+WTVA, 9, Tupelo, MS

Carroll
WABG–TV, 6, Greenwood, MS
WLBT–TV, 3, Jackson, MS
WJTV. 12, Jackson, MS
+WTVA, 9, Tupelo, MS

Chickasaw
WCBI–TV, 4, Columbus, MS
WMC–TV, 5, Memphis, TN
WTVA, 9, Tupelo, MS (formerly WTWV)

Choctaw
WCBI–TV, 4, Columbus, MS
WABG–TV, 6, Greenwood, MS
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS

Claiborne
WLBT–TV, 3, Jackson, MS
WJTV. 12, Jackson, MS

Clarke
WTOK–TV, 11, Meridian, MS
WDAM–TV, 7, Laurel, MS

Clay
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS

Coahoma
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN

Copiah
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WAPT, 16, Jackson, MS
+WDBD, 40, Jackson, MS

Covington
WDAM–TV, 7, Laurel, MS
+WHLT, 22, Hattiesburg, MS
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS

De Soto
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS

De Soto
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WLMT, 30, Memphis, TN

Forrest
WDAM–TV, 7, Laurel, MS
+WHLT, 22, Hattiesburg, MS
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS

Franklin
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WBRZ, 2, Baton Rouge, LA

George
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS

Greene
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL

[19] Affected communities are Byron, Eyota, Rochester and Stewartville, MN located in Olmsted County, MN.

WALA–TV, 10, Mobile, AL
WLOX–TV, 13, Biloxi, MS
WDAM–TV, 7, Laurel, MS

Grenada
WABG–TV, 6, Greenwood, MS
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
+WTVA, 9, Tupelo, MS

Hancock
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS

Harrison
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS
WKRG–TV, 5, Mobile, AL
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA

Hinds
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WAPT, 16, Jackson, MS
+WDBD, 40, Jackson, MS

Holmes
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS
WABG–TV, 6, Greenwood, MS

Humphreys
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS
WABG–TV, 6, Greenwood, MS
+WXVT, 15, Greenville, MS

Issaquena
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WABG–TV, 6, Greenwood, MS
KNOE–TV, 8, Monroe, LA

Itawamba
WTVA, 9, Tupelo, MS (formerly WTWV)
+WLOV–TV, 27, Tupelo, MS
WCBI–TV, 4, Columbus, MS

Jackson
WEAR–TV, 3, Pensacola, FL
WKRG–TV, 5, Mobile, AL
WALA–TV, 10, Mobile, AL
+WPMI, 15, Mobile, AL
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS

Jasper
WDAM–TV, 7, Laurel, MS
+WHLT, 22, Hattiesburg, MS
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WTOK–TV, 11, Meridian, MS

Jefferson
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
KNOE–TV, 8, Monroe, LA

Jefferson Davis
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WDAM–TV, 7, Laurel, MS

Jones
WDAM–TV, 7, Laurel, MS
+WHLT, 22, Hattiesburg, MS
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS
WTOK–TV, 11, Meridian, MS

Kemper
WTOK–TV, 11, Meridian, MS

Lafayette
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN

Lamar
WDAM–TV, 7, Laurel, MS
+WHLT, 22, Hattiesburg, MS
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS

Lauderdale
WTOK–TV, 11, Meridian, MS

Lawrence
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WAPT, 16, Jackson, MS

Leake
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS

Lee
WTVA, 9, Tupelo, MS (formerly WTWV)
+WLOV–TV, 27, Tupelo, MS
WCBI–TV, 4, Columbus, MS
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN

Leflore
WABG–TV, 6, Greenwood, MS
+WXVT, 15, Greenville, MS
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WTVA, 9, Tupelo, MS

Lincoln
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS

Lowndes
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS
+WLOV–TV, 27, Tupelo, MS

Madison
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WAPT, 16, Jackson, MS
+WDBD, 40, Jackson, MS

Marion
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS
WDAM–TV, 7, Laurel, MS

Marshall
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN

Monroe
WCBI–TV, 4, Columbus, MS
WTVA, 9, Tupelo, MS (formerly WTWV)
+WLOV–TV, 27, Tupelo, MS

Montgomery
WABG–TV, 6, Greenwood, MS
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WMC–TV, 5, Memphis, TN

Neshoba
WTOK–TV, 11, Meridian, MS
WLBT–TV, 3, Jackson, MS

Newton
WTOK–TV, 11, Meridian, MS
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS

Noxubee
WTOK–TV, 11, Meridian, MS
WCBI–TV, 4, Columbus, MS
+WLOV–TV, 27, Tupelo, MS

Oktibbeha
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS
+WLOV–TV, 27, Tupelo, MS
+WDBB, 17, Bessemer, AL

Panola
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WLMT, 30, Memphis, TN

Pearl River
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
WVUE, 8, New Orleans, LA
+WGNO, 26, New Orleans, LA
+WNOL–TV, 38, New Orleans, LA
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS

Perry
WDAM–TV, 7, Laurel, MS
+WHLT, 22, Hattiesburg, MS
WLOX–TV, 13, Biloxi, MS
WKRG–TV, 5, Pensacola, FL

Pike
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
WWL–TV, 4, New Orleans, LA

Pontotoc
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
WTVA, 9, Tupelo, MS (formerly WTWV)
+WLOV–TV, 27, Tupelo, MS

Prentiss
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
WTVA, 9, Tupelo, MS (formerly WTWV)

Quitman
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY, 24, Memphis, TN

Rankin
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WAPT, 16, Jackson, MS
+WDBD, 40, Jackson, MS

Scott
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS
WTOK–TV, 11, Meridian, MS

Sharkey
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WABG–TV, 6, Greenwood, MS

Simpson
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WAPT, 16, Jackson, MS
+WDBD, 40, Jackson, MS

Smith
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WDAM–TV, 7, Laurel, MS
Stone
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS
WDAM–TV, 7, Laurel, MS
WKRG–TV, 5, Pensacola, FL
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
Sunflower
WABG–TV, 6, Greenwood, MS
+WXVT, 15, Greenville, MS
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
Tallahatchie
WABG–TV, 6, Greenwood, MS
+WXVT, 15, Greenville, MS
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
Tate
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
Tippah
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
Tishomingo
WTVA, 9, Tupelo, MS (formerly WTWV)
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
Tunica
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
Union
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis,TN
WHBQ–TV, 13, Memphis, TN
+WTVA, 9, Tupelo, MS
+WLOV–TV, 27, Tupelo, MS
Walthall
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
WLOX–TV, 13, Biloxi, MS
WDAM–TV, 7, Laurel, MS
WWL–TV, 4, New Orleans, LA
WDSU, 6, New Orleans, LA
Warren
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS
KNOE–TV, 8, Monroe, LA
Washington
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
KTVE, 10, Monroe, LA
WABG–TV, 6, Greenwood, MS
+WXVT, 15, Greenville, MS
Wayne
WDAM–TV, 7, Laurel, MS
+WHLT, 22, Hattiesburg, MS
WLOX–TV, 13, Biloxi, MS
+WXXV–TV, 25, Gulfport, MS
WTOK–TV, 11, Meridian, MS
WEAR–TV, 3, Mobile, AL
WKRG–TV, 5, Pensacola, FL
Webster
WCBI–TV, 4, Columbus, MS
WABG–TV, 6, Greenwood, MS
WLBT–TV, 3, Jackson, MS
+WTVA, 9, Tupelo, MS
Wilkinson
WBRZ, 2, Baton Rouge, LA
WAFB, 9, Baton Rouge, LA
+WGMB, 44, Baton Rouge, LA
Winston
WTOK–TV, 11, Meridian, MS
WCBI–TV, 4, Columbus, MS
+WTVA, 9, Tupelo, MS
WLBT–TV, 3, Jackson, MS
Yalobusha
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
WABG–TV, 6, Greenwood, MS
+WTVA, 9, Tupelo, MS
Yazoo
WLBT–TV, 3, Jackson, MS
WJTV, 12, Jackson, MS
+WDBD, 40, Jackson, MS
WABG–TV, 6, Greenwood, MS

MISSOURI

Adair
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
Andrew
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KCWE, 29, Kansas City, MO
KQTV, 2, St. Joseph, MO
Atchison
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE
KQTV, 2, St. Joseph, MO
Audrain
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
Barry
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
+KSPR, 33, Springfield, MO
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
Barton
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)
Bates
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
Benton
KMOS–TV, 6, Sedalia, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KYTV, 3, Springfield, MO
+KOLR, 10, Springfield, MO
Bollinger
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Boone
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Buchanan
KQTV, 2, St. Joseph, MO
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KCWE, 29, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
Butler
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
+KAIT–TV, 8, Jonesboro, AR
Caldwell
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO
KQTV, 2, St. Joseph, MO
Callaway
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Camden
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Cape Girardeau
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Carroll
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
Carter
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
KAIT–TV, 8, Jonesboro, AR
Cass
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KCIT–TV, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
Cedar
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
Chariton
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
WDAF–TV, 4 Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO

Christian
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
+KSPR, 33, Springfield, MO
Clark
KTVO, 3, Ottumwa, IA
+KYOU, 15, Ottumwa, IA
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
Clay
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KSHB–TV, 41, Kansas City, MO (formerly KBMA)
KCIT–TV, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
Clinton
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KCIT–TV, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
KQTV, 2, St. Joseph, MO
Cole
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Cooper
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Crawford
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KRCG, 13, Jefferson City, MO
Dade
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
Dallas
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
Daviess
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KQTV, 2, St. Joseph, MO
De Kalb
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO
KQTV, 2, St. Joseph, MO
Dent
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
KRCG, 13, Jefferson City, MO
KYTV, 3, Springfield, MO
+KSPR, 33, Springfield, MO
Douglas
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
Dunklin
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
KAIT–TV, 8, Jonesboro, AR
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Franklin
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Gasconade
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KRCG, 13, Jefferson City, MO
Gentry
KQTV, 2, St. Joseph, MO
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
Greene
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
+KSPR, 33, Springfield, MO
Grundy
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KTVO, 3, Ottumwa, IA
KQTV, 2, St. Joseph, MO
Harrison
KQTV, 2, St. Joseph, MO
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
Henry
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO
Hickory
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
Holt
KQTV, 2, St. Joseph, MO
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
Howard
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Howell
KYTV, 3, Springfield, MO
+KOLR, 10, Springfield, MO
KDEB–TV, 27, Springfield, MO (formerly KMTC)
+KSPR, 33, Springfield, MO
Iron
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KFVS–TV, 12, Cape Girardeau, MO
Jackson
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KSHB–TV, 41, Kansas City, MO (formerly KBMA)
KCIT–TV, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
Jasper
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)
Jefferson
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Johnson
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
Knox
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVO, 3, Ottumwa, IA
Laclede
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
+KSPR, 33, Springfield, MO
Lafayette
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KCIT–TV, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
Lawrence
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
+KSPR, 33, Springfield, MO
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
Lewis
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVO, 3, Ottumwa, IA
Lincoln
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Linn
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)

KMBC–TV, 9, Kansas City, MO
KTVO, 3, Ottumwa, IA
Livingston
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KQTV, 2, St. Joseph, MO
McDonald
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)
Macon
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KOMU–TV, 8, Columbia, MO
KTVO, 3, Ottumwa, IA
Madison
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KFVS–TV, 12, Cape Girardeau, MO
Maries
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
Marion
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
WJJY–TV, 14, Jacksonville, IL
+KTVO, 3, Ottumwa, IA
Mercer
KTVO, 3, Ottumwa, IA
KCCI, 8, Des Moines, IA (formerly KRNT)
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KQTV, 2, St. Joseph, MO
Miller
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Mississippi
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Moniteau
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Monroe
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Montgomery
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Morgan
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
KYTV, 3, Springfield, MO
New Madrid
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
+KAIT–TV, 8, Jonesboro, AR
Newton
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)
Nodaway
KQTV, 2, St. Joseph, MO
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
+KPTM, 42 Omaha, NE
Oregon
KYTV, 3, Springfield, MO
+KOLR, 10, Springfield, MO
KAIT–TV, 8, Jonesboro, AR
Osage
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
KTVI, 2, St. Louis, MO
Ozark
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
Pemiscot
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
+KAIT–TV, 8, Jonesboro, AR
Perry
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR, 11, St. Louis, MO
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Pettis
KMOS–TV, 6, Sedalia, MO
KOMU–TV, 8, Columbia, MO
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
Phelps
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
KTVI, 2, St. Louis, MO
+KOLR, 10, Springfield, MO
Pike
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Platte
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KSHB–TV, 41, Kansas City, MO (formerly KBMA)
KCIT–TV, 50, Kansas City, MO
+KSMO–TV, 62, Kansas City, MO (formerly KZKC)
KQTV, 2, St. Joseph, MO
Polk
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
Pulaski
KYTV, 3, Springfield, MO
+KOLR, 10, Springfield, MO
+KSPR–TV, 33, Springfield, MO
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Putnam
KTVO, 3, Ottumwa, IA
Ralls
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
WJJY–TV, 14, Jacksonville, IL
Randolph
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Ray
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KCIT–TV, 50, Kansas City, MO
Reynolds
KFVS–TV, 12, Cape Girardeau, MO
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
Ripley
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
KAIT–TV, 8, Jonesboro, AR
St. Charles
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
St. Clair
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
St. Francois
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
St. Louis including city of St. Louis
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Ste. Genevieve
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
KDNL–TV, 30, St. Louis, MO
Saline
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
KMBC–TV, 9, Kansas City, MO
KMOS–TV, 6, Sedalia, MO
KOMU–TV, 8, Columbia, MO
KRCG, 13, Jefferson City, MO
Schuyler
KTVO, 3, Ottumwa, IA
+KYOU–TV, 15, Ottumwa, IA (formerly KOIA)
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
Scotland
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL

KTVO, 3, Ottumwa, IA
Scott
WSIL–TV, 3, Harrisburg, IL
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Shannon
KYTV, 3, Springfield, MO
Shelby
KHQA–TV, 7, Hannibal, MO
WGEM–TV, 10, Quincy, IL
KTVO, 3, Ottumwa, IA
Stoddard
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Stone
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
+KSPR, 33, Springfield, MO
Sullivan
KTVO, 3, Ottumwa, IA
WGEM–TV, 10, Quincy, IL
Taney
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
+KSPR, 33, Springfield, MO
Texas
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
Vernon
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)
KCTV, 5, Kansas City, MO (KCTV)
+KOLR, 10, Springfield, MO
Warren
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Washington
KTVI, 2, St. Louis, MO
KMOV, 4, St. Louis, MO (formerly KMOX)
KSDK, 5, St. Louis, MO (formerly KSD)
KPLR–TV, 11, St. Louis, MO
Wayne
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
Webster
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
Worth
KQTV, 2, St. Joseph, MO
WDAF–TV, 4, Kansas City, MO
KCTV, 5, Kansas City, MO (formerly KCMO)
Wright
KYTV, 3, Springfield, MO
KOLR, 10, Springfield, MO (formerly KTTS)
KDEB–TV, 27, Springfield, MO (formerly KMTC)
Agency—KSHB–TV, KSMO–TV
Country Club—KSHB–TV, KSMO–TV
St. Joseph—KSHB–TV, KSMO–TV
Savannah—KSHB–TV, KSMO–TV
Union Star—KSHB–TV, KSMO–TV

MONTANA

Beaverhead
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Big Horn
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Blaine
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
CJOC, 7, Canada (formerly CJLH)
Broadwater
KXLF–TV, 4, Butte, MT
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
Carbon
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Carter
KOTA–TV, 3, Rapid City, SD
KXGN–TV, 5, Glendive, MT
Cascade
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
Chouteau
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
Custer
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KYUS–TV, 3, Miles City, MT
Daniels
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND
CKTV, 2, Canada (formerly CKCK)
Dawson
KXGN–TV, 5, Glendive, MT
KUMV–TV, 8, Williston, ND
Deer Lodge
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Fallon
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
KXGN–TV, 5, Glendive, MT
Fergus
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KFBB–TV, 5, Great Falls, MT
Flathead
KCFW, 9, Kalispell, MT
KREM–TV, 2, Spokane, WA
#KXLY–TV, 4, Spokane, WA [20]
Gallatin
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Garfield
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Glacier
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
CJOC, 7, Canada (formerly CJLH)
Golden Valley
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Granite
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Hill
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
CFCN, 4, Canada
CJOC, 7, Canada (formerly CJLH)
Jefferson
KXLF–TV, 4, Butte, MT
KFBB–TV, 5, Great Falls, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Judith Basin
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
Lake
KECI–TV, 13, Missoula, MT (formerly KGVO)
KXLF–TV, 4, Butte, MT
KXLY–TV, 4, Spokane, WA
Lewis & Clark
KTVH, 12, Helena, MT (formerly KBLL)
KXLF–TV, 4, Butte, MT
KFBB–TV, 5, Great Falls, MT
Liberty
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
CFCN, 4, Canada
CJOC, 7, Canada (formerly CJLH)
Lincoln
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
KCFW–TV, 9, Kalispell, MT
McCone
KUMV–TV, 8, Williston, ND
KXGN–TV, 5, Glendive, MT
Madison
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Meagher
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
KXLF–TV, 4, Butte, MT
Mineral
KXLY–TV, 4, Spokane, WA
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Missoula
KECI–TV, 13, Missoula, MT (formerly KGVO)
KXLF–TV, 4, Butte, MT
Musselshell
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Park
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KXLF–TV, 4, Butte, MT
Petroleum
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Phillips
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
KTVQ, 2, Billings, MT (formerly KOOK)
Pondera
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT

[20] Affected community is Kalispell, MT.

CJOC, 7, Canada (formerly CJLH)
Powder River
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KOTA–TV, 3, Rapid City, SD
Powell
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Prairie
KXGN–TV, 5, Glendive, MT
KYUS–TV, 3, Miles City, MT
Ravalli
KECI–TV, 13, Missoula, MT (formerly KGVO)
KXLF–TV, 4, Butte, MT
Richland
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND
KXGN–TV, 5, Glendive, MT
Roosevelt
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND
CKTV, 2, Canada (formerly CKCK)
Rosebud
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KYUS–TV, 3, Miles City, MT
Sanders
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
KECI–TV, 13, Missoula, MT (formerly KGVO)
Sheridan
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND
CKTV, 2, Canada (formerly CKCK)
Silver Bow
KXLF–TV, 4, Butte, MT
KECI–TV, 13, Missoula, MT (formerly KGVO)
Stillwater
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Sweet Grass
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Teton
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
Toole
KRTV, 3, Great Falls, MT
KFBB–TV, 5, Great Falls, MT
CFCN, 4, Canada
CJOC, 7, Canada (formerly CJLH)
Treasure
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Valley
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND
CKTV, 2, Canada (formerly CKCK)
Wheatland
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Wibaux
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
KXGN–TV, 5, Glendive, MT
KUMV–TV, 8, Williston, ND
Yellowstone
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT

NEBRASKA

Adams
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
Antelope
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Arthur
KNOP–TV, 2, North Platte, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
Banner
KSTF, 10, Scottsbluff, NE
KDUH–TV, 4, Scottsbluff, NE
Blaine
KNOP–TV, 2, North Platte, NE
Boone
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
Box Butte
KSTF, 10, Scottsbluff, NE
KDUH–TV, 4, Scottsbluff, NE
Boyd
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
Brown
KELO–TV, 11, Sioux Falls, SD
Buffalo
KHAS–TV, 5, Lincoln & HastingS–Kearney
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
Burt
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Butler
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KOLN, 10, Lincoln, NE
Cass
KMTV, 3, Omaha, NE
WOW, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KOLN, 10, Lincoln, NE
Cedar
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
Chase
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KSNK, 8, McCook, NE (formerly KOMC)
Cherry
KELO–TV, 11, Sioux Falls, SD
KNOP–TV, 2, North Platte, NE
KDUH–TV, 4, Scottsbluff, NE
Cheyenne
KTVS, 3, Sterling, CO
KSTF, 10, Scottsbluff, NE
KDUH–TV, 4, Scottsbluff, NE
Clay
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
Colfax
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KOLN, 10, Lincoln, NE
Cuming
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Custer
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE
Dakota
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
Dawes
KDUH–TV, 4, Scottsbluff, NE
KSTF, 10, Scottsbluff, NE
Dawson
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE
Deuel
KTVS, 3, Sterling, CO
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE
Dixon
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
Dodge
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Douglas
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
Dundy
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)
KHGI–TV, 13, Kearney, NE (formerly KHOL)
Fillmore
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
Franklin
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
Frontier

KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE
KSNK, 8, McCook, NE (formerly KOMC)

Furnas
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KSNK, 8, McCook, NE (formerly KOMC)

Gage
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Garden
KTVS, 3, Sterling, CO
KSTF, 10, Scottsbluff, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE
KDUH–TV, 4, Scottsbluff, NE

Garfield
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE

Gosper
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Grant
KDUH–TV, 4, Scottsbluff, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE

Greeley
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Hall
KHAS–TV, 5, Hastings, NE
+KLKE, 24, Albion, NE (formerly KCAN)
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Hamilton
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Harlan
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Hayes
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KNOP–TV, 2, North Platte, NE
KSNK, 8, McCook, NE (formerly KOMC)

Hitchcock
KBSH–TV, 7, Hays, KS (formerly KAYS)
KSNK, 8, McCook, NE (formerly KOMC)
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Holt
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KTIV, 4, Sioux City, IA
KCAU, 9, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD

HookeR–
KNOP–TV, 2, North Platte, NE
KDUH–TV, 4, Scottsbluff, NE

Howard
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Jefferson
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Johnson
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KOLN, 10, Lincoln, NE

Kearney
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Keith
KNOP–TV, 2, North Platte, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Keya Paha
KELO–TV, 11, Sioux Falls, SD

Kimball
KTVS, 3, Sterling, CO
KGWN–TV, 5, Cheyenne, WY (formerly KFBC)
KSTF, 10, Scottsbluff, NE
KDUH–TV, 4, Scottsbluff, NE

Knox
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KLKN, 8, Lincoln, NE (formerly KHQL)
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)

Lancaster
+KLKE, 24, Albion, NE (formerly KBGT)
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Lincoln
KNOP–TV, 2, North Platte, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Logan
KNOP–TV, 2, North Platte, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Loup
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE

McPherson
KNOP–TV, 2, North Platte, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Madison
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
WOWT, 6, Omaha, NE (formerly WOW)

Merrick
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Morrill
KSTF, 10, Scottsbluff, NE
KDUH–TV 4, Scottsbluff, NE

Nance
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE

Nemaha
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE

Nuckolls
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Otoe
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KOLN, 10, Lincoln, NE

Pawnee
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
KOLN, 10, Lincoln, NE

Perkins
KHGI–TV, 13, Kearney, NE (formerly KHOL)
KTVS, 3, Sterling, CO
KNOP–TV, 2, North Platte, NE

Phelps
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Pierce
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KLKN, 8, Lincoln, NE (formerly KHQL)
KELO–TV, 11, Sioux Falls, SD

Platte
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE

Polk
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE

Red Willow
KSNK, 8, McCook, NE (formerly KOMC)
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Richardson
KMTV, 3, Omaha, NE

WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KPTM, 42, Omaha, NE
KCTV, 5, Kansas City, MO (formerly KCMO)
KOLN, 10, Lincoln, NE
KQTV, 2, St. Joseph, MO

Rock
KELO–TV, 11, Sioux Falls, SD

Saline
KSNB–TV, 4, Superior, NE (formerly KHTL)
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Sarpy
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE(formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Saunders
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE
KOLN, 10, Lincoln, NE

Scotts Bluff
KSTF, 10, Scottsbluff, NE
KDUH–TV, 4, Scottsbluff, NE

Seward
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Sheridan
KDUH–TV, 4, Scottsbluff, NE

Sherman
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Sioux
KSTF, 10, Scottsbluff, NE
KDUH–TV, 4, Scottsbluff, NE

Stanton
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE

Thayer
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Thomas
KNOP–TV, 2, North Platte, NE

Thurston
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE

Valley
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Washington
KMTV, 3, Omaha, NE
WOWT, 6, Omaha, NE (formerly WOW)
KETV, 7, Omaha, NE
+KXVO, 15, Omaha, NE
+KPTM, 42, Omaha, NE

Wayne
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA

Webster
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
KHGI–TV, 13, Kearney, NE (formerly KHOL)

Wheeler
KHAS–TV, 5, Hastings, NE
KLKN, 8, Lincoln, NE (formerly KHQL)
KOLN, 10, Lincoln, NE

York
KSNB–TV, 4, Superior, NE (formerly KHTL)
KHAS–TV, 5, Hastings, NE
KOLN, 10, Lincoln, NE
+KPTM, 42, Omaha, NE

Imperial—KNOP–TV

NEVADA

Carson City
+KAME–TV, 21, Reno, NV

Churchill
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV
+KAME–TV, 21, Reno, NV

Clark
KVBC, 3, Las Vegas, NV (formerly KORK)
KVVU–TV, 5, Henderson, NV (formerly KHBV)
KLAS–TV, 8, Las Vegas, NV
KTNV, 13, Las Vegas, NV (formerly KSHO)

Douglas
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV
+KAME–TV, 21, Reno, NV
KTVU, 2, Oakland, CA

Elko
KSL–TV, 5, Salt Lake City, UT
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
KOLO–TV, 8, Reno, NV

Esmeralda
KOLO–TV, 8, Reno, NV

Eureka
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT

Humboldt
KOLO–TV, 8, Reno, NV
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID

Lander
KTVN, 2, Reno, NV
KOLO–TV, 8, Reno, NV

Lincoln
KVBC, 3, Las Vegas, NV (formerly KORK)
KLAS–TV, 8, Las Vegas, NV
KTVX, 4, Salt Lake City, NV (formerly KCPX)

Lyon
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV
+KAME–TV, 21, Reno, NV

Mineral
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV

Nye
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV
KVBC, 3, Las Vegas, NV (formerly KORK)

Ormsby
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV

Pershing
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV

Storey
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV

Washoe
KTVN, 2, Reno, NV
KRNV, 4, Reno, NV (formerly KCRL)
KOLO–TV, 8, Reno, NV
+KAME–TV, 21, Reno, NV

White Pine
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT

NEW HAMPSHIRE

Belknap
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WMUR–TV, 9, Manchester, NH
+WNBU, 21, Concord, NH (formerly WNHT)

Carroll
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)

Cheshire
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WFSB, 3, Hartford, CT (formerly WTIC)
WMUR–TV, 9, Manchester, NH
WWLP, 22, Springfield, MA

Coos
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
WCAX–TV, 3, Burlington, VT

Grafton
WMTW–TV, 8, Portland, ME
WCAX–TV, 3, Burlington, VT

Hillsborough
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)

WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Cambridge, MA (formerly WKBG)
WMUR–TV, 9, Manchester, NH
+WNDS, 50, Derry, NH
Merrimack
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WMUR–TV, 9, Manchester, NH
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
+WNBU, 21, Concord, NH (formerly WNHT)
Rockingham
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WSBK–TV, 38, Boston, MA
WLVI–TV, 56, Cambridge, MA (formerly WKBG)
WMUR–TV, 9, Manchester, NH
+WNDS, 50, Derry, NH
Strafford
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WHDH–TV, 7, Boston, MA (formerly WNAC)
WMUR–TV, 9, Manchester, NH
WCSH, 6, Portland, ME
WMTW–TV, 8, Portland, ME
WGME–TV, 13, Portland, ME (formerly WGAN)
+WNBU, 21, Concord, NH (formerly WNHT)
Sullivan
WBZ–TV, 4, Boston, MA
WCVB–TV, 5, Boston, MA (formerly WHDH)
WCAX–TV, 3, Burlington, VT
WMUR–TV, 9, Manchester, NH
WWLP, 22, Springfield, MA
Alton—WHDH–TV
Auburn—WFXT
Barnstead—WHDH–TV
Bedford—WFXT
Belmont—WHDH–TV
Brentwood—WFXT, WCSH
Candia—WFXT
Center Harbor, NH
Chester—WFXT, WCSH, WNBU, WMUR–TV
Dover—WFXT, WCSH, WNBU, WMUR–TV
Durham—WFXT, WCSH, WNBU, WMUR–TV
East Kingston—WFXT, WCSH
Epping—WFXT, WCSH, WNBU, WMUR–TV
Exeter—WFXT, WCSH, WNBU, WMUR–TV
Fremont—WFXT, WCSH, WNBU, WMUR–TV
Gilford—WHDH–TV
Goffstown—WFXT
Greenland—WFXT, WCSH, WNBU, WMUR–TV
Hampton—WFXT, WCSH, WNBU, WMUR–TV
Hampton Falls—WFXT, WCSH, WNBU, WMUR–TV
Hooksett—WFXT
Kensington—WFXT, WCSH
Laconia—WHDH–TV
Lee—WFXT, WCSH
Madbury—WFXT, WCSH, WNBU, WMUR–TV
Manchester—WFXT
Meredith—WHDH–TV
New Castle—WFXT, WCSH, WNBU, WMUR–TV
New Durham—WHDH–TV
Newfield—WFXT, WCSH, WNBU, WMUR–TV
Newington—WFXT, WCSH, WNBU, WMUR–TV
New Market—WFXT, WCSH, WNBU, WMUR–TV
Northfield—WHDH–TV
North Hampton—WFXT, WCSH, WNBU, WMUR–TV
Nottingham—WFXT, WCSH
Portsmouth—WFXT, WCSH, WNBU, WMUR–TV
Raymond—WFXT, WCSH, WNBU, WMUR–TV
Rollingsford—WFXT, WCSH, WNBU, WMUR–TV
Rye—WFXT, WCSH, WNBU, WMUR–TV
Seabrook—WFXT, WCSH, WNBU, WMUR–TV
Somersworth—WFXT, WCSH, WNBU, WMUR–TV
Stratham—WFXT, WCSH, WNBU, WMUR–TV
Wolfesboro—WHDH–TV

NEW JERSEY

Atlantic
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Bergen
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5. New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Burlington
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Camden
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Cape May
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Cumberland
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Essex
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WWOR)
WPIX, 11, New York, NY
Gloucester
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Hudson
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Hunterdon
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Mercer
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WKBS–TV. 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)

WPIX, 11, New York, NY
Middlesex
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Monmouth
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Morris
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Ocean
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
Passaic
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Salem
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Somerset
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerlyWOR)
WPIX, 11, New York, NY
Sussex
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Union
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Warren
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WPIX, 11, New York, NY
+WFMZ–TV, 69, Allentown, PA

NEW MEXICO

Bernalillo
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
+KASA–TV, 2, Santa Fe, NM (formerly KNMZ, KKTO)
Catron
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KVOA, 4, Tucson, AZ
KGUN, 9, Tucson, AZ
KOLD–TV, 13, Tucson, AZ
Chaves
KBIM–TV, 10, Roswell, NM
KCBD–TV, 11, Lubbock, TX
Cibola
+KGSW–TV, 14, Albuquerque, NM
Colfax
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
KRDO–TV, 13, Colorado Springs, CO
Curry
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
KCBD–TV, 11, Lubbock, TX
De Baca
KCBD–TV, 11, Lubbock, TX
KOAT–TV, 7, Albuquerque, NM
KBIM–TV, 10, Roswell, NM
Dona Ana
KDBC–TV, 4, El Paso, TX (formerly KROD)
KTSM–TV, 9, El Paso, TX
KVIA–TV, 7, El Paso, TX (formerly KELP)
+KFOX–TV, 14, El Paso, TX
Eddy
KBIM–TV, 10, Roswell, NM
KVIA–TV, 13, El Paso, TX (formerly KELP)
KCBD–TV, 11, Lubbock, TX
Grant
KDBC–TV, 4, El Paso, TX (formerly KROD)
KTSM–TV, 9, El Paso, TX
KOAT–TV, 7, Albuquerque, NM
Guadalupe
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Harding
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Hidalgo
KTVK, 3, Phoenix, AZ
KSAZ–TV, 10, Phoenix, AZ (formerly KOOL)
KPNX, 12, Phoenix, AZ (formerly KTAR)
KVOA, 4, Tucson, AZ
KGUN, 9, Tucson, AZ
KOLD–TV, 13, Tucson, AZ
Lea North
KBIM–TV, 10, Roswell, NM
KCBD–TV, 11, Lubbock, TX
Lea South
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
KCBD–TV, 11, Lubbock, TX
KBIM–TV, 10, Roswell, NM
Lincoln
KOB–TV, 4, Albuquerque, NM
KCBD–TV, 11, Lubbock, TX
KBIM–TV, 10, Roswell, NM
Los Alamos
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
+KGSW–TV, 14, Albuquerque, NM
Luna
KBDC–TV, 4, El Paso, TX (formerly KROD)
KTSM–TV, 9, El Paso, TX
KELP–TV, 13, El Paso, TX (formerly KELP)
McKinley
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Mora
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Otero
KDBC–TV, 4, El Paso, TX (formerly KROD)
KTSM–TV, 9, El Paso, TX
+KFOX–TV, 14, El Paso, TX
KOAT–TV, 7, Albuquerque, NM
Quay
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
KOAT–TV, 7, Albuquerque, NM
KCBD–TV, 11, Lubbock, TX
Rio Arriba
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
+KGSW–TV, 14, Albuquerque, NM
Roosevelt
KFDA–TV, 10, Amarillo, TX
KCBD–TV, 11, Lubbock, TX
Sandoval
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
+KASA–TV, 2, Santa Fe, NM (formerly KNMZ)
San Juan
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM

KRQE, 13, Albuquerque, NM (formerly KGGM)
San Miguel
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Santa Fe
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
+KGSW–TV, 14, Albuquerque, NM
Sierra
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Socorro
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
+KGSW–TV, 14, Albuquerque, NM
Taos
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Torrance
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
Union
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
KKTV, 11, Colorado Springs, CO
KRDO–TV, 13, Colorado Springs, CO
Valencia
KOB–TV, 4, Albuquerque, NM
KOAT–TV, 7, Albuquerque, NM
KRQE, 13, Albuquerque, NM (formerly KGGM)
+KASA–TV, 2, Santa Fe, NM (formerly KNMZ)
Albuquerque—KASA–TV
Corrales—KASA–TV
Kirkland AFB—KASA–TV
Paradise Hills—KASA–TV

NEW YORK

Albany
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Alleghany
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
Bronx
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Broome
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WIVT, 34, Binghamton, NY (formerly WBJA)
WICZ–TV, 40, Binghamton, NY (formerly WINR)
Cattaraugus
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
+WNYO–TV, 49, Buffalo, NY (formerly WNYB)
Cayuga
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
Chautauqua
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
Chemung
WETM–TV, 18, Elmira, NY (formerly WSYE)
WENY–TV, 36, Elmira, NY
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WNYW, 5, New York, NY (formerly WNEW)
Chenango
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WICZ–TV, 40, Binghamton, NY (formerly WINR)
Clinton
WCAX–TV 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WVNY, 22, Burlington, VT
CBMT, 6, Canada
CFCF, 12, Canada
Columbia
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
+WRNN–TV, 62, Kingston, NY (formerly WTZA)
Cortland
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
Delaware
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WKTV, 2, Utica, NY
Dutchess
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
WTEN, 10, Albany, NY
+WXXA–TV, 23, Albany, NY
+WRNN–TV, 62, Kingston, NY (formerly WTZA)
Erie
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
WUTV, 29, Buffalo, NY
+WNYO–TV, 49, Buffalo, NY (formerly WNYB)
Essex
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
Franklin
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
CBOT, 4, Canada
CBMT, 6, Canada
CJOH, 8, Canada (formerly CJSS)
CFCF, 12, Canada
Fulton
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Genesee
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
+WNYO–TV, 49, Buffalo, NY (formerly WNYB)
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
Greene
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
+WRNN–TV, 62, Kingston, NY (formerly WTZA)
Hamilton
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
Herkimer
WKTV, 2, Utica, NY
+WFXV, 33, Utica, NY
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
+WXXA–TV, 23, Albany, NY
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
Jefferson
WWNY–TV, 7, Carthage, NY
+WWTI, 50, Watertown, NY
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
CKWS, 11, Canada
Kings
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Lewis
WWNY–TV, 7, Carthage, NY
+WWTI, 50, Watertown, NY
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WKTV, 2, Utica, NY
Livingston
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
+WUHF, 31, Rochester, NY

WGRZ–TV, 2, Buffalo, NY (formerly WGR)
Madison
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
WKTV, 2, Utica, NY
Monroe
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
+WUHF, 31, Rochester, NY
Montgomery
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
WKTV, 2, Utica, NY
Nassau
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
New York
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Niagara
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
WUTV, 29, Buffalo, NY
+WNYO–TV, 49, Buffalo, NY (formerly WNYB)
CBLT, 6, Canada
CFTO, 9, Canada
CHCH, 11, Canada
Oneida East
WKTV, 2, Utica, NY
WUTR, 20, Utica, NY
+WFXV, 33, Utica, NY
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
Oneida West
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
WKTV, 2, Utica, NY
+WFXV, 33, Utica, NY
Onondaga
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
Ontario
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
+WUHF, 31, Rochester, NY
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
Orange
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Orlean
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
WUTV, 29, Buffalo, NY
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
Oswego
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WNYS, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
Otsego
WKTV, 2, Utica, NY
WRGB, 6, Schenectady, NY
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
Putnam
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Queens
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Rensselaer
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Richmond
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Rockland
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
St. Lawrence
WWNY–TV, 7, Carthage, NY
+WWTI, 50, Watertown, NY
WPTZ, 5, Plattsburgh, NY
CBOT, 4, Canada
CJOH, 8, Canada (formerly CJSS)
CKWS, 11, Canada
Saratoga
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Schenectady
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Schoharie
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Schuyler
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
Seneca
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
Steuben
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
WETM–TV, 18, Elmira, NY (formerly WSYE)
Suffolk East
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
WFSB, 3, Hartford, CT (formerly WTIC)
WTNH–TV, 8, New Haven, CT (formerly WNHC)
Suffolk West
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Sullivan
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)

WPIX, 11, New York, NY
Tioga
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WIVT, 34, Binghamton, NY (formerly WBJA)
WICZ–TV, 40, Binghamton, NY (formerly WINR)
Tompkins
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
Ulster
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
+WXXA–TV, 23, Albany, NY
+WRNN–TV, 62, Kingston, NY (formerly WTZA)
Warren
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Washington
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Wayne
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
+WUHF, 31, Rochester, NY
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
Westchester
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WWOR–TV, 9, New York, NY (formerly WOR)
WPIX, 11, New York, NY
Wyoming
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
+WNYO–TV, 49, Buffalo, NY (formerly WNYB)
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
WOKR, 13, Rochester, NY
+WUHF, 31, Rochester, NY
Yates
WSTM–TV, 3, Syracuse, NY (formerly WSYR)
WTVH, 5, Syracuse, NY (formerly WHEN)
WIXT, 9, Syracuse, NY (formerly WNYS)
+WSYT, 68, Syracuse, NY
WROC–TV, 8, Rochester, NY
WHEC–TV, 10, Rochester, NY
Amherst—CBLT, CFTO
Bethel—WCBS–TV, WNBC, WNYW, WYOU–TV
Blasdell—CBLT, CFTO
Callicoon—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Cheektowaga—CBLT, CFTO
Cochecton—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Colchester—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Delaware—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Denning—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Ellenville—WCBS–TV, WNBC, WNYW, WWOR–TV
Ellenville Vilage—WCBS–TV, WWOR–TV
Fallsburg Village—WWOR–TV
Forestburgh—WCBS–TV, WNBC, WNYW, WYOU–TV
Fremont—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Gardiner—WRNN–TV, WCBS–TV, WNBC, WNYW, WABC–TV
Greenport—WVIT, WTXX
Hamburg—CBLT, CFTO
Jeffersonville—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Kenmore Village—CBLT, CFTO
Lackawanna—CBLT, CFTO
Lloyd—WRNN–TV, WCBS–TV, WNBC, WNYW, WABC–TV
Lumberland—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Mamakating—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV
Neversink—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Quoque—WVIT, WTXX
Riverhead—WVIT, WTXX
Rochester—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV
Rockland—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Sag Harbor—WVIT, WTXX
Sloan—CBLT, CFTO
Southampton—WVIT, WTXX
Southampton Village, WVIT, WTXX
Southold—WVIT, WTXX
Tonawanda—CBLT, CFTO
Tusten—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV, WPIX, WOLF–TV, WNEP–TV, WYOU–TV
Wawarsing—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV
Westhampton—WVIT, WTXX
West Seneca—CBLT, CFTO
Williamsville—CBLT, CFTO
Woodridge Village—WCBS–TV, WNBC, WNYW, WABC–TV, WWOR–TV

NORTH CAROLINA

Alamance
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
Alexander
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
Alleghany
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Anson
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont, NC
WBTW, 13, Florence, SC
+WWMB, 21, Florence, SC
WGHP, 8, Greensboro, NC
Ashe
WBTV, 3, Charlotte, NC
WCYB–TV, 5, Bristol, VA
+WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
Avery
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCYB–TV, 5, Bristol, VA
Beaufort
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC
Bertie
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Bladen
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
+WWMB, 21, Florence, SC
+WKFT, 40, Fayetteville, NC
Brunswick
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
+WSFX–TV, 26, Wilmington, NC
Buncombe
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Burke
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WCNC–TV, 36, Charlotte, NC
+WJZY, 46, Belmont, NC
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC

+WHNS, 21, Greenville, SC
Cabarrus
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont, NC
Caldwell
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WCNC–TV, 36, Charlotte, NC
+WJZY, 46, Belmont, NC
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Camden
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Carteret
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC
Caswell
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
WRAL–TV, 5, Raleigh, NC
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
Catawba
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
+WCNC–TV, 36, Charlotte, NC
+WJZY, 46, Belmont, NC
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Chatham
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WRDC, 28, Durham, NC (formerly WRDU)
+WKFT, 40, Fayetteville, NC
Cherokee
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WYFF, 4, Greenville, SC (formerly WFBC)
WLOS–TV, 13, Greenville, SC
Chowan
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
Clay
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WSB–TV, 2, Atlanta, GA
WAGA, 5, Atlanta, GA
WXIA–TV, 11, Atlanta, GA (formerly WQXI)
Cleveland
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WCNC–TV, 36, Charlotte, NC
+WJZY, 46, Belmont, NC
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Columbus
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
+WSFX–TV, 26, Wilmington, NC
WBTW, 13, Florence, SC
+WWMB, 21, Florence, SC
+WFXB, 43, Myrtle Beach, SC
Craven
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC
Cumberland
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WKFT, 40, Fayetteville, NC
WECT, 6, Wilmington, NC
+WBTW, 13, Florence, SC
Currituck
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Dare
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WITN–TV, 7, Washington, NC
Davidson
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WJZY, 46, Belmont, NC
Davie
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
Duplin
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
Durham
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WRDC, 28, Durham, NC (formerly WRDU)
+WKFT, 40, Fayetteville, NC
WFMY–TV, 2, Greensboro, NC
Edgecombe
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
Forsyth
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
+WLXI–TV, 61, Greensboro, NC
+WJZY, 46, Belmont, NC
Franklin
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham, NC (formerly WPTF, WRDU)
+WKFT, 40, Fayetteville, NC
WNCT–TV, 9, Greenville, NC
Gaston
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
WLOS, 13, Greenville, SC
Gates
WTKR, 3, Norfolk, VA (formerlyWTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Graham
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WYFF, 4, Greenville, SC (formerly WFBC)
WLOS, 13, Greenville, SC
Granville
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WRDC, 28, Durham, NC (formerly WRDU)
+WKFT, 40, Fayetteville, NC
Greene
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
Guilford
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
+WLXI–TV, 61, Greensboro, NC
Halifax
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
Harnett
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham, NC (formerly WPTF, WRDU)
+WKFT, 40, Fayetteville, NC
WECT, 6, Wilmington, NC
Haywood
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
Henderson
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Hertford

WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA

Hoke
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WKFT, 40, Fayetteville, NC
WBTW, 13, Florence, SC
+WFXB, 43, Myrtle Beach, SC
WGHP, 8, Greensboro, NC
WECT, 6, Wilmington, NC

Hyde
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC

Iredell
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont, NC
+WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)

Jackson
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC

Johnston
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham, NC (formerly WPTF, WRDU)
+WKFT, 40, Fayetteville, NC
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC

Jones
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC

Lee
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WRDC, 28, Durham, NC (formerly WRDU)
+WKFT, 40, Fayetteville, NC
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC

Lenoir
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC
WRAL–TV, 5, Raleigh, NC

Lincoln
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC

McDowell
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
WBTV, 3, Charlotte, NC
+WJZY, 46, Belmont, NC

Macon
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
WSB–TV, 2, Atlanta, GA

Madison
WYFF, 4, Greenville, SC (formerly WFBC)
WLOS, 13, Greenville, SC

Martin
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC

Mecklenburg
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)

Mitchell
WBTV, 3, Charlotte, NC
WCYB–TV, 5, Bristol, VA
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC

Montgomery
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WKFT, 40, Fayetteville, NC

Moore
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham (formerly WPTF, WRDU)
+WKFT, 40, Fayetteville, NC
WECT, 6, Wilmington, NC

Nash
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC. 28, Durham, NC (formerly WPTF, WRDU)

New Hanover
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
+WSFX–TV, 26, Wilmington, NC

Northampton
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC

Onslow
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC

Orange
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WRDC, 28, Durham, NC (formerly WRDU)
+WKFT, 40, Fayetteville, NC
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC

Pamlico
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC

Pasquotank
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WGNT, 27, Portsmouth, VA (formerly WYAH)
+WTVZ, 33, Norfolk, VA

Pender
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
+WSFX–TV, 26, Wilmington, NC

Perquimans
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA

Person
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WRDC, 28, Durham, NC (formerly WRDU)
WFMY–TV, 2, Greensboro, NC
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)

Pitt
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC
WRAL–TV, 5, Raleigh, NC

Polk
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
WBTV, 3, Charlotte, NC

Randolph
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)

Richmond
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WBTW, 13, Florence, SC
+WPDE–TV, 15, Florence, SC
WGHP, 8, Greensboro, NC
+WLFL, 22, Raleigh, NC
+WKFT, 40, Fayetteville, NC

Robeson
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
WBTW, 13, Florence, SC
+WPDE–TV, 15, Florence, SC
+WWMB, 21, Florence, SC
+WFXB, 43, Myrtle Beach, SC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WKFT, 40, Fayetteville, NC

Rockingham
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA

Rowan
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont, NC
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)

Rutherford
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WJZY, 46, Belmont, NC
Sampson
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
Scotland
WBTW, 13, Florence, SC
+WPDE–TV, 15, Florence, SC
+WWMB, 21, Florence, NC
WGHP, 8, Greensboro, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WKFT, 40, Raleigh.NC
WECT, 6, Wilmington, NC
Stanly
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WCNC–TV, 36, Charlotte, NC
+WJZY, 46, Belmont, NC
WGHP, 8, Greensboro, NC
Stokes
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
Surry
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
Swain
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
Transylvania
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Tyrrell
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
Union
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WSNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont, NC
Vance
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham, NC (formerly WPTF, WRDU)
+WKFT, 40, Fayetteville, NC
Wake
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham, NC (formerly WPTF, WRDU)
+WKFT, 40, Fayetteville, NC
Warren
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham, NC (formerly WPTF, WRDU)
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
Washington
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WCTI, 12, New Bern, NC
Watauga
WBTV, 3, Charlotte, NC
+WJZY, 46, Charlotte, NC
WCYB–TV, 5, Bristol, VA
WGHP, 8, Greensboro, NC
Wayne
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
+WLFL, 22, Raleigh, NC
+WKFT, 40, Fayetteville, NC
Wilkes
+WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WJZY, 46, Belmont, NC
Wilson
WITN–TV, 7, Washington, NC
WNCT–TV, 9, Greenville, NC
WRAL–TV, 5, Raleigh, NC
+WLFL, 22, Raleigh, NC
+WRDC, 28, Durham, NC (formerly WPTF, WRDU)
WTVD, 11, Durham, NC
Yadkin
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
+WJZY, 46, Belmont, NC
Yancey
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
WCYB–TV, 5, Bristol, VA
Connelly Springs—WCCB
Drexel—WCCB
Fayetteville—WLFL, WRDC
Fort Bragg—WLFL, WRDC
Glen Alpine—WCCB
Hope Mills—WLFL, WRDC
Kill Devil Hills—WVEC–TV, WTKR, WAVY–TV
Kitty Hawk—WVEC–TV, WTKR, WAVY–TV
Manteo—WVEC–TV, WTKR, WAVY–TV
Nags Head—WVEC–TV, WTKR, WAVY–TV
Raleigh—WNCN
Rutherford College—WCCB
Southern Shores—WVEC–TV, WTKR, WAVY–TV
Spring Lake—WLFL, WRDC
Valdése—WCCB
Unincorporated areas of Burke County—WCCB
Unincorporated surrounding areas of Cumberland County—WLFL, WRDC
Unincorporated areas of Dare County—WVEC–TV, WTKR, WAVY–TV
Unincorporated areas of Wake County—WNCN

NORTH DAKOTA

Adams
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
KFYR–TV, 5, Bismarck, ND
Barnes
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Benson
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
KXMC–TV, 13, Minot, ND
Billings
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
KFYR–TV, 5, Bismarck, ND
Bottineau
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
Bowman
KSMA–TV, 2, Dickinson, ND (formerly KDIX)
KFYR–TV, 5, Bismarck, ND
KOTA–TV, 3, Rapid City, SD
Burke
KUMV–TV, 8, Williston, ND
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
CKOS, 3, Canada
Burleigh
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Cass
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Cavalier
WDAZ–TV, 8, Devils Lake, ND
KCND, 12, Pembina, ND
CKY, 7, Canada (formerly CJAY)
Dickey
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Divide
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND
CKTV, 2, Canada (formerly CKCK)
Dunn
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
KFYR–TV, 5, Bismarck, ND
KUMV–TV, 8, Williston, ND
Eddy
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Emmons
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Foster

KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Golden Valley
KUMV–TV, 8, Williston, ND
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
Grand Forks
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Grant
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Griggs
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Hettinger
KFYR–TV, 5, Bismarck, ND
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
Kidder
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
La Moure
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Logan
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
McHenry
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
McIntosh
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
McKenzie
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND
McLean
KFYR–TV 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
KXMC–TV, 13, Minot, ND
Mercer
KFYR–TV, 5, Bismarck, ND
KXMC–TV, 13, Minot, ND
Morton East
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Morton West
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Mountrail
KUMV–TV, 8, Williston, ND
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
Nelson
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Oliver
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Pembina
KCND, 12, Pembina, ND
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
CBWT, 6, Canada
CKY, 7, Canada (formerly CJAY)
Pierce
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
Ramsey
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Ransom
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Renville
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
Richland
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Rolette
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
CKX, 5, Canada
Sargent
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Sheridan
KFYR–TV, 5, Bismarck, ND
KXMC–TV, 13, Minot, ND
Sioux
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Slope
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
Stark
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
KFYR–TV, 5, Bismarck, ND
Steele
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Stutsman
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
KFYR–TV, 5, Bismarck, ND
Towner
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
Traill
KXJB–TV, 4, Valley City, ND
WDAY–TV, 6, Fargo, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Walsh
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
KCND, 12, Pembina, ND
Ward
KMOT, 10, Minot, ND
KXMC–TV, 13, Minot, ND
Wells
KFYR–TV, 5, Bismarck, ND
KXMC–TV, 13, Minot, ND
KXJB–TV, 4, Valley City, ND
WDAZ–TV, 8, Devils Lake, ND
KVLY–TV, 11, Fargo, ND (formerly KTHI)
Williams
KUMV–TV, 8, Williston, ND
KXMD–TV, 11, Williston, ND

OHIO

Adams
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
Allen
WLIO, 35, Lima, OH (formerly WIMA)
+WTLW, 44, Lima, OH
WHIO–TV, 7, Dayton, OH
WANE–TV, 15, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
Ashland
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH
Ashtabula
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WICU–TV, 12, Erie, PA
WJET–TV, 24, Erie, PA
WSEE, 35, Erie, PA
Athens
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WCMH–TV, 4, Columbus, OH (formerly WLWC)
Auglaize
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WLIO, 35, Lima, OH (formerly WIMA)
+WTLW, 44, Lima, OH
+WFFT–TV, 55, Fort Wayne, IN
Belmont
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
+WPGH–TV, 53, Pittsburgh, PA
Brown
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
+WRGT–TV, 45, Dayton, OH
Butler
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
+WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
Carroll
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH

KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)

Champaign
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Clark
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH

Clermont
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
+WRGT–TV, 45, Dayton, OH

Clinton
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH

Columbiana
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WPGH–TV, 53, Pittsburgh, PA
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
WFMJ–TV, 21, Youngstown, OH
WKBN–TV, 27, Youngstown, OH
WYTV, 33, Youngstown, OH

Coshocton
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
WHIZ–TV, 18, Zanesville, OH

Crawford
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
+WUPW, 36, Toledo, OH

Cuyahoga
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH

Darke
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WCPO–TV, 9, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Defiance
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN

Delaware
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Erie
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
+WUPW, 36, Toledo, OH

Fairfield
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Fayette
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH

Franklin
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Fulton
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH

Gallia
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Geauga
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH

Greene
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH

Guernsey
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
+WTTE, 28, Columbus, OH

Hamilton
WLWT, 5, Cincinnati, OH
WCPO–TV 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
+WRGT–TV, 45, Dayton, OH

Hancock
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH

Hardin
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
+WUPW, 36, Toledo, OH
+WTLW, 44, Lima, OH

Harrison
WTR–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)

Henry
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH

Highland
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH

Hocking
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Holmes
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
+WTTE, 28, Columbus, OH

Huron
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH

WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
+WUPW, 36, Toledo, OH

Jackson
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Jefferson
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, OH
WTAE–TV, 4, Pittsburgh, OH
WPXI, 11, Pittsburgh, OH (formerly WIIC)
+WPGH–TV, 53, Pittsburgh, OH

Knox
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Lake
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH

Lawrence
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Licking
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Logan
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH

Lorain
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH

Lucas
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
WJBK, 2, Detroit, MI
WXYZ–TV, 7, Detroit, MI
+WKBD–TV, 50, Detroit, MI

Madison
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
+WRGT–TV, 45, Dayton, OH

Mahoning
WFMJ–TV, 21, Youngstown, OH
WKBN–TV, 27, Youngstown, OH
WYTV, 33, Youngstown, OH
+WOIO, 19, Shaker Heights, OH

Marion
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Medina
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH

Meigs
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Mercer
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
WIMA, 35, Lima, OH (formerly WIMA)
+WTLW, 44, Lima, OH

Miami
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WPTD, 16, Dayton, OH (formerly WKTR)
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH

Monroe
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
WDTV, 5, Clarksburg, WV
WTAE–TV, 4, Pittsburgh, PA

Montgomery
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WPTD, 16, Dayton, OH (formerly WKTR)
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Morgan
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
WTAP–TV, 15, Parkersburg, WV
WHIZ–TV, 18, Zanesville, OH

Morrow
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH

Muskingum
WHIZ–TV, 18, Zanesville, OH
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Noble
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)

Ottawa
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
WEWS–TV, 5, Cleveland, OH
WJBK, 2, Detroit, MI

Paulding
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN

Perry
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
WHIZ–TV, 18, Zanesville, OH

Pickaway
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH

Pike
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
WSAZ–TV, 3, Huntington, WV
WOWK–TV, 13, Huntington (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)

Portage
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH

Preble
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH

Putnam
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo. OH
WLIO, 35, Lima, OH (formerly WIMA)
+WTLW, 44, Lima, OH
+WFFT–TV, 55, Fort Wayne, IN

Richland
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH

WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
Ross
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
Sandusky
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
Scioto
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Seneca
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
WEWS–TV, 5, Cleveland, OH
Shelby
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
Stark
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH
+WOAC, 67, Canton, OH
Summit
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WAKC, 23, Akron, OH (formerly WAKR)
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH
Trumbull
WFMJ–TV, 21, Youngstown, OH
WKBN–TV, 27, Youngstown, OH
WYTV, 33, Youngstown, OH
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
Tuscarawas
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
Union
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
Van Wert
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
WLIO, 35, Lima, OH (formerly WIMA)
+WTLW, 44, Lima, OH
Vinton
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WSYX, 6, Columbus, OH (formerly WTVN)
WBNS–TV, 10, Columbus, OH
Warren
WLWT, 5, Cincinnati, OH
WCPO–TV, 9, Cincinnati, OH
WKRC–TV, 12, Cincinnati, OH
WXIX–TV, 19, Cincinnati, OH
+WSTR–TV, 64, Cincinnati, OH
WDTN, 2, Dayton, OH (formerly WLWD)
WHIO–TV, 7, Dayton, OH
WKEF, 22, Dayton, OH
+WRGT–TV, 45, Dayton, OH
Washington
#WSAZ–TV, 3, Huntington, WV [21]
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WTAP–TV, 15, Parkersburg, WV
WTRF–TV, 7, Wheeling, WV
Wayne
WKYC–TV, 3, Cleveland, OH
WEWS–TV, 5, Cleveland, OH
WJW, 8, Cleveland, OH
+WOIO, 19, Shaker Heights, OH
WUAB, 43, Lorain, OH
WKBF–TV, 61, Cleveland, OH
+WOAC, 67, Akron, OH
Williams
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
WANE–TV, 15, Fort Wayne, IN
WPTA, 21, Fort Wayne, IN
WKJG–TV, 33, Fort Wayne, IN
+WFFT–TV, 55, Fort Wayne, IN
Wood
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
WKBD–TV, 50, Detroit, MI
Wyandot
WTOL–TV, 11, Toledo, OH
WTVG, 13, Toledo, OH (formerly WSPD)
WNWO–TV, 24, Toledo, OH (formerly WDHO)
+WUPW, 36, Toledo, OH
WCMH–TV, 4, Columbus, OH (formerly WLWC)
WBNS–TV, 10, Columbus, OH
+WTTE, 28, Columbus, OH
Ashtabula—WUAB
Ashtabula Township—WUAB
Austinburg Township—WUAB
Austintown Township—WJW
Canfield—WJW
Canfield Township (portions)—WJW
Geneva—WUAB
Geneva Township—WUAB
Geneva-on-the-Lake Village—WUAB
Harpersfield Township—WUAB
Jefferson Village—WUAB
Jefferson Township—WUAB
Kingsville Township—WUAB
Madison Village—WUAB
McDonald Township—WJW
Plymouth Township—WUAB
Sabina—WSYX, WBNS–TV
Saybrook Township—WUAB
Weathersfield Township—WJW

OKLAHOMA

Adair
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Alfalfa
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
Atoka
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
Beaver
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS
Beckham
KFDA–TV, 10, Amarillo, TX
KSWO–TV, 7, Lawton, OK
+KOKH–TV, 25, Oklahoma City, OK
Blaine
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KAUT–TV, 43, Oklahoma City, OK
Bryan
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
KDFW, 4, Dallas, TX
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
Caddo
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KTBO–TV, 14, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
Canadian
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
Carter
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
KWTV, 9, Oklahoma City, OK
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
Cherokee
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK

[21] Affected community is Marietta, OH.

KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Choctaw
KTVT, 11, Fort Worth, TV
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
Cimarron
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
Cleveland
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KTBO–TV, 14, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KAUT–TV, 43, Oklahoma City, OK
Coal
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
Comanche
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
Cotton
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
Craig
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
KOAM–TV, 7, Pittsburg, KS
Creek
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Custer
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
Delaware
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
Dewey
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
Ellis
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KFDA–TV, 10, Amarillo, TX
Garfield
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KAUT–TV, 43, Oklahoma City, OK
Garvin
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
KTEN, 10, Ada, OK
Grady
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
Grant
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
Greer
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
KFDA–TV, 10, Amarillo,TX
Harmon
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
Harper
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KUPK–TV, 13, Garden City, KS
Haskell
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
Hughes
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
KTEN, 10, Ada, OK
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Jackson
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
Jefferson
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
KXII, 12, Sherman, TX
Johnston
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
Kay
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
KJRH, 2, Tulsa, O, OKK (formerly KTEW)
KOTV, 6, Tulsa, OK
KSNW, 3, Wichita, KS (formerly KARD)
KAKE–TV, 10, Wichita, KS
Kingfisher
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KTBO–TV, 14, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
Kiowa
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
Latimer
KTUL, 8, Tulsa, OK
KTEN, 10, Ada, OK
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
Le Flore
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
KTUL, 8, Tulsa, OK
Lincoln
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KAUT–TV, 43, Oklahoma City, OK
Logan
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma Cit, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
Love
KDFW, 4, Dallas, TX
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KXII, 12, Sherman, TX
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
McClain
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
McCurtain
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 12, Shreveport, LA
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
McIntosh
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK

KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Major
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
Marshall
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
KDFW, 4, Dallas, TX
Mayes
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
+KWHB, 47, Tulsa, OK
Murray
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
Muskogee
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
+KWHB, 47, Tulsa, OK
Noble
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
Nowata
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Okfuskee
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
KTEN, 10, Ada, OK
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
Oklahoma
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
Okmulgee
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
+KWHB, 47, Tulsa, OK
Osage
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Ottawa
KOAM–TV, 7, Pittsburg, KS
KODE–TV, 12, Joplin, MO
KSNF, 16, Joplin, MO (formerly KUHI)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Pawnee
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
Payne
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
Pittsburg
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
KTEN, 10, Ada, OK
Pontotoc
KTEN, 10, Ada, OK
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
KAUT–TV, 43, Oklahoma City, OK
Pottawatomie
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KAUT–TV, 43, Oklahoma City, OK
Pushmataha
KTEN, 10, Ada, OK
KXII, 12, Sherman, TX
Roger Mills
KFDA–TV, 10, Amarillo, TX
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
Rogers
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
+KWHB, 47, Tulsa, OK
Seminole
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
+KOCB, 34, Oklahoma City, OK (formerly KGMC)
+KAUT–TV, 43, Oklahoma City, OK
KTEN, 10, Ada, OK
Sequoyah
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
KFSM–TV, 5, Fort Smith, AR (formerly KFSA)
Stephens
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
+KOKH–TV, 25, Oklahoma City, OK
Texas
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
KBSD–TV, 6, Ensign, KS (formerly KTVC)
KSNG, 11, Garden City, KS (formerly KGLD)
KUPK–TV, 13, Garden City, KS
Tillman
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
Tulsa
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
+KWHB, 47, Tulsa, OK
Wagoner
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
+KWHB, 47, Tulsa, OK
Washington
KJRH, 2, Tulsa, OK (formerly KTEW)
KOTV, 6, Tulsa, OK
KTUL, 8, Tulsa, OK
+KOKI–TV, 23, Tulsa, OK
Washita
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
+KOKH–TV, 25, Oklahoma City, OK
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
Woods
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
Woodward
KFOR–TV, 4, Oklahoma City, OK (formerly WKY)
KOCO–TV, 5, Oklahoma City, OK
KWTV, 9, Oklahoma City, OK
Marlow—KFOR–TV, KOCO–TV, KWTV

OREGON

Baker
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Benton
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KPTV, 12, Portland, OR
KEZI, 9, Eugene, OR
KVAL–TV, 13, Eugene, OR
Clackamas
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
+KPDX, 49, Vancouver, WA
Clatsop
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
KING–TV, 5, Seattle, WA
Columbia
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
+KPDX, 49, Vancouver, WA

Coos
KCBY–TV, 11, Coos Bay, OR
KOBI, 5, Medford, OR
Crook
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
KEZI, 9, Eugene, OR
+KTVZ, 21, Bend, OR
Curry
KIEM–TV, 3, Eureka, CA
KVIQ–TV, 6, Eureka, CA
Deschutes
+KTVZ, 21, Bend, OR
Douglas
KPIC, 4, Roseburg, OR
KEZI, 9, Eugene, OR
KOBI, 5, Medford, OR
Gilliam
KEPR–TV, 19, Pasco, WA
KNDU, 25, Richland, WA
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
Grant
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Harney
Not available.
Hood River
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
Jackson
KOBI, 5, Medford, OR
KTVL, 10, Medford, OR (formerly KMED)
Jefferson
KATU, 2, Portland, OR
KOIN, 6 Portland, OR
KGW, 8, Portland, OR
+KTVZ, 21, Bend
Josephine
KOBI, 5, Medford, OR
KTVL, 10, Medford, OR (formerly KMED)
Klamath
KOTI, 2, Medford, OR
KTVL, 10, Medford, OR (formerly KMED)
Lake
KOTI, 2, Medford, OR
Lane Inner
KEZI, 9, Eugene, OR
KVAL–TV, 13, Eugene, OR
Lane Outer
KEZI, 9, Eugene, OR
KVAL–TV, 13, Eugene, OR
KOIN, 6, Portland, OR
Lincoln
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
KEZI, 9, Eugene, OR
KOAB–TV, 3, Bend, OR (formerly KVDO)
Linn
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
KEZI, 9, Eugene, OR
KVAL–TV, 13, Eugene, OR
KOAB–TV, 3, Bend, OR (formerly KVDO)
Malheur
KBCI–TV, 2, Boise, ID (formerly KBOI)
KTVB, 7, Boise, ID
Marion
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
+KPDX, 49, Portland, OR
KOAB–TV, 3, Bend, OR (formerly KVDO)
Morrow
KEPR–TV, 19, Pasco, WA
KNDU, 25, Richland, WA
KVEW, 42, Kennewick, WA
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
Multnomah
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
+KPDX, 49, Portland, OR
Polk
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
KOAB–TV, 3, Bend, OR (formerly KVDO)
Sherman
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
Tillamook
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
KOAB–TV, 3, Bend, OR (formerly KVDO)
Umatilla
KEPR–TV, 19, Pasco, WA
KNDU, 25, Richland, WA
KVEW, 42, Kennewick, WA
Union
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
KTVB, 7, Boise, ID
Wallowa
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Wasco
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
Washington
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
+KPDX, 49, Portland, OR
Wheeler
Not available.
Yamhill
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
KOAB–TV, 3, Bend, OR (formerly KVDO)

PENNSYLVANIA

Adams
WGAL, 8, Lancaster, PA
+WPMT, 43, York, PA
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
WTTG, 5, Washington, DC
Allegheny
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburg, PA (formerly WPTT)
WPGH–TV, 53, Pittsburgh, PA
Armstrong
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
WPGH–TV, 53, Pittsburgh, PA
WJAC–TV, 6, Johnstown, PA
+WWCP–TV, 8, Johnstown, PA
Beaver
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
WPGH–TV, 53, Pittsburgh, PA
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
Bedford
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Berks
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
+WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
WGAL, 8, Lancaster, PA
Blair
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Bradford
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WETM–TV, 18, Elmira, NY (formerly WSYE)
WENY–TV, 36, Elmira, NY
+WOLF–TV, 38, Scranton, PA
Bucks
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Butler
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
WPGH–TV, 53, Pittsburgh, PA
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA

Cambria
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
Cameron
Not available.
Carbon
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WNEP–TV, 16, Scranton, PA
Centre
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Chester
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphi, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Clarion
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
Clearfield
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Clinton
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Columbia
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
+WOLF–TV, 38, Scranton, PA
Crawford
WICU–TV, 12, Erie, PA
WJET–TV, 24, Erie, PA
WSEE, 35, Erie, PA
Cumberland
WGAL, 8, Lancaster, PA
WHP–TV, 21, Harrisburg, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
+WPMT, 43, York, PA
Dauphin
WGAL, 8, Lancaster, PA
WHP–TV, 21, Harrisburg, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
+WPMT, 43, York, PA
Delaware
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Elk
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Erie
WICU–TV, 12, Erie, PA
WJET–TV, 24, Erie, PA
WSEE, 35, Erie, PA
Fayette
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
+WPGH–TV, 53, Pittsburgh, PA
+WWCP, 8, Johnstown, PA
Forest
WICU–TV, 12, Erie, PA
WJAC–TV, 6, Johnstown, PA
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
Franklin
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
WGAL, 8, Lancaster, PA
Fulton
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WJAC–TV, 6, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Greene
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
WPGH–TV, 53, Pittsburgh, PA
WTRF–TV, 7, Wheeling, WV
+WWCP, 8, Johnstown, PA
Huntingdon
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Indiana
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Jefferson
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
Juniata
WGAL, 8, Lancaster, PA
WHP–TV, 21, Harrisburg, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
+WPMT, 43, York, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Lackawanna
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
+WOLF–TV, 38, Scranton, PA
Lancaster
WGAL, 8, Lancaster, PA
WLYH–TV, 15, Lancaster, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
+WPMT, 43, York, PA
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
Lawrence
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
WFMJ–TV, 21, Youngstown, OH
WKBN–TV, 27, Youngstown, OH
WYTV, 33, Youngstown, OH
Lebanon
WGAL, 8, Lancaster, PA
WLYH–TV, 15, Lancaster, PA
WHP–TV, 21, Harrisburg, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
+WPMT, 43, York, PA
Lehigh
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
+WPSG, 57, Philadelphia, PA (formerly WGBS)
Luzerne
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, Wilkes Barre, PA
+WOLF–TV, 38, Scranton, PA
Lycoming
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, Wilkes Barre, PA
+WWLF–TV, 56, Hazelton, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
McKean
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
Mercer
WFMJ–TV, 21, Youngstown, OH
WKBN–TV, 27, Youngstown, OH
WYTV, 33, Youngstown, OH
KDKA–TV, 2, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
Mifflin
WGAL, 8, Lancaster, PA
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
WTAJ–TV, 10, Altoona, PA (formerly WFBG)
Monroe
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA

WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
Montgomery
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
+WPSG, 57, Philadelphia, PA (forermly WGBS)
Montour
+WOLF–TV, 38, Scranton, PA
Northampton
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WNYW, 5, New York, NY (formerly WNEW)
WWOR–TV, 9, New York, NY (forermly WOR)
WPIX, 11, New York, NY
Northumberland
+WOLF–TV, 38, Scranton, PA
Perry
WGAL, 8, Lancaster, PA
WHP–TV, 21, Harrisburg, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
+WPMT, 43, York, PA
Philadelphia
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WPHL–TV, 17, Philadelphia, PA
WTXF–TV, 29, Philadelphia, PA (formerly WTAF)
WKBS–TV, 48, Altoona, PA
Pike
WCBS–TV, 2, New York, NY
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
WABC–TV, 7, New York, NY
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
Potter
WGRZ–TV, 2, Buffalo, NY (forermly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
Schuylkill
KYW–TV, 3, Philadelphia, PA
WPVI–TV, 6, Philadelphia, PA (formerly WFIL)
WCAU, 10, Philadelphia, PA
WGAL, 8, Lancaster, PA
Snyder
WGAL, 8, Lancaster, PA
WHP–TV, 21, Harrisburg, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
WNEP–TV, 16, Scranton, PA
WBRE–TV, 28, WilkeS–Barre, PA
+WWLF, 56, Scranton, PA
Somerset
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
Sullivan
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
Susquehanna
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
+WOLF–TV, 38, Scranton, PA
Tioga
WETM–TV, 18, Elmira, NY (formerly WSYE)
WENY–TV, 36, Elmira, NY
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
Union
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
+WOLF–TV, 38, Scranton, PA
Venango
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
WICU–TV, 12, Erie, PA
WJAC–TV, 6, Johnstown, PA
Warren
WGRZ–TV, 2, Buffalo, NY (formerly WGR)
WIVB–TV, 4, Buffalo, NY (formerly WBEN)
WKBW–TV, 7, Buffalo, NY
WICU–TV, 12, Erie, PA
Washington
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
WPGH–TV, 53, Pittsburgh, PA
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
+WWCP, 8, Johnstown, PA
Wayne
WNEP–TV, 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
+WOLF–TV, 38, Scranton, PA
WBNG–TV, 12, Binghamton, NY (formerly WNBF)
WNBC, 4, New York, NY
WNYW, 5, New York, NY (formerly WNEW)
Westmoreland
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
WPGH–TV, 53, Pittsburgh, PA
WJAC–TV, 6, Johnstown, PA
+WWCP, 8, Johnstown, PA
Wyoming
WNEP–TV 16, Scranton, PA
WYOU, 22, Scranton, PA (formerly WDAU)
WBRE–TV, 28, WilkeS–Barre, PA
+WOLF–TV, 38, Scranton, PA
York
WGAL, 8, Lancaster, PA
WHTM–TV, 27, Harrisburg, PA (formerly WTPA)
WPMT, 43, York, PA (formerly WSBA)
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
Adamstown Borough—WTXF–TV
Akron Borough—WTXF–TV
Alburtis—WTXF–TV
Allentown—WTXF–TV
Allen Township—WTXF–TV, WPHL–TV
Bangor Borough—WTXF–TV, WPHL–TV
Bath Borough—WTXF–TV, WPHL–TV
Bethlehem—WTXF–TV
Bethlehem Township—WTXF–TV, WPHL–TV
Bushkill Township—WTXF–TV, WPHL–TV
Catasauqua—WTXF–TV
Chapman Borough—WPHL–TV
Clay Township—WTXF–TV
Conestoga Township—WTXF–TV
Coopersburg—WTXF–TV
Coplay—WTXF–TV
Denver Borough—WTXF–TV
East Allen Township—WTXF–TV, WPHL–TV
East Bangor—WTXF–TV, WPHL–TV
East Cocalico Township—WTXF–TV
East Hempfield Township—WTXF–TV, WKBS–TV
East Lampeter Township—WTXF–TV, WKBS–TV
Easton—WPHL–TV
East Petersburg—WTXF–TV. WKBS–TV
Ephrata Borough—WTXF–TV
Ephrate Township—WTXF–TV
Forks Township—WPHL–TV
Fountain Hill—WTXF–TV
Freemansburg Borough—WTXF–TV, WPHL–TV
Glendon Borough—WPHL–TV
Hallerton Borough—WTXF–TV, WPHL–TV
Hanover Township—WTXF–TV, WPHL–TV
Heidelberg Township—WTXF–TV
Lancaster—WTXF–TV, WKBS–TV
Lancaster Township—WTXF–TV, WKBS–TV
Lehigh Township—WPHL–TV
Lititz Borough—WTXF–TV
Lowhill Township—WTXF–TV
Lower Macungie Township—WTXF–TV
Lower Milford Township—WTXF–TV
Lower Mt. Bethel—WTXF–TV, WPHL–TV
Lower Nazareth Township—WTXF–TV, WPHL–TV
Lower SauconTownship—WTXF–TV, WPHL–TV
Lynn Township—WTXF–TV
Manheim Borough—WTXF–TV
Manheim Township—WTXF–TV, WKBS–TV
Manor Township—WTXF–TV, WKBS–TV
Millcreek Township—KYW–TV, WPVI–TV, WCAU
Millersville—WTXF–TV, WKBS–TV
Moore Township—WTXF–TV, WPHL–TV
Mountville—WTXF–TV, WKBS–TV
Nazareth Borough—WTXF–TV, WPHL–TV
Northampton Borough—WPHL–TV
North Catasaqua Borough—WTXF–TV, WPHL–TV
North Whitehall Township—WTXF–TV
Palmer Township—WPHL–TV
Pen Argyl Borough—WTXF–TV, WPHL–TV
Penn Township—WTXF–TV
Pequea Township—WTXF–TV
Plainfield Township—WTXF–TV, WPHL–TV
Portland—WTXF–TV, WPHL–TV
Richland Borough—KYW–TV, WPVI–TV, WCAU
Roseto—WTXF–TV, WPHL–TV
Roseto Borough—WPHL–TV

Salisbury Township—WTXF–TV
South Heidelberg Townshlp—WTXF–TV
South Whitehall Township—WTXF–TV
Stockerton Borough—WPHL–TV
Strasburg—WTXF–TV
Strasburg Borough—WKBS–TV
Strasburg Township—WTXF–TV
Tatamy—WTXF–TV, WPHL–TV
Tatamy Borough—WPHL–TV
Upper Macungie Township—WTXF–TV
Upper Mt. Bethel—WTXF–TV, WPHL–TV
Upper Nazareth—WTXF–TV, WPHL–TV
Upper Nazareth Township—WPHL–TV
Upper Saucon Township—WTXF–TV
Warwick Township—WTXF–TV
Washington Township—WTXF–TV, WPHL–TV
Weisenberg Township—WTXF–TV
West Cocalico Township—WTXF–TV
West Earl Township—WTXF–TV
West Easton Township—WPHL–TV
West Hempfield Township—WTXF–TV, WKBS–TV
West Lampeter Township—WTXF–TV, WKBS–TV
Whitehall Township—WTXF–TV
Williams Township—WTXF–TV, WPHL–TV
Wilson Borough—WPHL–TV
Wind Gap Borough—WTXF–TV, WPHL–TV

RHODE ISLAND

Bristol
- WLNE–TV, 6, Providence, RI (formerly WTEV)
- WJAR, 10, Providence, RI
- WPRI–TV, 12, Providence, RI
- WNAC–TV, 64, Providence, RI
- WBZ–TV, 4, Boston, MA
- +WHDH–TV, 7, Boston, MA (formerly WNAC)
- WSBK–TV, 38, Boston, MA

Kent
- WLNE–TV, 6, Providence, RI (formerly WTEV)
- WJAR, 10, Providence, RI
- WPRI–TV, 12, Providence, RI
- WNAC–TV, 64, Providence, RI
- WCVB–TV, 5, Boston, MA (formerly WHDH)
- +WHDH–TV, 7, Boston, MA (formerly WNAC)
- WSBK–TV, 38, Boston, MA

Newport
- WLNE–TV, 6, Providence, RI (formerly WTEV)
- WJAR, 10, Providence, RI
- WPRI–TV, 12, Providence, RI
- WNAC–TV, 64, Providence, RI
- +WHDH–TV, 7, Boston, MA (formerly WNAC)
- WSBK–TV, 38, Boston, MA
- WLVI–TV, 56, Cambridge, MA (formerly WKBG)

Providence
- WLNE–TV, 6, Providence, RI (formerly WTEV)
- WJAR, 10, Providence, RI
- WPRI–TV, 12, Providence, RI
- WNAC–TV, 64, Providence, RI
- WBZ–TV, 4, Boston, MA
- WCVB–TV, 5, Boston, MA (formerly WHDH)
- +WHDH–TV, 7, Boston, MA (formerly WNAC)
- WSBK–TV, 38, Boston, MA
- WLVI–TV, 56, Cambridge, MA (formerly WKBG)

Washington
- WLNE–TV, 6, Providence, RI (formerly WTEV)
- WJAR, 10, Providence, RI
- WPRI–TV, 12, Providence, RI
- +WNAC–TV, 64, Providence, RI
- WHPX, 26, New London, CT (formerly WTWS)

Coventry—WLVI–TV
East Greenwich—WLVI–TV
Warwick—WLVI–TV
West Warwick—WLVI–TV

SOUTH CAROLINA

Abbeville
- WYFF, 4, Greenville, SC (formerly WFBC)
- WSPA–TV, 7, Greenville, SC
- WLOS, 13, Greenville, SC
- +WHNS, 21, Greenville, SC
- WJBF, 6, Augusta, GA

Aiken
- WJBF, 6, Augusta, GA
- WRDW–TV, 12, Augusta, GA
- +WFXG, 54, Augusta, GA

Allendale
- WJBF, 6, Augusta, GA
- WRDW–TV, 12, Augusta, GA
- +WFXG, 54, Augusta, GA

Anderson
- WYFF, 4, Greenville, SC (formerly WFBC)
- WSPA–TV, 7, Greenville, SC
- WLOS, 13, Greenville, SC
- +WHNS, 21, Greenville, SC

Bamberg
- WJBF, 6, Augusta, GA
- WRDW–TV, 12, Augusta, GA
- WCSC–TV, 5, Charleston, SC
- WIS, 10, Columbia, SC

Barnwell
- WJBF, 6, Augusta, GA
- WRDW–TV, 12, Augusta, GA
- +WFXG, 54, Augusta, GA
- WIS, 10, Columbia, SC

Beaufort
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCIV, 4, Charleston, SC
- WCSC–TV, 5, Charleston, SC
- WSAV–TV, 3, Savannah, GA
- WTOC–TV, 11, Savannah, GA

Berkeley
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCIV, 4, Charleston, SC
- WCSC–TV, 5, Charleston, SC
- +WTAT–TV, 24, Charleston, SC

Calhoun
- WIS, 10, Columbia, SC
- WLTX, 19, Columbia, SC (formerly WNOK)
- WRDW–TV, 12, Augusta, GA
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCSC–TV, 5, Charleston, SC

Charleston
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCIV, 4, Charleston, SC
- WCSC–TV, 5, Charleston, SC
- +WTAT–TV, 24, Charleston, SC

Cherokee
- WYFF, 4, Greenville, SC (formerly WFBC)
- WSPA–TV, 7, Greenville, SC
- WLOS, 13, Greenville, SC
- +WHNS, 21, Greenville, SC
- WBTV, 3, Charlotte, NC
- WSOC–TV, 9, Charlotte, NC
- +WJZY, 46, Belmont, NC

Chester
- WBTV, 3, Charlotte, NC
- WSOC–TV, 9, Charlotte, NC
- +WCNC–TV, 36, Charlotte, NC
- +WJZY, 46, Belmont, NC
- WIS, 10, Columbia, SC
- WYFF, 4, Greenville, SC (formerly WFBC)
- WSPA–TV, 7, Greenville, SC
- WLOS, 13, Greenville, SC
- +WHNS, 21, Greenville, SC

Chesterfield
- WBTV, 3, Charlotte, NC
- WSOC–TV, 9, Charlotte, NC
- WCCB, 18, Charlotte, NC
- WCNC–TV, 36, Charlotte, NC (formerly WRET)
- +WJZY, 46, Belmont, NC
- WIS, 10, Columbia, SC
- WBTW, 13, Florence, SC
- +WWMB, 21, Florence, SC

Clarendon
- WIS, 10, Columbia, SC
- +WLTX, 19, Columbia, SC
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCIV, 4, Charleston, SC
- WCSC–TV, 5, Charleston, SC
- +WTAT–TV, 24, Charleston, SC
- WBTW, 13, Florence, SC

Colleton
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCIV, 4, Charleston, SC
- WCSC–TV, 5, Charleston, SC
- +WTAT–TV, 24, Charleston, SC

Darlington
- WBTW, 13, Florence, SC
- +WPDE–TV, 15, Florence, SC
- +WWMB, 21, Florence, SC
- +WFXB, 43, Myrtle Beach, SC
- WIS, 10, Columbia, SC

Dillon
- WBTW, 13, Florence, SC
- +WPDE–TV, 15, Florence, SC
- +WFXB, 43, Myrtle Beach, SC
- WWAY, 3, Wilmington, NC
- WECT, 6, Wilmington, NC

Dorchester
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCIV, 4, Charleston, SC
- WCSC–TV, 5, Charleston, SC
- +WTAT–TV, 24, Charleston, SC

Edgefield
- WJBF, 6, Augusta, GA
- WRDW–TV, 12, Augusta, GA
- +WFXG, 54, Augusta, GA

Fairfield
- WIS, 10, Columbia, SC
- WLTX, 19, Columbia, SC (formerly WNOK)
- WOLO–TV, 25, Columbia, SC
- WSPA–TV, 7, Greenville, SC

Florence
- WBTW, 13, Florence, SC
- +WPDE–TV, 15, Florence, SC
- +WWMB, 21, Florence, SC
- +WFXB, 43, Myrtle Beach, SC
- WIS, 10, Columbia, SC
- +WTAT–TV, 24, Charleston, SC

Georgetown
- WCBD–TV, 2, Charleston, SC (formerly WUSN)
- WCIV, 4, Charleston, SC
- WCSC–TV, 5, Charleston, SC
- +WTAT–TV, 24, Charleston, SC

+WFXB, 43, Myrtle Beach, SC
Greenville
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Greenwood
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
WJBF, 6, Augusta, GA
Hampton
WJBF, 6, Augusta, GA
WRDW, 12, Augusta, GA
WCBD–TV, 2, Charleston, SC (formerly WUSN)
WCIV, 4, Charleston, SC
WCSC–TV, 5, Charleston, SC
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, CA
Horry
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
WCSC–TV, 5, Charleston, SC
WBTW, 13, Florence, SC
+WPDE–TV, 15, Florence, SC
+WWMB, 21, Florence, SC
+WFXB, 43, Myrtle Beach, SC
Jasper
WSAV–TV, 3, Savannah, GA
WTOC–TV, 11, Savannah, GA
WCBD–TV, 2, Charleston, SC (formerly WUSN)
WCIV, 4, Charleston, SC
WCSC–TV, 5, Charleston, SC
Kershaw
WIS, 10, Columbia, SC
WLTX, 19, Columbia, SC (formerly WNOK)
WOLO–TV, 25, Columbia, SC
WBTW, 13, Florence, SC
Lancaster
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont,NC
WIS, 10, Columbia, SC
Laurens
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Lee
WIS, 10, Columbia, SC
WBTW, 13, Florence, SC
+WPDE–TV, 15, Florence, SC
+WFXB, 43, Myrtle Beach, SC
Lexington
WIS, 10, Columbia, SC
WLTX, 19, Columbia, SC (formerly WNOK)
WOLO–TV, 25, Columbia, SC
McCormick
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
Marion
WBTW, 13, Florence, SC
+WPDE–TV, 15, Florence, SC
+WWMB, 21, Florence, SC
+WFXB, 43, Myrtle Beach, SC
WIS, 10, Columbia, SC
WWAY, 3, Wilmington, NC
WECT, 6, Wilmington, NC
Marlboro
WBTW, 13, Florence, SC
+WPDE–TV, 15, Florence, SC
+WWMB, 21, Florence, SC
+WFXB, 43, Myrtle Beach, SC
WIS, 10, Columbia, SC
WECT, 6, Wilmington, NC
Newberry
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
WJBF, 6, Augusta, GA
WIS, 10, Columbia, SC
+WLTX, 19, Columbia, SC
Oconee
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Orangeburg
WIS, 10, Columbia, SC
+WLTX, 19, Columbia, SC
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
+WFXG, 54, Augusta, GA
WCBD–TV, 2, Charleston, SC (formerly WUSN)
WCIV, 4, Charleston, SC
WCSC–TV, 5, Charleston, SC
+WTAT–TV, 24, Charleston, SC
Pickens
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
Richland
WIS, 10, Columbia, SC
WLTX, 19, Columbia, SC (formerly WNOK)
WOLO–TV, 25, Columbia, SC
Saluda
WJBF, 6, Augusta, GA
WRDW–TV, 12, Augusta, GA
WIS, 10, Columbia, SC
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
Spartanburg
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS. 21, Greenville, SC
WBTV, 3, Charlotte, NC
+WJZY, 46, Belmont, NC
Sumter
WIS, 10, Columbia, SC
WLTX, 19, Columbia, SC (formerly WNOK)
WOLO–TV, 25, Columbia, SC
WBTW, 13, Florence, SC
+WTAT–TV, 24, Charleston, SC
Union
WYFF, 4, Greenville, SC (formerly WFBC)
WSPA–TV, 7, Greenville, SC
WLOS, 13, Greenville, SC
+WHNS, 21, Greenville, SC
WBTV, 3, Charlotte, NC
+WJZY, 46, Belmont, NC
Williamsburg
WCBD–TV, 2, Charleston, SC (formerly WUSN)
WCIV, 4, Charleston, SC
WCSC–TV, 5, Charleston, SC
WIS, 10, Columbia, SC
WBTW, 13, Florence, SC
York
WBTV, 3, Charlotte, NC
WSOC–TV, 9, Charlotte, NC
WCCB, 18, Charlotte, NC
WCNC–TV, 36, Charlotte, NC (formerly WRET)
+WJZY, 46, Belmont, NC
WSPA–TV, 7, Greenville, SC
+WHNS, 21, Greenville, SC

SOUTH DAKOTA

Aurora
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KFSY–TV, 13, Sioux Falls, SD (formerly KSOO)
Beadle
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Bennett
KOTA–TV, 3, Rapid City, SD
KDUH–TV, 4, Scottsbluff, NE
Bon Homme
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Brookings
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Brown
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Brule
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
Buffalo
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
Butte
KOTA–TV, 3, Rapid City, SD
KEVN–TV, 7, Rapid City, SD (formerly KRSD)
Campbell
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Charles Mix
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Clark
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Clay
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Codington
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)

Corson
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
Custer
KOTA–TV, 3, Rapid City, SD
KEVN–TV, 7, Rapid City, SD (formerly KRSD)
Davison
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
+KTTM, 12, Huron, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Day
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Deuel
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Dewey
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
KELO–TV, 11, Sioux Falls, SD
Douglas
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
Edmunds
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Fall River
KOTA–TV, 3, Rapid City, SD
KDUH–TV, 4, Scottsbluff, NE
KSTF, 10, Scottsbluff, NE
Faulk
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Grant
KELO–TV, 11, Sioux Falls, SD
KCCO–TV, 7, Alexandria, MN (formerly KCMT)
Gregory
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
Haakon
KOTA–TV, 3, Rapid City, SD
KELO–TV, 11, Sioux Falls, SD
Hamlin
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Hand
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Hanson
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Harding
KOTA–TV, 3, Rapid City, SD
Hughes
KELO–TV, 11, Sioux Falls, SD
Hutchinson
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Hyde
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Jackson
KOTA–TV, 3, Rapid City, SD
KELO–TV, 11, Sioux Falls, SD
Jerauld
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Jones
KELO–TV, 11, Sioux Falls, SD
Kingsbury
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Lake
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Lawrence
KOTA–TV, 3, Rapid City, SD
KEVN–TV, 7, Rapid City, SD (formerly KRSD)
Lincoln
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Lyman
KELO–TV, 11, Sioux Falls, SD
McCook
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formery KSOO)
McPherson
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KFYR–TV, 5, Bismarck, ND
Marshall
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KXjB–TV, 4, Valley City, ND
Meade
KOTA–TV, 3, Rapid City, SD
KEVN–TV, 7, Rapid City, SD (formerly KRSD)
Mellette
KELO–TV, 11, Sioux Falls, SD
Miner
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Minnehaha
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KCAU–TV, 9, Sioux City, IA
Moody
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Pennington
KOTA–TV, 3, Rapid City, SD
KEVN–TV, 7, Rapid City, SD (formerly KRSD)
Perkins
KFYR–TV, 5, Bismarck, ND
KXMA–TV, 2, Dickinson, ND (formerly KDIX)
KOTA–TV, 3, Rapid City, SD
Potter
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KFYR–TV, 5, Bismarck, ND
Roberts
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
WDAY–TV, 6, Fargo, ND
Sanborn
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Shannon
KOTA–TV, 3, Rapid City, SD
KDUH–TV, 4, Scottsbluff, NE
KEVN–TV, 7, Rapid City, SD (formerly KRSD)
Spink
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Stanley
KELO–TV, 11, Sioux Falls, SD
Sully
KELO–TV, 11, Sioux Falls, SD
Todd
KELO–TV, 11, Sioux Falls, SD
Tripp
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
Turner
KDLV–TV, 5, Mitchell, SD (formerly KORN)
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
Union
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KMEG, 14, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD
KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Walworth
KFYR–TV, 5, Bismarck, ND
KXMB–TV, 12, Bismarck, ND
KELO–TV, 11, Sioux Falls, SD
Washabaugh
KOTA–TV, 3, Rapid City, SD
KELO–TV, 11, Sioux Falls, SD
Yankton
KTIV, 4, Sioux City, IA
KCAU–TV, 9, Sioux City, IA
KELO–TV, 11, Sioux Falls, SD

KSFY–TV, 13, Sioux Falls, SD (formerly KSOO)
Ziebach
KOTA–TV, 3, Rapid City, SD

TENNESSEE

Anderson
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK)
+WTNZ, 43, Knoxville, TN (formerly WKCH)
Bedford
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Benton
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Bledsoe
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Blount
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK)
+WTNZ, 43, Knoxville, TN (formerly WKCH)
Bradley
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Campbell
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK)
+WTNZ, 43, Knoxville, TN (formerly WKCH)
Cannon
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Carroll
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WBBJ–TV, 7, Jackson, TN
+WJKT, 16, Jackson, TN (formerly WMTU)
WREG–TV, 3, Memphis, TN (formerly WREC)
WPSD–TV, 6, Paducah, KY
Carter
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
WKPT–TV, 19, Kingsport, TN
+WEMT, 39, Greenville, TN
Cheatam
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Chester
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
WBBJ–TV, 7, Jackson, TN
+WJKT, 16, Jackson, TN (formerly WMTU)
Claiborne
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
+WTNZ, 43, Knoxville, TN (formerly WKCH)
+WEMT, 39, Greenville, TN
Clay
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Cocke
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
WLOS, 13, Greenville, SC
+WEMT, 39, Greenville, TN
Coffee
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Crockett
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
WBBJ–TV, 7, Jackson, TN
Cumberland
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
WTVC, 9, Chattanooga, TN
Davidson
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN
Decatur
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WBBJ–TV, 7, Jackson, TN
De Kalb
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Dickson
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN
Dyer
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN
WBBJ–TV, 7, Jackson, TN
KFVS–TV, 12, Cape Girardeau, MO
Fayette
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
Fentress
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
Franklin
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
+WZDX, 54, Huntsville, AL
Gibson
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
WBBJ–TV, 7, Jackson, TN
Giles
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Grainger
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
Greene
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
+WEMT, 39, Greenville, TN
WLOS, 13, Greenville, SC
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
Grundy
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Hamblen
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
+WTNZ, 43, Knoxville, TN (formerly WKCH)
WCYB–TV, 5, Bristol, VA
+WEMT, 39, Greenville, TN
WLOS, 13, Greenville, SC
Hamilton
WRCB–TV, 3, Chattanooga, Tn
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Hancock
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN.
WCYB–TV, 5, Bristol, VA
Hardeman
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
Hardin
WBBJ–TV, 7, Jackson, TN
+WJKT, 16, Jackson, TN (formerly WMTU)
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
Hawkins
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
+WEMT, 39, Greenville, TN
WLOS, 13, Greenville, SC

WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN

Haywood
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WLMT, 30, Memphis, TN
WBBJ–TV, 7, Jackson, TN

Henderson
WBBJ–TV, 7, Jackson, TN
+WJKT, 16, Jackson, TN (formerly WMTU)
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)

Henry
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WPSD–TV, 6, Paducah, KY

Hickman
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Houston
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Humphreys
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Jackson
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Jefferson
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK)
+WTNZ, 43, Knoxville, TN (formerly WKCH)
WLOS, 13, Greenville, SC
+WEMT, 39, Greenville, TN

Johnson
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN

Knox
WATE–TV, 6, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
+WTNZ, 43, Knoxville, TN (formerly WKCH)

Lake
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN

Lauderdale
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN

Lawrence
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
+WZDX, 54, Huntsville, AL

Lewis
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Lincoln
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
+WZDX, 54, Huntsville, AL
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Loudon
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK)
+WTNZ, 43, Knoxville, TN (formerly WKCH)

McMinn
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WATE–TV, 6, Knoxville, TN

McNairy
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
WBBJ–TV, 7, Jackson, TN
+WJKT, 16, Jackson, TN (formerly WMTU)

Macon
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Madison
WBBJ–TV, 7, Jackson, TN
+WJKT, 16, Jackson, TN (formerly WMTU)
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WPTY–TV, 24, Memphis, TN

Marion
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN

Marshall
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Maury
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN

Meigs
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN

Monroe
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WKXT, WTVK)
WBIR–TV, 10, Knoxville, TN
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN

Montgomery
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN

Moore
WHNT–TV, 19, Huntsville, AL
WAAY–TV, 31, Huntsville, AL
WAFF, 48, Huntsville, AL (formerly WMSL)
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Morgan
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WKXT, WTVK)
WBIR–TV, 10, Knoxville, TN
WTVC, 9, Chattanooga, TN

Obion
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
WBBJ–TV, 7, Jackson, TN

Overton
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Perry
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Pickett
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Polk
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
WATL, 36, Atlanta, GA

Putnam
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Rhea
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN

Roane
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
+WTNZ, 43, Knoxville, TN (formerly WKCH)
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN

Robertson
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)

Rutherford
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN
Scott
WATE–TV, 6, Knoxville, TN
+WVLT–TV, 8, Knoxville, TN (formerly WTVK, WKXT)
WBIR–TV, 10, Knoxville, TN
Sequatchie
WRCB–TV, 3, Chattanooga, TN
WTVC, 9, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Sevier
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK)
+WTNZ, 43, Knoxville, TN (formerly WKCH)
+WEMT, 39, Greenville, TN
Shelby
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WLMT, 30, Memphis, TN
Smith
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Stewart
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Sullivan
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
WKPT–TV, 19, Kingsport, TN
Sumner
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN
Tipton
WREG–TV, 3, Memphis, TN (formerly WREC)
WMC–TV, 5, Memphis, TN
WHBQ–TV, 13, Memphis, TN
+WLMT, 30, Memphis, TN
Trousdale
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Unicoi
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
Union
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN
WVLT–TV, 8, Knoxville, TN (formerly WTVK)
Van Buren
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
WRCB–TV, 3, Chattanooga, TN
WDEF–TV, 12, Chattanooga, TN
Warren
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Washington
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
WKPT–TV, 19, Kingsport, TN
Wayne
WSMV 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Weakley
WPSD–TV, 6, Paducah, KY
KFVS–TV, 12, Cape Girardeau, MO
+KBSI, 23, Cape Girardeau, MO
WBBJ–TV, 7, Jackson, TN
White
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
Williamson
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN
Wilson
WSMV, 4, Nashville, TN (formerly WSM)
WTVF, 5, Nashville, TN (formerly WLAC)
WKRN–TV, 2, Nashville, TN (formerly WSIX)
+WUXP, 30, Nashville, TN

TEXAS

Anderson
KDFW, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KLTV, 7, Tyler, TX
+KETK–TV, 56, Jacksonville, TX
Andrews
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
+KPEJ, 24, Odessa, TX
Angelina
KTRE, 9, Lufkin, TX
+KLSB–TV, 19, Nacogdoches, TX
Aransas
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
Archer
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
Armstrong
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
Atascosa
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
+KRRT, 35, Kerrville, TX
Austin
KPRC–TV, 2, Houston, TV
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
KHTV, 39, Houston, TX
Bailey
KCBD—TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
+KJTV–TV, 34, Lubbock, TX
KFDA–TV, 10, Amarillo, TX
Bandera
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
Bastrop
KTBC, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)
+KEYE–TV, 42, Austin (formerly KBVO)
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
Baylor
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
Bee
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
Bell
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX
KTBC, 7, Austin, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)
Bexar
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
+KRRT, 35, Kerrville, TX
KWEX–TV, 41, San Antonio, TX
Blanco
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TS
KTBC, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)
Borden
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
Bosque
KDFW, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
Bowie
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Brazoria

KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX
+KXLN–TV, 45, Rosenberg, TX

Brazos
KBTX–TV, 3, Waco, TX
KCEN–TV, 6, Temple, TX
+KWKT, 44, Waco, TX
KTVT, 11, Fort Worth, TX

Brewster
Not available.

Briscoe
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVIITV 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Brooks
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX

Brown
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX
KTVT, 11, Fort Worth, TX

Burleson
KBTX–TV, 3, Bryan, TX
KCEN–TV, 6, Temple, TX
KTBC, 7, Austin, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)

Burnet
KTBC, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)
+KEYE–TV, 42, Austin, TX (formerly KBVO)
KWTX–TV, 10, Waco, TX
+KWKT, 44, Waco, TX

Caldwell
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
KTBC, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)
+KEYE–TV, 42, Austin, TX (formerly KBVO)

Calhoun
+KAVU–TV, 25, Victoria, TX

Callahan
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX

Cameron
KGBT–TV, 4, Harlingen, TX
KRGV–TV, 5, Weslaco, TX
+KVEO, 23, Brownsville, TX

Camp
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
KLTV, 7, Tyler, TX

Carson
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
+KCIT, 14, Amarillo, TX

Cass
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA,-TV 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA

Castro
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
KLBK–TV, 13, Lubbock, TX
+KJTV–TV, 34, Lubbock, TX

Chambers
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
KHTV, 39, Houston, TX
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX

Cherokee
KLTV, 7, Tyler, TX
KTRE, 9, Lufkin, TX
+KFXK, 51, Longview, TX
+KETK–TV, 56, Jacksonville, TX
KTBS–TV, 3, Shreveport, LA

Childress
Not available.

Clay
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX

Cochran
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)

Coke
KRBC+–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
KLST, 8, San Angelo, TX (formerly KCTV)

Coleman
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX

Collin
KDFW, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KDFI–TV, 27, Dallas, TX
+KDAF, 33, Dallas, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)

Collingsworth
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK

Colorado
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX

Comal
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
+KRRT, 35, Kerrville, TX

Comanche
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KRBC–TV, 9, Abilene, TX

Concho
+KIDY, 6, San Angelo, TX

Cooke
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KDFI–TV, 27, Dallas, TX

Coryell
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX
KTBC, 7, Austin, TX
KTVT, 11, Fort Worth, TX

Cottle
Over 90% cable penetration.

Crane
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)

Crockett
Not available.

Crosby
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
+KJTV–TV, 34, Lubbock, TX

Culberson
Not available.

Dallam
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Dallas
KDFW, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TV
+KDFI–TV, 27, Dallas, TX
+KDAF, 33, Dallas, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)

Dawson
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
KJTV–TV, 34, Lubbock, TX (formerly KMXN)
KMID, 2, Midland, TX
+KPEJ, 24, Odessa, TX

Deaf Smith
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Delta
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX

Denton
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KTXA, 21, Arlington, TX
+KDFI–TV, 27, Dallas, TX
+KDAF, 33, Dallas, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)

De Witt

KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX

Dickens
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
KTXS–TV, 12, Sweetwater, TX

Dimmit
Not available.

Donley
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Duval
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX

Eastland
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX

Ector
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
+KPEJ, 24, Odessa, TX

Edwards
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX

Ellis
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KDFI–TV, 27, Dallas, TX
+KDAF, 33, Dallas, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)

El Paso
KDBC–TV, 4, El Paso, TX (formerly KROD)
KTSM–TV, 9, El Paso, TX
KVIA–TV, 7, El Paso, TX (formerly KELP)
+KFOX–TV, 14, El Paso, TX

Erath
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX

Falls
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX

Fannin
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KXII–TV, 12, Sherman, TX

Fayette
KTBC, 7, Austin, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX

Fisher
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX

Floyd
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
+KJTV–TV, 34, Lubbock, TX

Foard
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK

Fort Bend
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX
+KXLN–TV, 45, Rosenberg, TX

Franklin
Not available.

Freestone
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX

Frio
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX

Gaines
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
+KJTV–TV, 34, Lubbock, TX
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)
+KPEJ, 24, Odessa, TX

Galveston
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX

Garza
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)

Gillespie
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KRRT, 35, Kerrville, TX
KTBC–TV, 7, Austin, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)

Glasscock
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)

Goliad
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX

Gonzales
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)

Gray
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Grayson
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KTXA, 21, Arlington, TX
KXII, 12, Sherman, TX

Gregg
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
KLTV, 7, Tyler, TX
+KFXK, 51, Longview, TX
+KETK–TV, 56, Jacksonville, TX

Grimes
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
KBTX–TV, 3, Bryan, TX

Guadalupe
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
+KRRT, 35, Kerrville, TX

Hale
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
+KJTV–TV, 34, Lubbock, TX

Hall
Over 90% cable penetration.

Hamilton
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX

Hansford
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Hardeman
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK

Hardin
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
+KVHP, 29, Lake Charles, LA

Harris
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX
+KXLN–TV, 45, Rosenberg, TX
+KTMD, 48, Galveston, TX

Harrison
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA

KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Hartley
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
Haskell
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX
KFDX–TV, 3, Wichita Falls, TX
Hays
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
KTBC–TV, 7, Austin, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)
Hemphill
Over 90% cable penetration.
Henderson
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KLTV, 7, Tyler, TX
Hidalgo
KGBT–TV, 4, Harlingen, TX
KRGV–TV, 5, Weslaco, TX
+KVEO, 23, Brownsville, TX
Hill
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KWTX–TV, 10, Waco, TX
Hockley
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
+KJTV–TV, 34, Lubbock, TX
Hood
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
Hopkins
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KLTV, 7, Tyler, TX
Houston
KTRE, 9, Lufki, TX
KBTX–TV, 3, Bryan, TX
Howard
KMID, 2, Midland, TX
KWAB–TV, 4, Big Spring, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
Hudspeth
KDBC–TV, 4, El Paso, TX (formerly KROD)
KTSM–TV, 9, El Paso, TX
KVIA–TV, 7, El Paso, TX (formerly KELP)
Hunt
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KTXA, 21, Fort Worth, TX
+KDFI–TV, 27, Dallas, TX
+KDAF, 33, Dallas, TX
Hutchinson
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
+KCIT, 14, Amarillo, TX
Irion
KLST, 8, San Angelo, TX (formerly KCTV)
KRBC–TV, 9, Abilene, TX
Jack
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
Jackson
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
KHTV, 39, Houston, TX
+KAVU–TV, 25, Victoria, TX
Jasper
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
+KVHP, 29, Lake Charles, LA
Jeff Davis
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
Jefferson North
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
+KVHP, 29, Lake Charles, LA
Jefferson South
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
+KVHP, 29, Lake Charles, LA
Jim Hogg
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
Jim Wells
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
Johnson
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KDFI–TV, 27, Dallas, TX
+KDAF, 33, Dalla, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)
Jones
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX
Karnes
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
Kaufman
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)
Kendall
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
Kenedy
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
Kent
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
KTXS–TV, 12, Sweetwater, TX
Kerr
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KRRT, 35, Kerrville, TX
Kimble
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
King
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
KTXS–TV, 12, Sweetwater, TX
Kinney
Over 90% cable penetration.
Kleberg
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
Knox
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
KTXS–TV, 12, Sweetwater, TX
Lamar
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KXII–TV, 12, Sherman, TX
Lamb
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
+KJTV–TV, 34, Lubbock, TX
Lampasas
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX
KTBC–TV, 7, Austin, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)
La Salle
Not available.
Lavaca
KMOL–TV, 4, San Antonio, TX (formerly WOAI)

KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
KPRC–TV, 2, Houston, TX

Lee
KTBC–TV, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)
+KEYE–TV, 42, Austin, TX (formerly KBVO)
KBTX–TV, 3, Bryan, TX
KCEN–TV, 6, Temple, TX

Leon
KBTX–TV, 3, Bryan, TX
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX

Liberty
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX

Limestone
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KWKT, 44, Waco, TX

Lipscomb
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Live Oak
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX

Llano
KTBC–TV, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)

Loving
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)

Lubbock
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
+KJTV–TV, 34, Lubbock, TX

Lynn
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
KJTV, 34, Lubbock, TX (formerly KMSN)

McCulloch
Over 90% cable penetration.

McLennan
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX
KDFW–TV, 4, Dallas, TX
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX

McMullen
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX

Madison
KBTX–TV, 3, Bryan, TX
KPRC–TV, 2, Houston, TX

Marion
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA

Martin
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)

Mason
Not available.

Matagorda
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX

Maverick
Over 90% cable penetration.

Medina
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
+KABB, 29, San Antonio, TX
+KRRT, 35, Kerrville, TX

Menard
KRBC–TV, 9, Abilene, TX
KLST, 8, San Angelo, TX (formerly KCTV)

Midland
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
+KPEJ, 24, Odessa, TX

Milam
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX
KTBC–TV, 7, Austin, TX
+KEYE–TV, 42, Austin, TX (formerly KBVO)

Mills
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX

Mitchell
KMID, 2, Midland, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
KTXS–TV, 12, Sweetwater, TX

Montague
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, WichitA–Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
KTVT, 11, Fort Worth, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)

Montgomery
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX

Moore
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Morris
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA

Motley
Over 90% cable penetration.

Nacogdoches
KTBS–TV, 3, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
KTVT, 11, Fort Worth, TX
KTRE, 9, Lufkin, TX
+KLSB–TV, 19. Nacogdoches, TX

Navarro
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KTXA, 21, Arliington, TX

Newton
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
+KVHP, 29, Lake Charles, LA

Nolan
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX

Nueces
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX

Ochiltree
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Oldham
KAMR–TV, 4, Amarillo, TX (formery KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX

Orange
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
+KVHP, 29, Lake Charles, LA

Palo Pinto
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX

Panola
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA

Parker
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX

Parmer
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
KCBD–TV, 11, Lubbock, TX

Pecos
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)

Polk
KTRE, 9, Lufkin, TX
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KPRC–TV, 2, Houston, TX
+KTXH, 20, Houston, TX
Potter
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
+KCIT, 14, Amarillo, TX
Presidio
KOSA–TV, 7, Odessa, TX
Rains
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
Randall
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
+KCIT, 14, Amarillo, TX
Reagan
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
Real
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
Red River
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
Reeves
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
Refugio
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
Roberts
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
Robertson
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KXXV, 25, Waco, TX
+KWKT, 44, Waco, TX
Rockwall
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)
Runnels
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX
+KIDY, 6, San Angelo, TX
KLST, 8, San Angelo, TX (formerly KCTV)
Rusk
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
KLTV, 7, Tyler, TX
+KFXK, 51, Longview, TX
+KETK–TV, 56, Jacksonville, TX
Sabine
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KTBS–TV, 3, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
KTRE, 9, Lufkin, TX
San Augustine
KTBS–TV, 3, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
KTRE, 9, Lufkin; TX
San Jacinto
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
San Patricio
KIII–TV, 3, Corpus Christi, TX
KRIS–TV, 6, Corpus Christi, TX
KZTV, 10, Corpus Christi, TX
San Saba
KDFW–TV, 4, Dallas, TX
KRBC–TV, 9, Abilene, TX
KTBC–TV, 7, Austin, TX
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
Schleicher
KLST, 8, San Angelo, TX (formerly KCTV)
KRBC–TV, 9, Abilene, TX
Scurry
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
Shackelford
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
Shelby
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Sherman
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
Smith
KLTV, 7, Tyler, TX
+KFXK, 51, Longview, TX
+KETK–TV, 56, Jacksonville, TX
KDFW–TV, 4, Dallas, TX
KTVT, 11, Fort Worth, TX
KTBS–TV, 3, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
Somervell
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
Starr
KGBT–TV, 4, Harlingen, TX
KRGV–TV, 5, Weslaco, TX
+KVEO, 23, Brownsville, TX
Stephens
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
Sterling
KRBC–TV, 9, Abilene, TX
KLST, 8, San Angelo, TX (formerly KCTV)
Stonewall
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
Sutton
Not available.
Swisher
KAMR–TV, 4, Amarillo, TX (formerly KGNC)
KVII–TV, 7, Amarillo, TX
KFDA–TV, 10, Amarillo, TX
+KJTV–TV, 34, Lubbock, TX
Tarrant
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
+KTXA, 21, Arlington, TX
+KDFI–TV, 27, Dallas, TX
+KDAF, 33, Dallas, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)
Taylor
KRBC–TV, 9, Abilene, TX
KTXS–TV, 12, Sweetwater, TX
+KTAB–TV, 32, Abilene, TX
Terrell
Over 90% cable penetration.
Terry
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
KAMC, 28, Lubbock, TX (formerly KSEL)
+KJTV–TV, 34, Lubbock, TX
Throckmorton
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
Titus
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
Tom Green
+KIDY, 6, San Angelo, TX
KCTV, 8, San Angelo, TX (formerly KCTV)
KRBC–TV, 9, Abilene, TX
Travis
KTBC–TV, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)
+KEYE–TV, 42, Austin, TX (formerly KBVO)
Trinity
KTRE, 9, Lufkin, TX
KPRC–TV, 2, Houston, TX
KBTX–TV, 3, Bryan, TX
Tyler
KBTV–TV, 4, Port Arthur, TX (formerly KJAC)
KFDM–TV, 6, Beaumont, TX
KBMT, 12, Beaumont, TX
Upshur
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6 Shreveport, LA
KSLA–TV, 12, Shreveport, LA
+KMSS–TV, 33, Shreveport, LA
KLTV, 7, Tyle, TX
+KFXK, 51, Longview, TX
Upton
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
Uvalde
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
Val Verde
Not available.

Van Zandt
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KLTV, 7, Tyler, TX
Victoria
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV. 12, San Antonio, TX
KIII–TV, 3, Corpus Christi, TX
+KAVU–TV, 25, Victoria, TX
Walker
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX
KBTX–TV, 3, Bryan, TX
Waller
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
KHTV, 39, Houston, TX
Ward
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
Washington
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX
KBTX–TV, 3, Bryan, TX
Webb
KGNS–TV, 8, Laredo, TX
XEFE–TV, 2, Mexico
Wharton
KPRC–TV, 2, Houston, TX
KHOU–TV, 11, Houston, TX
KTRK–TV, 13, Houston, TX
+KTXH, 20, Houston, TX
KHTV, 39, Houston, TX
Wheeler
KFDA–TV, 10, Amarillo, TX
Wichita
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
Wilbarger
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
+KJTL, 18, Wichita Falls, TX
Willacy
KGBT–TV, 4, Harlingen, TX
KRGV–TV, 5, Weslaco, TX
+KVEO, 23, Brownsville, TX
Williamson
KTBC–TV, 7, Austin, TX
KXAN–TV, 36, Austin, TX (formerly KHFI)
+KEYE–TV, 42, Austin, TX (formerly KBVO)
KCEN–TV, 6, Temple, TX
KWTX–TV, 10, Waco, TX
+KWKT, 44, Waco, TX
Wilson
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
KSAT–TV, 12, San Antonio, TX
KWEX–TV, 41, San Antonio, TX
Winkler
KMID, 2, Midland, TX
KOSA–TV, 7, Odessa, TX
KWES–TV, 9, Odessa, TX (formerly KMOM)
Wise
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas. TX
KTVT, 11, Fort Worth, TX
KXTX–TV, 39, Dallas, TX (formerly KDTV)
Wood
KTBS–TV, 3, Shreveport, LA
KTAL–TV, 6, Shreveport, LA
KSLA–TV, 12, Shreveport, LA
KDFW–TV, 4, Dallas, TX
KXAS–TV, 5, Fort Worth, TX (formerly WBAP)
WFAA–TV, 8, Dallas, TX
KTVT, 11, Fort Worth, TX
KLTV, 7, Tyler, TX
Yoakum
KCBD–TV, 11, Lubbock, TX
KLBK–TV, 13, Lubbock, TX
+KJTV–TV, 34, Lubbock, TX
KBIM–TV, 10, Roswell, NM
Young
KFDX–TV, 3, Wichita Falls, TX
KAUZ–TV, 6, Wichita Falls, TX
KSWO–TV, 7, Lawton, OK
Zapata
KGNS–TV, 8, Laredo, TX
KGBT–TV, 4, Harlingen, TX
XEFB, 3, Mexico
Zavala
KMOL–TV, 4, San Antonio, TX (formerly WOAI)
KENS–TV, 5, San Antonio, TX
Brenham—KRIV
Copperas Cove—KEYE–TV
Denison—KDFI–TV, KDAF
Greenville—KXTX–TV
Knollwood—KDFI–TV, KDAF
Portions of Grayson County—KDFI–TV, KDAF
Sherman—KDFI–TV, KDAF
Unincorporated portions of Washington County (adjacent to Brenham)—KRIV

UTAH

Beaver
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Box Elder
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Cache
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Carbon
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Daggett
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Davis
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Duchesne
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Emery
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Garfield
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Grand
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Iron
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Juab
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Kane
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Millard
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Morgan
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Piute
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Rich
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Salt Lake
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
San Juan
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT

Sanpete
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Sevier
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Summit
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Tooele
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Uintah
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Utah
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Wasatch
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Washington
KUTV, 2, Salt Lake City
KTVX, 4, Salt Lake City (KTVX) (formerly KCPX)
KSL–TV, 5, Salt Lake City
+KSTU, 13, Salt Lake City
KVBC, 3, Las Vegas, NV (formerly KORK)
Wayne
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Weber
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT

VERMONT

Addison
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
Bennington
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
+WXXA–TV, 23, Albany, NY
Caledonia
WCAX–TV, 3, Burlington, VT
WMTW–TV, 8, Portland, ME
Chittenden
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WVNY, 22, Burlington, VT
CFCF, 12, Canada
Essex
WCAX–TV, 3, Burlington, VT
WMTW–TV, 8, Portland, ME
Franklin
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WVNY, 22, Burlington, VT
CBMT, 6, Canada
CFCF, 12, Canada
Grand Isle
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WVNY, 22, Burlington, VT
CBMT, 6, Canada
CFCF, 12, Canada
Lamoille
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WVNY, 22, Burlington, VT
WMTW–TV, 8, Portland, ME
CBMT, 6, Canada
Orange
WCAX–TV, 3, Burlington, VT
WMTW–TV, 8, Portland, ME
Orleans
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WMTW–TV, 8, Portland, ME
CBMT, 6, Canada
CFCF, 12, Canada
Rutland
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WRGB, 6, Schenectady, NY
WTEN, 10, Albany, NY
WNYT, 13, Albany, NY (formerly WAST)
Washington
WCAX–TV, 3, Burlington, VT
WPTZ, 5, Plattsburgh, NY
WMTW–TV, 8, Portland, ME
Windham
WMTW–TV, 8, Portland, ME
WCVB–TV, 5, Boston, MA
Windsor
WCAX–TV, 3, Burlington, VT
WMTW–TV, 8, Portland, ME

VIRGINIA

Accomack
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WBOC–TV, 16, Salisbury, MD
+WMDT, 47, Salisbury, MD
WTTG, 5, Washington, DC
Albemarle & Charlottesville City
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
+WVIR–TV, 29, Charlottesville, VA
Alleghany & Covington City incl. Clifton Forge City
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Amelia
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Amherst
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WJPR, 21, Lynchburg, VA
Appomattox
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
Arlington & Alexandria City
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
Augusta & Staunton City & Waynesboro City
WTVR–TV, 6, Richmond, VA
WWBT, 12, Richmond, VA
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
WTTG, 5, Washington, DC
+WVIR–TV, 29, Charlottesville, VA
Bath
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WVVA, 6, Bluefield, WV (formerly WHIS)
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
Bedford
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WJPR, 21, Lynchburg, VA
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
Bland
WVVA, 6, Bluefield, WV (formerly WHIS)
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Botetourt
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
Brunswick
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
Buchanan
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
WCYB–TV, 5, Bristol, VA
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Buckingham
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
+WVIR–TV, 29, Charlottesville, VA
Campbell & Lynchburg City
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WJPR, 21, Lynchburg, VA
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
Caroline
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)

WWBT, 12, Richmond, VA
WTTG, 5, Washington, DC
Carroll
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WVVA, 6, Bluefield, WV (formerly WHIS)
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
Charles City
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Charlotte
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
WTVR–TV, 6, Richmond, VA
Chesterfield & Colonial Heights City
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Clarke
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
+WDCA, 20, Washington, DC
Craig
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Culpeper
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
Cumberland
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Dickenson
WCYB–TV, 5, Bristol, VA
Dinwiddie & Petersburg City
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Essex
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WTTG, 5, Washington, DC
Fairfax & Fairfax City & Falls Church City
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
Fauquier
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formery WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
+WDCA, 20, Washington, DC
Floyd
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Fluvanna
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WVIR–TV, 29, Charlottesville, VA
Franklin
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
Frederick & Winchester City
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
Giles
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WVVA, 6, Bluefield, WV (formerly WHIS)
Gloucester
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
Goochland
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Grayson
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
Greene
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
+WVIR–TV, 29, Charlottesville, VA
Greensville
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
Halifax
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WJPR, 21, Lynchburg, VA
+WLFL, 22, Raleigh, NC
Hampton-Newport News & Hampton City & Newport News City
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Hanover
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
Henrico & Richmond City
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
Henry & Martinsville City
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WXLV–TV, 45, Winston-Salem, NC (formerly WNRW)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
Highland
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WHSV–TV, 3, Harrisonbur, VA (formerly WSVA)
Isle of Wight
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
James City & Williamsburg City
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
King and Queen
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
WAVY–TV, 10, Portsmouth, VA
King George
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
King William
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Lancaster
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
Lee
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
+WEMT, 39, Greenville, TN
WATE–TV, 6, Knoxville, TN
WBIR–TV, 10, Knoxville, TN

Loudoun
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
Louisa
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
Lunenburg
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
Madison
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
WRC–TV, 4, Washington, D
WTTG, 5, Washington, D
+WVIR–TV, 29, Charlottesville, VA
Mathews
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
Mecklenburg
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
WRAL–TV, 5, Raleigh, NC
WTVD, 11, Durham, NC
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
Middlesex
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
Montgomery & Radford City
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
Nansemond & Suffolk City
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
WGNT, 27, Portsmouth, VA (formerly WYAH)
Nelson
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
WTVR–TV, 6, Richmond, VA
WWBT, 12, Richmond, VA
+WVIR–TV, 29, Charlottesville, VA
New Kent
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Norfolk & Chesapeake City & Portsmouth City & Norfolk City
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Northampton
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Northumberland
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WTTG, 5, Washington, DC
Nottoway
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
Orange
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
+WVIR–TV, 29, Charlottesville, VA
Page
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
WTVR–TV, 6, Richmond, VA
Patrick
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Pittsylvania & Danville City
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WJPR, 21, Lynchburg, VA
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
WFMY–TV, 2, Greensboro, NC
WGHP, 8, Greensboro, NC
WXII, 12, Greensboro, NC (formerly WSJS)
+WUPN–TV, 48, Greensboro, NC (formerly WGGT)
Powhatan
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Prince Edward
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
Prince George & Hopewell City
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Prince William
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
Pulaski
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
WVVA, 6, Bluefield, WV (formerly WHIS)
Rappahannock
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
Richmond
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
WTTG, 5, Washington, DC
Roanoke & Roanoke City & Salem City
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WJPR, 21, Lynchburg, VA
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
Rockbridge
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WSET–TV, 13, Lynchburg, VA (formerly WLVA)
+WFXR–TV, 27, Roanoke, VA (formerly WVFT)
Rockingham & Harrisonburg City
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
WTVR–TV, 6, Richmond, VA
WWBT, 12, Richmond, VA
WTTG, 5, Washington, DC
+WVIR–TV, 29, Charlottesville, VA
Russell
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
+WEMT, 39, Greenville, TN
WVVA, 6, Bluefield, WV (formerly WHIS)
Scott
WGYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
+WEMT, 39, Greenville, TN
Shenandoah
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WHSV–TV, 3, Harrisonburgm VA (formerly WSVA)

Smyth
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
Southampton
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Spotsylvania & Fredericksburg City
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WTVR–TV, 6, Richmond, VA
+WRLH–TV, 35, Richmond, VA
Stafford
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WDCA, 20, Washington, DC
WTVR–TV, 6, Richmond, VA
Surry
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Sussex
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
WWBT, 12, Richmond, VA
+WRLH–TV, 35, Richmond, VA
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
Tazewell
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
WDBJ, 7, Roanoke, VA
Virginia Beach & Virginia Beach City
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Warren
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WMAR–TV, 2, Baltimore, MD
WBAL–TV, 11, Baltimore, MD
WJZ–TV, 13, Baltimore, MD
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
Washington & Bristol City
WCYB–TV, 5, Bristol, VA
WJHL–TV. 11, Johnson City, TN
WKPT–TV, 19, Kingsport, TN
+WEMT, 39, Greenville, TN (formerly WETO)
Westmoreland
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, D
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WTVR–TV, 6, Richmond, VA
WRIC–TV, 8, Richmond, VA (formerly WXEX)
Wise
WCYB–TV, 5, Bristol, VA
WJHL–TV, 11, Johnson City, TN
+WEMT, 39, Greenville, TN
Wythe
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
WVVA, 6, Bluefield, WV (formerly WHIS)
York
WTKR, 3, Norfolk, VA (formerly WTAR)
WAVY–TV, 10, Portsmouth, VA
WVEC–TV, 13, Hampton, VA
Bedford—WJPR, WFXR–TV
Colonial Heights—WRLH–TV
Danville—WJPR, WFXR–TV
Hopewell City—WRLH–TV
Lynchburg—WJPR, WFXR–TV
Petersburg City—WRLH–TV
Roanoke—WJPR
Salem—WJPR

WASHINGTON

Adams
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
KEPR–TV, 19, Pasco, WA
KNDU, 25, Richland, WA
Asotin
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
KLEW–TV, 3, Lewiston, ID
Benton
KEPR–TV, 19, Pasco, WA
KNDU, 25, Richland, WA
KVEW, 42, Kennewick, WA
Chelan
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
+KAYU–TV, 28, Spokane, WA
Clallam
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KVOS–TV, 12, Bellingham, WA
CBUT, 2, Canada
CHEK, 6, Canada
CHAN, 8, Canada
Clark
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
+KPDX, 49, Vancouver, WA
Columbia
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Cowlitz
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
+KPDX, 49, Vancouver, WA
Douglas
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
+KAYU–TV, 28, Spokane, WA
Ferry
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Franklin
KEPR–TV, 19, Pasco, WA
KNDU, 25, Richland, WA
KVEW, 42, Kennewick, WA
Garfield
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Grant
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Grays Harbor
KOMO–TV 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
Island
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
KVOS–TV, 12, Bellingham, WA
+KCPQ, 13, Tacoma, WA
CHEK, 6, Canada
Jefferson
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
+KCPQ, 13, Tacoma, A
King
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
+KCPQ, 13, Tacoma, WA
+KTZZ–TV, 22, Seattle, WA
Kitsap
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
+KCPQ, 13, Tacoma, WA
+KTZZ–TV, 22, Seattle, WA
Kittitas
KNDO, 23, Yakima, WA
KIMA–TV, 29, Yakima, WA
Klickitat
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
Lewis
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
+KCPQ, 13, Tacoma, WA
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
Lincoln
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Mason
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
Okanogan
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Pacific
KOMO–TV, 4, Seattle, WA

KING–TV, 5, Seattle, WA
Pend Oreille
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Pierce
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
+KCPQ, 13, Tacoma, WA
+KTZZ–TV. 22, Seattle, WA
San Juan
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KVOS–TV, 12, Bellingham, WA
CBUT, 2, Canada
CHEK, 6, Canada
CHAN, 8, Canada
Skagit
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
KVOS–TV, 12, Tacoma, WA
+KCPQ, 13, Tacoma, WA
CHEK, 6, Canada
CHAN, 8, Canada
Skamania
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KGW, 8, Portland, OR
KPTV, 12, Portland, OR
Snohomish
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
+KCPQ, 13, Tacoma, WA
+KTZZ–TV, 22, Seattle, WA
Spokane
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
+KAYU–TV, 28, Spokane, WA
Stevens
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
+KAYU–TV, 28, Spokane, WA
Thurston
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KSTW, 11, Tacoma, WA (formerly KTNT)
KSPQ, 13, Tacoma, WA (formerly KTVW)
Wahkiakum
KATU, 2, Portland, OR
KOIN, 6, Portland, OR
KPTV, 12, Portland, OR
Walla Walla
KEPR–TV, 19, Pasco, WA
KNDU, 25, Richland, WA
KVEW, 42, Kennewick, WA
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
Whatcom
KOMO–TV, 4, Seattle, WA
KING–TV, 5, Seattle, WA
KIRO–TV, 7, Seattle, WA
KVOS–TV, 12, Bellingham, WA
+KCPQ, 13, Tacoma, WA
CBUT, 2, Canada
CHEK, 6, Canada
CHAN, 8, Canada
Whitman
KREM–TV, 2, Spokane, WA
KXLY–TV, 4, Spokane, WA
KHQ–TV, 6, Spokane, WA
+KAYU–TV, 28, Spokane, WA
Yakima
KNDO, 23, Yakima, WA
KIMA–TV, 29, Yakima, WA
KAPP, 35, Yakima, WA

WEST VIRGINIA

Barbour
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV. 4, Pittsburgh, PA
Berkeley
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WMAR–TV, 2, Baltimore, MD
Boone
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
Braxton
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WOAY–TV, 4, Oak Hill, WV
WDTV, 5, Clarksburg, WV
Brooke
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WPGH–TV, 53, Pittsburgh, PA
Cabell
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Calhoun
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
WDTV, 5, Clarksburg, WV
Clay
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOAY–TV, 4, Oak Hill, WV
Doddridge
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
Fayette
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Gilmer
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
WOAY–TV, 4, Oak Hill, WV
WSAZ–TV, 3, Huntington, WV
Grant
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
WJAC–TV, 6, Johnstown, PA
Greenbrier
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
+WVAH–TV, 11, Charleston, WV
Hampshire
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WUSA, 9, Washington, DC (formerly WTOP)
WMAR–TV, 2, Baltimore, MD
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
WJAC–TV, 6, Johnstown, PA
Hancock
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
+WPGH–TV, 53, Pittsburgh, PA
Hardy
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WUSA, 9, Washington, DC (formerly WTOP)
Harrison
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
WTAE–TV, 4, Pittsburgh, PA
Jackson
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Jefferson
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WMAR–TV, 2, Baltimore, MD
Kanawha
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Lewis
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
Lincoln
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Logan

WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
Marion
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
Marshall
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
Mason
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
McDowell
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
Mercer
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Mineral
Over 90% cable penetration.
Mingo
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WVVA, 6, Bluefield, WV (formerly WHIS)
Monongalia
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
+WPGH–TV, 53, Pittsburgh, PA
WBOY–TV, 12, Clarksburg, WV
WTRF–TV, 7, Wheeling, WV
Monroe
WVVA, 6, Bluefield, WV (formerly WHIS)
WDBJ, 7, Roanoke, VA
WSLS–TV, 10, Roanoke, VA
Morgan
WRC–TV, 4, Washington, DC
WTTG, 5, Washington, DC
WJLA–TV, 7, Washington, DC (formerly WMAL)
WUSA, 9, Washington, DC (formerly WTOP)
WMAR–TV, 2, Baltimore, MD
WTAJ–TV, 10, Johnstown, PA (formerly WFBG)
Nicholas
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WOAY–TV, 4, Oak Hill, WV
Ohio
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
+WCWB, 22, Pittsburgh, PA (formerly WPTT)
+WPGH–TV, 53, Pittsburgh, PA
Pendleton
WHSV–TV, 3, Harrisonburg, VA (formerly WSVA)
Pleasants
WTRF–TV, 7, Wheeling, WV
WCHS–TV, 8, Charleston, WV
+WVAH–TV, 11, Charleston, WV
WDTV, 5, Clarksburg, WV
Pocahontas
WDBJ, 7, Roanoke, WV
WSLS–TV, 10, Roanoke, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
Preston
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WPXI, 11, Pittsburgh, PA (formerly WIIC)
WDTV, 5, Clarksburg, WV
WTRF–TV, 7, Wheeling, WV
+WWCP–TV, 8, Johnstow, PA
Putnam
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Raleigh
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charlestonm, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Randolph
WDTV, 5, Clarksburg.WV
WBOY–TV, 12, Clarksburg, WV
WCHS–TV, 8, Charleston, WV
Ritchie
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
+WVAH–TV, 11, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
WTRF–TV, 7, Wheeling, WV
Roane
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Summers
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
Taylor
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
Tucker
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
Tyler
WTRF–TV, 7, Wheeling, WV
WDTV, 5, Clarksburg, WV
Upshur
WDTV, 5, Clarksburg, WV
WBOY–TV, 12, Clarksburg, WV
Wayne
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
Webster
WSAZ–TV, 3, Huntington, WV
+WVAH–TV, 11, Charleston, WV
WOAY–TV, 4, Oak Hill, WV
WDTV, 5, Clarksburg, WV
Wetzel
WTRF–TV, 7, Wheeling, WV
WTOV–TV, 9, Steubenville, OH (formerly WSTV)
KDKA–TV, 2, Pittsburgh, PA
WTAE–TV, 4, Pittsburgh, PA
Wirt
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
Wood
WSAZ–TV, 3, Huntington, WV
WCHS–TV, 8, Charleston, WV
WOWK–TV, 13, Huntington, WV (formerly WHTN)
+WVAH–TV, 11, Charleston, WV (formerly ch. 23)
WTAP–TV, 15, Parkersburg, WV
Wyoming
WOAY–TV, 4, Oak Hill, WV
WVVA, 6, Bluefield, WV (formerly WHIS)
WCHS–TV, 8, Charleston, WV

WISCONSIN

Adams
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
WISC–TV, 3, Madison, WI
+WMSN–TV, 47, Madison, WI
Ashland
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Barron
WCCO–TV, 4, MinneapoliS–St. Paul
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
WEAU–TV, 13, Eau Claire, WI
Bayfield
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Brown
WBAY–TV, 2, Green Bay, WI

WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Buffalo
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
+WLAX, 25, La Crosse, WI
KTTC, 10, Rochester, MN (formerly KROC)
Burnett
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
Calumet
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Chippewa
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
Clark
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
Columbia
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
+WCGV–TV, 24, Milwaukee, WI
Crawford
WKBT, 8, La Crosse, WI
+WLAX, 25, La Crosse, WI
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
+WMSN–TV, 47, Madison, WI
Dane
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
Dodge
WTMJ–TV, 4, Milwaukee, WI
WITI, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
+WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
Door
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Douglas
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Dunn
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
Eau Claire
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
Florence
WLUC–TV, 6, Marquette, MI
WFRV–TV, 5, Green Bay, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
Fond du Lac
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WGBA, 26, Green Bay, WI
KFIZ–TV, 34, Fond du Lac, WI
WTMJ–TV, 4, Milwaukee, WI
WITI, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
+WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
Forest
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
Grant
KGAN, 2, Cedar Rapids, IA (formerly WMT)
KWWL, 7, Waterloo, IA
KCRG–TV, 9, Cedar Rapids, IA
WISC–TV, 3, Madison, WI
+WMSN–TV, 47, Madison, WI
Green
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, IL
WIFR, 23, Freeport, IL (formerly WCEE)
Green Lake
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
WISC–TV, 3, Madison, WI
+WMSN–TV, 47, Madison, WI
Iowa
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
Iron
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Jackson
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
+WLAX, 25, La Crosse, WI
Jefferson
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
+WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
Juneau
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
WISC–TV, 3, Madison, WI
+WMSN–TV, 47, Madison, WI
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
Kenosha
WBBM–TV, 2, Chicago, IL
WMAQ–TV, 5, Chicago, IL
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
+WPWR–TV, 50, Chicago, IL
+WGBO–TV, 66, Joliet, IL
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
+WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
Kewaunee
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WACY, 32, Appleton, WI (formerly WXGZ)
La Crosse
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
WXOW–TV, 19, La Crosse, WI
+WLAX, 25, La Crosse, WI
Lafayette
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
Langlade
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Lincoln
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
Manitowoc
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WACY, 32, Appleton, WI (formerly WXGZ)
Marathon
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
WEAU–TV, 13, Eau Claire, WI
Marinette
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WGBA, 26, Green Bay, WI
+WACY, 32, Appleton, WI (formerly WXGZ)
Marquette
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Menominee
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Milwaukee

WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
Monroe
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
+WLAX, 25, La Crosse, WI
Oconto
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WACY, 32, Appleton, WI (formerly WXGZ)
Oneida
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
Outagamie
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Ozaukee
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
Pepin
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
Pierce
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
Polk
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
Portage
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
Price
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
WEAU–TV, 13, Eau Claire, WI
Racine
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
WLS–TV, 7, Chicago, IL
WGN–TV, 9, Chicago, IL
Richland
WISC–TV, 3, Madison, WI
+WMSN–TV, 47, Madison, WI
WKBT, 8, La Crosse, WI
Rock
WREX–TV, 13, Rockford, IL
WTVO, 17, Rockford, I:
WIFR, 23, Freeport, IL (formerly WCEE)
+WQRF–TV, 39, Rockford, IL
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
Rusk
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
WSAW–TV, 7, Wausau, WI (formerly WSAU)
St. Croix
WCCO–TV, 4, Minneapolis, MN
KSTP–TV, 5, St. Paul, MN
KMSP–TV, 9, Minneapolis, MN
KARE, 11, Minneapolis, MN (formerly WTCN)
+KLGT, 23, Minneapolis, MN (formerly KTMA)
+WFTC, 29, Minneapolis, MN (formerly KITN)
Sauk
WISC–TV, 3, Madison, WI
WMTV, 15, Madison, WI
WKOW–TV, 27, Madison, WI
+WMSN–TV, 47, Madison, WI
Sawyer
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Shawano
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WACY, 32, Appleton, WI (formerly WXGZ)
WSAW–TV, 7, Wausau, WI (formerly WSAU)
Sheboygan
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
+WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
+WGBA, 26, Green Bay, WI
Taylor
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WEAU–TV, 13, Eau Claire, WI
Trempealeau
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
+WLAX, 25, La Crosse, WI
Vernon
WKBT, 8, La Crosse, WI
WEAU–TV, 13, Eau Claire, WI
+WLAX, 25, La Crosse, WI
KTTC, 10, Rochester, MN (formerly KROC)
Vilas
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WJFW–TV, 12, Rhinelander, WI (formerly WAEO)
Walworth
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
+WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
WBBM–TV, 2, Chicago, IL
WGN–TV, 9, Chicago, IL
WISC–TV, 3, Madison, WI
WREX–TV, 13, Rockford, IL
Washburn
KDLH, 3, Duluth, MN (formerly KDAL)
KBJR–TV, 6, Duluth, MN (formerly WDSM)
WDIO–TV, 10, Duluth, MN
Washington
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
Waukesha
WTMJ–TV, 4, Milwaukee, WI
WITI–TV, 6, Milwaukee, WI
WISN–TV, 12, Milwaukee, WI
WVTV, 18, Milwaukee, WI
+WCGV–TV, 24, Milwaukee, WI
Waupaca
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
WSAW–TV, 7, Wausau, WI (formerly WSAU)
Waushara
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
WSAW–TV, 7, Wausau, WI (formerly WSAU)
Winnebago
WBAY–TV, 2, Green Bay, WI
WFRV–TV, 5, Green Bay, WI
WLUK–TV, 11, Green Bay, WI
KFIZ–TV, 34, Fond du Lac, WI
Wood
WSAW–TV, 7, Wausau, WI (formerly WSAU)
WAOW–TV, 9, Wausau, WI
WEAU–TV, 13, Eau Claire, WI
Beloit—WMSN–TV
Beloit Township—WMSN–TV
Turtle Township—WMSN–TV

WYOMING

Albany
KCNC–TV, 4, Denver, CO (formerly KOA)
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
KGWN–TV, 5, Cheyenne, WY (formerly KFBC)
Big Horn
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KFNE, 10, Riverton, WY (formerly KWRB)
Campbell
Over 90% cable penetration.
Carbon
KTWO–TV, 2, Casper, WY
KGWN–TV, 5, Cheyenne, WY (formerly KFBC)
Converse
KTWO–TV, 2, Casper, WY
TF, 10, Scottsbluff, NE
Crook
KOTA–TV, 3, Rapid City, SD
KTWO–TV, 2, Casper, WY
Fremont
KTWO–TV, 2, Casper, WY
KFNE, 10, Riverton, WY, (formerly KWRB)
Goshen
KSTF, 10, Scottsbluff, NE
KDUH–TV, 4, Scottsbluff, NE
Hot Springs
KTWO–TV, 2, Casper, WY

KFNE, 10, Riverton, WY (formerly KWRB)
Johnson
KTWO–TV 2, Casper, WY
Laramie
#KGWN–TV, 5, Cheyenne, WY (formerly KFBC)[22]
+KKTU, 33, Cheyenne, WY
KWGN–TV, 2, Denver, CO
#KCNC–TV, 4, Denver, CO (formerly KOA)[23]
KMGH–TV, 7, Denver, CO (formerly KLZ)
KUSA–TV, 9, Denver, CO (formerly KBTV)
Lincoln
KIDK, 3, Idaho Falls, ID (formerly KID)
+KPVI, 6, Pocatello, ID
KIFI–TV, 8, Idaho Falls, ID
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Natrona
KTWO–TV, 2, Casper, WY
Niobrara
KTWO–TV, 2, Casper, WY
KGWN–TV, 5, Cheyenne, WY (formerly KFBC)
Park
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
Platte
KGWN–TV, 5, Cheyenne, WY (formerly KFBC)
KSTF, 10, Scottsbluff, NE
KTWO–TV, 2, Casper, WY
Sheridan
KTVQ, 2, Billings, MT (formerly KOOK)
KULR–TV, 8, Billings, MT
KTWO–TV, 2, Casper, WY
KOTA–TV, 3, Rapid City, SD
Sublette
KTWO–TV, 2, Casper, WY
KIDK, 3, Idaho Falls, ID (formerly KID)
Sweetwater
Over 90% cable penetration.
Teton
KIDK, 3, Idaho Falls, ID (formerly KID)
KIFI–TV, 8, Idaho Falls, ID
Uinta
KUTV, 2, Salt Lake City, UT
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
+KSTU, 13, Salt Lake City, UT
Washakie
KTWO–TV, 2, Casper, WY
KFNE, 10, Riverton, WY (formerly KWRB)
KTVX, 4, Salt Lake City, UT (formerly KCPX)
KSL–TV, 5, Salt Lake City, UT
Weston
KTWO–TV, 2, Casper, WY
KOTA–TV, 3, Rapid City, SD
Yellowstone National Park
KIDK, 3, Idaho Falls, ID (formerly KID)
KULR–TV, 8, Billings, MT

[22] Affected community is Cheyenne, WY.
[23] Affected community is Cheyenne, WY.

[FR Doc. 05–3847 Filed 3–7–05; 8:45 am]
BILLING CODE 6712–01–P

Federal Register

Tuesday,
March 8, 2005

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 401 and 405

Medicare Program: Changes to the Medicare Claims Appeal Procedures; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 401 and 405

[CMS–4064–IFC]

RIN 0938–AM73

Medicare Program: Changes to the Medicare Claims Appeal Procedures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: Medicare beneficiaries and, under certain circumstances, providers and suppliers of health care services, can appeal adverse determinations regarding claims for benefits under Medicare Part A and Part B under sections 1869 and 1879 of the Social Security Act (the Act). Section 521 of the Medicare, Medicaid, and SCHIP Benefits Act of 2000 (BIPA) amended section 1869 of the Act to provide for significant changes to the Medicare claims appeal procedures. This interim final rule responds to comments on the November 15, 2002 proposed rule regarding changes to these appeal procedures, establishes the implementing regulations, and explains how the new procedures will be implemented. It also sets forth provisions that are needed to implement the new statutory requirements enacted in Title IX of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

DATES: *Effective date:* These regulations are effective on May 1, 2005. However, in view of the wide span of applicability of these rules and the complex, intertwined nature of the affected appeal procedures, not all of these provisions can be implemented simultaneously. Please see section I.E. of the preamble for a full description of the implementation approach.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 9, 2005.

ADDRESSES: In commenting, please refer to file code CMS–4064–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4064–IFC, P.O. Box 8011, Baltimore, MD 21244–8011.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Michele Edmondson-Parrott, (410) 786–6478 (for issues relating to general appeal rights). Janet Miller, (410) 786–1588 (for issues relating to assignment or authorized representatives). Jennifer Eichhorn Frantz, (410) 786–9531 (for issues relating to initial determinations and redeterminations). Arrah Tabe-Bedward, (410) 786–7129 or Jennifer Eichhorn Frantz, (410) 786–9531 (for issues relating to Qualified Independent Contractor (QIC) reconsiderations). Arrah Tabe-Bedward, (410) 786–7129 or John Scott (410) 786–3636 (for issues relating to expedited access to judicial review, Administrative Law Judge (ALJ) hearings and Medicare Appeals Council (MAC) reviews). Jennifer Collins, (410) 786–1404 or Rosalind Little, (410) 786–6972 (for issues relating to reopenings).

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–4064–IFC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public website. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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To assist readers in referencing sections contained in this preamble, we are providing the following table of contents.

Table of Contents

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

A. Overview of Existing Medicare Program

The original Medicare program consists of two parts (Part A and Part B). Part A, known as the hospital insurance program, covers certain care provided to inpatients in hospitals, critical access hospitals, and skilled nursing facilities, as well as hospice care and some home health care. Part B, the supplementary medical insurance program, covers certain physicians' services, outpatient hospital care, and other medical services that are not covered under Part A.

In addition to the original Medicare program, beneficiaries may elect to receive health care coverage under Part C of Medicare, the Medicare Advantage (MA) program. Under the MA program, an individual is entitled to those items and services (other than hospice care) for which benefits are available under Part A and Part B. An MA plan can provide additional health care items and services that are not covered under the original Medicare program. Beginning in January 2006, beneficiaries also can elect to receive prescription drug coverage under Part D of Medicare through the Medicare prescription drug benefit.

Under the original Medicare program, a beneficiary can generally obtain health services from any institution, agency, or person qualified to participate in the Medicare program that undertakes to provide the service to the individual. After the care is provided, the provider or supplier (or, in some cases, a beneficiary) can submit a claim for benefits under the Medicare program to the appropriate government contractor, either a fiscal intermediary (FI) (for all Part A claims and certain Part B claims) or a carrier (for most claims under Part B). If the claim is for an item or service that falls within a Medicare benefit category, is reasonable and necessary for the individual, and is not otherwise excluded by statute or rule, then the contractor pays the claim. However, the Medicare program does not cover all health care expenses. Therefore, if the Medicare contractor determines that the medical care is not covered under the Medicare program, then it denies the claim.

Generally, when a contractor denies a claim, it notifies the provider, supplier, or beneficiary of the denial and offers the opportunity to appeal the denial. The existing appeal procedures for original Medicare are set forth in regulations at 42 CFR part 405, subparts G and H. Separate procedures for appealing determinations made under the Part C program are set forth at subpart M of part 422. There is a similar, separate appeals process for Part D claim determinations set forth at subpart M of Part 423. After an appellant has exhausted the administrative appeal procedures offered under the Medicare program, the Medicare statute provides the opportunity for a dissatisfied individual to seek review in Federal court.

Consistent with section 1852(g)(5) of the Act, the MA regulations provide that enrollees in MA plans who are dissatisfied with determinations regarding their Part C benefits have the right to a hearing before an Administrative Law Judge (ALJ), review by the Departmental Appeals Board (DAB), and judicial review at the Federal district court level in much the same manner as beneficiaries have under the fee-for-service Medicare program. These regulations are codified at §§ 422.600 through 422.612. Section 1860D–4(h) of the Act establishes similar rights for enrollees in Medicare prescription drug plans. To the extent that there are any differences in the appeal procedures for these enrollees, we will address those differences in future Part C and Part D rulemaking documents.

The regulations in part 405 subpart G beginning at § 405.701 describe reconsiderations and appeals under Medicare Part A. When a Medicare contractor makes a determination for a Part A claim, the beneficiary or, in some circumstances, the provider, can appeal the determination. (Consistent with sections 1861(u) and 1866(e) of the Act and § 400.202, the term "provider" generally includes hospitals, skilled nursing facilities (SNFs), home health agencies (HHAs), comprehensive outpatient rehabilitation facilities (CORFs), and hospices, as well as certain clinics, rehabilitation agencies, and public health agencies.) If the determination is appealed, then the contractor reconsiders the initial determination. If the contractor upholds the original determination, a party can request a hearing before an ALJ, provided that the amount in controversy is at least $100. If a party is dissatisfied with the ALJ's decision, a party can request review by the DAB. The component within the DAB that is responsible for Medicare claim appeals is the Medicare Appeals Council (MAC). (Although the Medicare appeals regulations in part 405 contain some limited provisions regarding ALJ and MAC proceedings, these proceedings are generally governed by the Social Security Administration (SSA) regulations at 20 CFR part 404, subpart J.) MAC decisions constitute the final decision of the Secretary and can be appealed to a Federal court. Generally, the lower level of appeal must be exhausted before the appeal can be elevated to the next level.

Medicare Part B appeal procedures are set forth in part 405 subpart H (§ 405.801 *et seq.*). Under these

regulations, beneficiaries and suppliers that accept assignment for Medicare claims can appeal to a Medicare contractor for a review of the contractor's initial determination that a claim cannot be paid, either in full or in part. (The term "supplier" is defined under section 1861(d) of the Act, as amended by section 901(b) of the MMA, and means a physician or other practitioner, a facility, or other entity (other than a provider of services that furnishes items or services) under Medicare. This regulation will use the term "supplier" to include physicians.) Suppliers that do not take assignment and providers, in some circumstances, also have appeal rights.

If the contractor's review results in a continued denial of the claim, and the amount in controversy is at least $100, the appellant can request a second level appeal known as a "fair hearing." If the hearing officer upholds the denial, the appellant can request a hearing before an ALJ, provided that the appellant meets the amount-in-controversy requirement. (We published a ruling, CMS Ruling No. 02–1, which implemented the $100 amount-in-controversy requirement for Part B ALJ hearings specified in section 521 of BIPA for initial determinations made on or after October 1, 2002. *See* 67 FR 62478, 62480 (Oct. 7, 2002). For initial determinations prior to October 1, 2002, the amount in controversy threshold was $500 for all services other than home health ($100).) Subsequent aspects of the appeals process for Part B claims are identical to those described above for a Part A claim.

B. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

Section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, (Pub. L. 106–554) (BIPA), amended section 1869 of the Act to require revisions to the Medicare fee-for-service appeals process. Among the major changes required by the BIPA amendments are—

- Establishing a uniform process for handling Medicare Part A and Part B appeals, including the introduction of a new level of appeal for Part A claims;
- Revising the time frames for filing a request for Part A and Part B appeals;
- Imposing a 30-day time frame for certain "redeterminations" made by the contractors;
- Requiring the establishment of a new appeals entity, the qualified independent contractor (QIC), to conduct "reconsiderations" of contractors' initial determinations (including redeterminations) and allowing appellants to escalate cases to an ALJ hearing, if reconsiderations are not completed within 30 days;
- Establishing a uniform amount in controversy threshold of $100 for Part B appeals at the ALJ level;
- Imposing 90-day time limits for conducting ALJ and DAB appeals and allowing appellants to escalate cases to the next level of appeal if ALJs or the MAC do not meet the 90-day deadline; and
- Imposing "de novo" review when the MAC reviews an ALJ decision made after a hearing.

On November 15, 2002, we published in the **Federal Register** a comprehensive proposed rule (67 FR 69312) to implement the provisions of section 521 of the BIPA, as well as other complementary changes needed to improve the Medicare claim appeal procedures.

Revised section 1869 of the Act also requires that the Secretary establish a process by which a beneficiary can obtain an expedited determination if the beneficiary receives a notice from a provider of services that the provider plans to terminate all services or discharge the beneficiary from the provider. Previously, this right to an expedited review existed under statute only for hospital discharges (under sections 1154 and 1155 of the Act). On November 26, 2004, we published a separate final rule, Expedited Determination Procedures for Provider Service Terminations (69 FR 69252), to respond to comments on that aspect of the November 15, 2002 proposed rule and to set forth the regulations needed to establish new expedited review procedures for provider service terminations.

C. Related Provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) was enacted. The MMA includes a number of provisions that affect the Medicare claim appeals process, each of which is summarized below. To the extent that the new statutory language has necessitated revisions or additions to our proposed regulations to ensure that they conform to the MMA, we have incorporated the needed changes into this interim final rule. A brief summary of these provisions follows. To the extent that the MMA provisions entail regulatory changes, a discussion of those changes is set forth in the appropriate section of this preamble.

1. Requirement To Transfer the Administrative Law Judge Function to the Department of Health and Human Services (Section 931 of the MMA)

Section 931 of the MMA requires transfer of the functions of administrative law judges (ALJs) responsible for hearing appeals under title XVIII of the Act (and related provisions of title XI of the Act) from the Commissioner of SSA to the Secretary of the Department of Health and Human Services (DHHS). These ALJs are required to be organizationally and functionally independent from CMS and must report to and fall under the general supervision of the Secretary of DHHS. The DHHS and SSA were required to jointly develop a plan to facilitate this transfer not later than April 1, 2004, and the transfer will take place no earlier than July 1, 2005, but not later than October 1, 2005. On March 25, 2004, DHHS and SSA submitted a report to the Congress that describes the process through which DHHS and SSA will accomplish the transfer of responsibility for the ALJ function. A copy of that report is available online at *http://www.hhs.gov/medicare/appealsrpt.pdf.*

2. Process for Expedited Access to Judicial Review (Section 932 of the MMA)

Section 1869(b) of the Act provides for expedited access to judicial review in situations involving Medicare claims appeals. Section 932 of the MMA amends section 1869(b) of the Act by requiring a review entity to respond to a request for expedited access to judicial review in writing within 60 days after receiving the request. The term "review entity" means up to three reviewers who are ALJs or members of the Departmental Appeals Board as determined by the Secretary. If the review entity does not act within the 60-day deadline, then the party can request judicial review. Expedited access to judicial review can be granted when the MAC does not have authority to decide questions of law or regulation relevant to matters in controversy and there is no material issue of fact in dispute. *See* § 405.990.

3. Revisions to the Medicare Fee-for-Service Appeals Process (Section 933 of the MMA)

a. Requirement for Full and Early Presentation of Evidence (Section 933(a))

Section 933(a) of the MMA amends section 1869(b) of the Act to require providers and suppliers to present any evidence for an appeal no later than the

QIC reconsideration level, unless there is good cause that prevented the timely introduction of the evidence. In this interim final rule with comment, we are adopting regulations to specify that in the absence of good cause, a provider, supplier, or beneficiary represented by a provider or supplier must present evidence at the QIC level. Evidence not presented by the parties at the QIC level cannot be introduced at a higher level of appeal. *See* § 405.956(b)(8), § 405.966(a), § 405.1018, and § 405.1122(c).

b. Use of Patients' Medical Records (Section 933(b))

Section 933(b) of the MMA amends section 1869(c)(3)(B)(i) of the Act to require QICs to review an individual's medical records when conducting a reconsideration involving medical necessity. *See* § 405.968(a).

c. Notice Requirements for Medicare Appeals (Section 933(c))

Section 933(c) of the MMA amends sections 1869(a), 1869(c), and 1869(d) of the Act to require appeal notices issued at the initial determination, redetermination, reconsideration, and ALJ levels to include certain information. As amended, section 1869(a)(4) of the Act requires that a notice of an initial determination include the reasons for the determination, including whether a local medical review policy (LMRP) or local coverage determination (LCD) was used. The notice of initial determination must also include procedures for obtaining additional data concerning the determination and notification of any applicable appeal rights, including instructions on how to request a redetermination. *See* § 405.921(a).

Section 1869(a)(5) of the Act specifies that a notice of redetermination must include the specific reasons for the redetermination, a summary of the clinical or scientific evidence used to make the redetermination, if applicable, information on how to obtain additional information concerning the redetermination, and notification of any applicable appeal rights. *See* § 405.956.

Reconsideration notices, under the amended section 1869(c)(3)(E) of the Act, are required to include information about applicable appeal rights. *See* § 405.976. Section 1869(d) of the Act is also amended to require that notices of ALJ decisions give the specific reasons for the decision, including, if applicable, a summary of the clinical or scientific evidence used in making the decision, the procedures for obtaining additional information about the decision, and any applicable appeal rights. *See* § 405.1046(b). Additionally, section 933 of the MMA amends sections 1869(a), 1869(c), and 1869(d) of the Act to require all appeal notices to be written in a manner calculated to be understood by a beneficiary.

d. Qualified Independent Contractors (QICs) (Section 933(d))

Prior to the MMA, section 1869(c) of the Act, as amended by section 521 of BIPA, required the Secretary to enter into contracts with at least 12 entities called qualified independent contractors (QICs) to conduct reconsiderations of contested claim determinations. Section 1869(c) sets forth certain requirements for the QICs and their reviews and panels. Section 933(d) of the MMA makes a number of revisions to section 1869(c) of the Act, including providing additional detail regarding the eligibility requirements for QICs (section 933(d)(1) of the MMA) and the eligibility requirements for QIC reviewers (section 933(d)(2) of the MMA). We have added § 405.968(c)(3) to reflect the requirement of section 1869(g)(1)(C) that where a claim pertains to the furnishing of treatment by a physician, or the provision of items or services by a physician, a reviewing professional must be a physician. In addition, section 933(d)(3) of the MMA amended section 1869(c)(4) of the Act to reduce from 12 to 4 the minimum number of QICs with whom the Secretary must contract.

4. Process for the Correction of Minor Errors or Omissions Without Pursuing an Appeal (Section 937 of the MMA)

Section 937 of the MMA requires that the Secretary develop a means of allowing providers and suppliers to correct minor errors or omissions to claims submitted under the programs under title XVIII without initiating an appeal. The statute specifies that this process be available no later than December 8, 2004. We have revised § 405.980 to allow providers and suppliers to make these corrections through the reopenings process. *See* § 405.927 and § 405.980.

This process was developed in consultation with Medicare contractors and representatives of providers and suppliers, as required by section 937 of the MMA. We published an article on April 30, 2004 that is available online at *http://www.cms.hhs.gov/medlearn/matters/mmarticles/2004/SE0420.pdf* to address the implementation of section 937 and consulted with providers and suppliers about this implementation during open door forums held between August 3 and August 31, 2004. We also created an e-mailbox, *PBG937@cms.hhs.gov,* for providers and suppliers to comment on our proposed implementation. The comment period closed September 10, 2004.

5. Appeals by Providers When There Is No Other Party Available (Section 939 of the MMA)

In situations where a beneficiary dies and there is no other party available to appeal an unfavorable determination, section 939 of the MMA amends section 1870 of the Act to permit a provider or supplier to file an appeal. *See* § 405.906(c).

6. Revisions to the Appeals Time Frames and Amounts in Controversy (Section 940 of the MMA)

Sections 1869(a)(3)(C)(ii) and 1869(c)(3)(C)(i) of the Act as added by section 521 of BIPA established 30-day decision making time frames at both the redetermination and reconsideration levels. Additionally, section 1869 (b)(1)(E) of the Act established the amount in controversy (AIC) requirement for ALJ hearing requests and judicial review as $100 and $1000, respectively. Section 940 of the MMA amended these provisions so that the decision-making time frame for redeterminations and reconsiderations is 60 days and the AICs for ALJ hearings and judicial review will now be adjusted annually, beginning on January 1, 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers and rounded to the nearest multiple of $10. *See* § 405.950(a), § 405.970(a), and § 405.1006. A conforming amendment applies these AICs to the Part C MA program as well, and we have proposed that they apply to Part D when the new prescription drug benefit becomes available in January 2006. *See* 69 Fed. Reg. 46,866, 46,910, and 46,911, 46,722 for the MA proposed rule and 69 Fed. Reg. 46,632 for the Part D proposed rule. (The medical care component of the CPI increased by 4.5 percent in 2004. Consequently, the AIC in 2005 for ALJ hearings will remain $100, and the AIC for judicial review will be $1,050.)

7. Determinations of Sustained or High Levels of Payment Errors (Section 935(a) of the MMA)

Consistent with section 1893(f)(3) of the Act, as amended by section 935(a) of the MMA, determinations by the Secretary of sustained or high levels of payment errors are precluded from administrative or judicial review. *See* § 405.926(p).

8. Limitations on Further Review of Prior Determinations (Section 938(a) of the MMA)

Section 1869(h)(6) of the Act, as amended by section 938(a) of the MMA. requires that there must be no administrative or judicial review of "prior determinations" on coverage of physicians" services, a new aspect of the Medicare program that the MMA specifies must begin by June 2005. See § 405.926(q).

D. Codification of Regulations

The current regulations governing Medicare administrative appeals are set forth in 42 CFR part 405, subparts G and H. These regulations will continue to be necessary for an indefinite transition period until the completion of all appeals that result from initial determinations made before the implementation of the new procedures set forth in this interim final rule. However, the new BIPA and MMA provisions make possible a largely uniform set of appeals procedures that can be applied for claims under both Parts A and B of Medicare. Therefore, this interim final rule establishes a new subpart I of part 405 that sets forth in one location the administrative appeals requirements for Medicare carriers, fiscal intermediaries (FIs), QICs, ALJs, and the MAC. The major subjects covered in subpart I of part 405 are as follows:

- *General Rules (§ 405.900 through § 405.912)*—Definitions and requirements concerning initial determinations, parties to appeals, appointing a representative, and assigning appeal rights.
- *Initial Determinations (§ 405.920 through § 405.928)*—Requirements concerning the processing time frames for initial claim determinations, descriptions of actions that are initial determinations, and the effect of an initial determination.
- *Redeterminations (§ 405.940 through § 405.958)*—Requirements concerning requesting a redetermination, the redetermination process, applicable notice requirements, and the effect of a redetermination.
- QIC Reconsiderations (§ 405.960 through § 405.978)—Requirements concerning requesting a reconsideration, the reconsideration process, applicable notice requirements, and the effect of a reconsideration.
- *Reopenings (§ 405.980 through § 405.986)*—Requirements concerning reopening of determinations and decisions, including the good cause standard, content requirements for notices of revised determinations or decisions, and the effect of a revised determination or decision.
- *Expedited Access to Judicial Review (§ 405.990)*—Requirements concerning obtaining expedited access to judicial review.
- *ALJ Hearings (§ 405.1000 through § 405.1064)*—Requirements concerning requesting a hearing, the hearing process, applicable notice requirements, the effect of an ALJ's decision, and the applicability of national and local coverage determinations.
- *MAC Review (§ 405.1100 through § 405.1140)*—Requirements concerning requesting a review, the review process, applicable notice requirements, the effect of a review decision, and the requirements for requesting judicial review.

E. Implementation of the New Appeal Requirements

We believe that the changes set forth in this interim final rule, in conjunction with the introduction of a new case-specific appeal data system that we are now developing, will produce substantial improvements in the efficiency of the Medicare claims appeal process. We expect that the implementation of these new appeal procedures, along with the transfer of the ALJ function from SSA to DHHS, will reduce appellants' concerns over the fairness and timeliness of Medicare appeal decisions. The introduction of QICs, in particular, will not only reassure appellants of the independence of the reconsideration process, but also offer them for the first time routine reconsideration, by a panel of physicians or other health care professionals, of all medical necessity issues. As a result, we believe these new procedures will lead, over time, to significant reductions in the need to pursue appeals at the later stages of the appeals system, such as ALJ hearings and MAC reviews.

In the short term, however, we recognize that implementing the changes set forth in this interim final rule may prove challenging both for the entities responsible for conducting appeals and for appellants themselves. For example, there may be an initial increase in requests for second level appeals (that is, reconsiderations by QICs), given the availability of these new independent appeal entities and the introduction of physician review panels, as well as the fact that the time frame for a QIC decision is only half of the current time frame for a contractor fair hearing. Similarly, increases in requests for ALJ hearings or MAC reviews are also possible, in view of the establishment of relatively short decision-making time frames for these entities.

Another challenge involves the need for appeal entities to process appeals that were filed before and after the implementation of these new appeal procedures. For example, the DHHS ALJs and the MAC will need to continue processing appeals received before the implementation of QICs at the same time that they begin to receive appeals of QIC reconsiderations. Thus, until all appeals that were filed under the rules in effect before full implementation of these regulations are completed, different administrative deadlines and procedures may apply, depending on the timing and source of the previous, lower-level appeal decision. Based on previous experience, the need for parallel procedures could extend over a year, as all cases currently in the appeals pipeline are resolved.

In addressing these challenges and implementing the new procedures, we need to balance the goal of implementing the new procedures as quickly as possible with our responsibility to facilitate a clear and well-organized transition to the new procedures for appellants and appeals entities alike. We also need to ensure that existing appeals continue to be carried out as expeditiously as possible as we transition fully to the new appeals procedures. These goals drive the implementation approach described below.

The appeal procedures set forth in section 521 of BIPA were to take effect for initial determinations made on or after October 1, 2002. As discussed in the proposed rule, we were unable to fully implement the BIPA provisions by that date without disrupting other fundamental functions of the Medicare program (for example, the processing and payment of claims). We were also aware of the possibility of additional statutory changes, as were subsequently enacted in the MMA. Additionally, we recognize that the MMA has, in some cases, established specific deadlines for implementation of certain appeals provisions. For example, section 933(a)(2) of the MMA establishes an effective date of October 1, 2004 for the prohibition on submission of new evidence, absent good cause, by providers or suppliers in any ALJ or MAC appeal if that evidence was not presented at the QIC reconsideration. For other provisions, the MMA either makes no explicit reference to an effective date, or specifies (under section 933(d)(4)) that certain MMA amendments will be effective as if included in the BIPA legislation; that is, as of October 1, 2002. In the absence of

a specific effective date, the provisions became effective on the date of enactment of the MMA.

Given the unavoidable delays in full implementation of the BIPA changes, it will not be possible to meet all of the MMA deadlines. As a practical matter, full, effective implementation of both the MMA and BIPA provisions can be achieved only in concert with the availability of QICs in the Medicare appeals process. Thus, we believe that full implementation of these regulations must be premised on, and linked to, QIC implementation.

As noted above, another important related MMA provision is the transfer of the ALJ hearing function for Medicare claims appeals from SSA to DHHS. Section 931(b) of the MMA mandates that this transition take place not earlier than July 1, 2005, and not later than October 1, 2005. We have also taken this impending change into account in establishing the implementation schedule for the new appeals provisions set forth in this interim final rule.

Based on all of these considerations, the table below illustrates the implementation approach that we are following for the provisions of this interim final rule:

IMPLEMENTATION APPROACH

Section(s)	Effective
§ 401.108	Effective date of interim final rule.
§ 405.900–§ 405.928	Effective date of interim final rule.
§ 405.940, § 944(a), and § 944(b)	FI initial determinations issued on or after May 1, 2005. Carrier initial determinations issued on or after January 1, 2006.
§ 942(a)	Effective date of interim final rule.
§ 405.942(b), § 405.944(c), § 405.946 through § 405.958	All requests for redeterminations received by FIs on and or after May 1, 2005. All requests for redeterminations received by Carriers on or after January 1, 2006.
§ 405.960–§ 405.978	May 1, 2005 for redeterminations issued by FIs January 1, 2006 for redeterminations issued by Carriers.
§ 405.980–§ 405.990	Effective date of interim final rule.
§ 405.1000–§ 405.1018	Effective for all appeal requests stemming from a QIC reconsideration.
§ 405.1020	July 1, 2005 for all ALJ hearing requests.
§ 405.1022–§ 405.1140	Effective for all appeal requests stemming from a QIC reconsideration.

As the table reflects, we have concluded that the best approach to implement the new appeal procedures is to phase in the new procedures beginning in FY 2005. QIC reconsiderations will become available in two stages depending on if an FI or carrier carries out the redetermination. For all FI redeterminations issued on or after May 1, 2005, appellants will have a right to reconsideration by a QIC within 60 days of their request for reconsideration, as well as escalation to an ALJ if the reconsideration is not completed timely. Similarly, the new reconsideration and escalation procedures will take effect for all carrier redeterminations issued on or after January 1, 2006. Thus, in 2006, all new appeals will be carried out under the regulations set forth in this interim final rule, including provisions on—

- Reconsiderations by QICs;
- The new statutory time frames for reconsiderations, ALJ hearings, and MAC reviews;
- The possibility of escalation of cases where the time frames are not met;
- The new notice and evidence rules; and
- Medicare-specific ALJ procedures.

The phased-in approach enables at least two QICs to begin carrying out reconsiderations of appealed FI redeterminations beginning in May 2005, and thus to provide the second level reconsideration envisioned by the statute for Part A claims as soon as possible. In January 2006, at least four QICs will begin carrying out reconsiderations of appealed carrier redeterminations. We believe that this phased-in approach to QIC implementation constitutes the only viable approach for an undertaking of this magnitude and is critical to ensuring that we: (1) Minimize disruption among the current Medicare contractors and current appellants; and (2) have adequate opportunity to educate providers, suppliers, and beneficiaries about the new procedures. Phasing in the transition from the current process serves to eliminate any unnecessary risk in terms of our ability to manage major appeal transitions at all of our FIs and carriers simultaneously. In addition, these contractors are dealing at the same time with numerous statutorily mandated changes (such as the contracting reform changes required under Title IX of the MMA).

We have chosen to implement the changes initially for redeterminations conducted by fiscal intermediaries for several reasons. Fiscal intermediaries are responsible for all appeals involving Part A claims, as well a limited number of Part B claims. The Part A process currently does not include a second level of contractor appeal prior to an ALJ hearing, unlike the Part B fair hearing procedure. Thus, introducing the QIC reconsideration step first for these claims ensures that Part A appellants have access to a second pre-ALJ appeal process as soon as possible. Implementing the new procedures for appeals resulting from FI determinations also gives us an opportunity over several months to identify and address any process problems or other technical difficulties involved in the first stages of QIC reconsiderations before transitioning the much larger Part B appeals workload that is now performed by carriers.

One unavoidable consequence of this change will be that some employees of current contractors will need to be either reassigned or discharged since the FIs and carriers will no longer be conducting fair hearings. However, we believe that the slightly longer transition for the much larger carrier workforce will help to ameliorate the potential human costs of this change.

Finally, we note that wherever it was feasible (that is, where the BIPA and MMA appeals provisions are not fundamentally premised on the introduction of QIC reconsiderations into the appeals process), we have already taken a series of steps to implement the new appeal provisions mandated by the statute, including most notably the transition to a uniform redetermination process by our FIs and carriers. We issued instructions (CR 2620) to effect this change beginning on October 1, 2004. The instructions incorporate both the redetermination decision-making time frames and notice requirements required by the statute

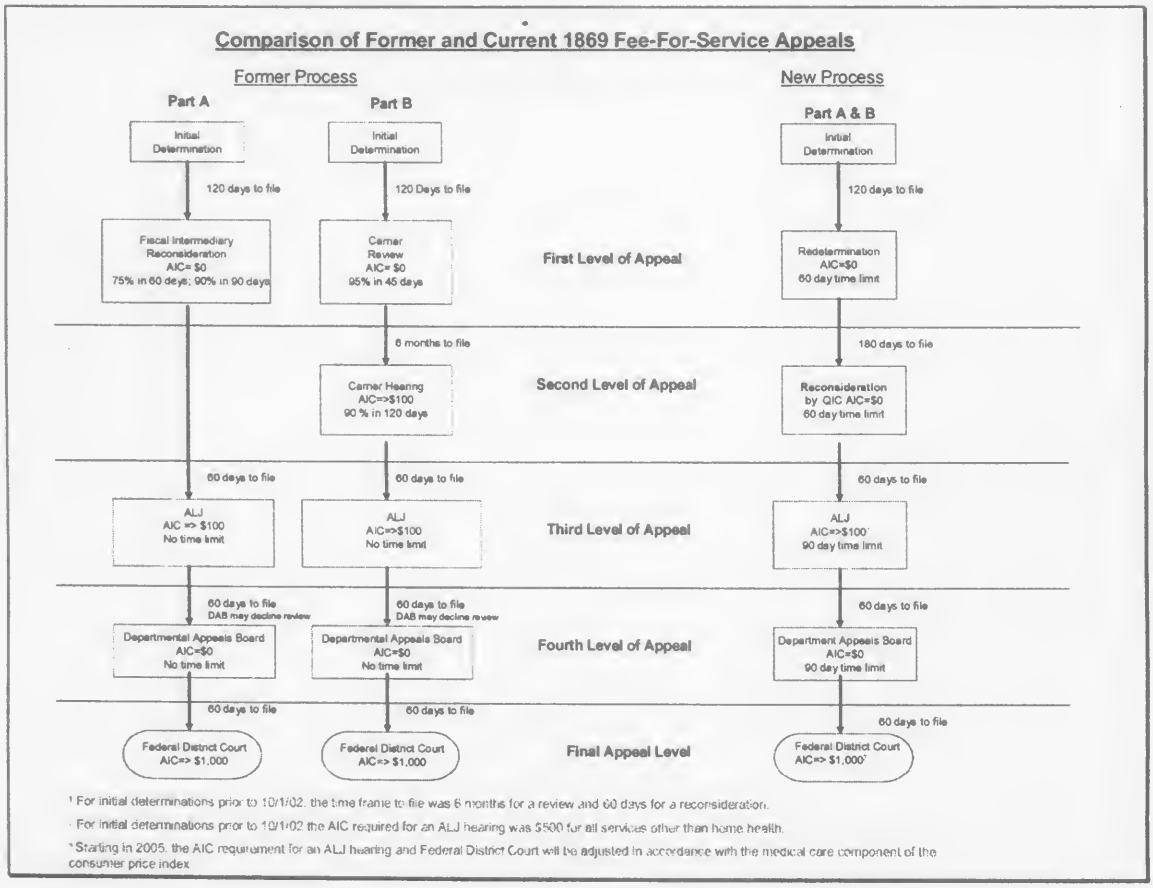
(under sections 1869(a)(2), 1869(a)(3) and 1869(a)(5) of the Act, as amended by section 521 of BIPA and sections 933 and 940 of the MMA). We have also issued instructions to the contractors regarding the implementation of section 939 of the MMA (which took effect upon enactment of the MMA) concerning appeals by providers when there is no other party available because of the death of the beneficiary appellant. These regulations codify those changes.

II. Analysis of and Responses to Public Comments

A. Overview of Comments on November 15, 2002 Proposed Rule

We received 37 timely comments from organizations representing providers and suppliers, beneficiary advocacy groups, administrative law judges, law offices, health plans, and others. The issues most frequently raised by commenters include: Beneficiary protections, particularly for unrepresented beneficiaries; deadlines for filing appeals and time frames for decision-making; notices; differences between an assignee and an appointed representative of a beneficiary; authority of representatives of parties; time frames for the escalation of cases from one level to the next when adjudicators fail to meet their deadlines; the role of the new entities, qualified independent contractors (QICs), that will perform reconsiderations; evidentiary requirements; the perceived formality of administrative law judge (ALJ) procedures, especially adversarial proceedings whereby we enter the process in general, and the impact on beneficiaries in particular; whether an ALJ's role changes and how much deference the ALJ gives to our policies; dismissals and remands of appeals; and distinctions between reopenings and appeals.

These comments and our responses are discussed below, in order of the new regulations text. (For the convenience of the reader, we are presenting below a chart offering a sequential overview of the available procedures and related time frames associated with the former and current appeals process. This chart is for illustrative purposes only, and certain details (such as when escalation of a case is permissible) have been omitted for ease of presentation. For a full description of the applicable requirements, please consult the preamble material that follows and the regulations text.)



B. Appeal Rights (§ 405.900 Through § 405.912)

1. Basis and Scope, Definitions, General Rules, and Parties to Initial Determinations, Redeterminations, Reconsiderations, Hearings and Reviews (§ 405.900 Through § 405.906)

[If you choose to comment on issues in this section, please include the caption "Appeal Rights—Basis and Scope, etc." at the beginning of your comments.]

In the proposed rule, we proposed that providers would be allowed to file an administrative appeal of Medicare initial determinations to the same extent as beneficiaries. Currently, providers have limited rights to appeal Medicare initial determinations: providers can appeal Medicare determinations only when the determination involves a finding that: (1) The item or service is not covered because it constitutes custodial care, is not reasonable and necessary, or for certain other reasons; and (2) the provider knows, or reasonably could have been expected to know, that the item or service in question is not covered under Medicare (that is, there is a finding with respect to the limitation of liability provision under section 1879 of the Act). Regarding non-participating providers and suppliers, however, we proposed maintaining the current appeal policies.

Consistent with section 940 of the MMA, in this interim final rule, we are making a change to § 405.904(a)(2) concerning the amounts in controversy for ALJ hearings and judicial review. Section 940 of the MMA requires the amount in controversy to be adjusted annually based on the medical care component of the consumer price index for all urban consumers. Accordingly, we have deleted specific references to the previous $100 and $1,000 threshold requirements.

We have made two revisions to proposed § 405.906. In the proposed rule, we inadvertently omitted certain nonparticipating suppliers as potential parties to an initial determination. The interim final rule corrects that error by specifying under § 405.906(a)(2) that a nonparticipating supplier who has accepted assignment can be a party to an initial determination.

Also, consistent with section 1870(h) of the Act, as amended by section 939(a) of the MMA, we have added a conforming provision to § 405.906(c) concerning parties to appeals. Where a provider or supplier is not already a party, revised § 405.906(c) permits the provider or supplier to appeal an initial determination relating to services it rendered to a beneficiary who subsequently dies. This provision is intended to give appeal rights to nonparticipating suppliers who are not considered parties to the initial determination and who may not have secured an assignment of appeal rights from the beneficiary.

Comment: Several commenters sought clarification on whether the intent of the proposed rule was to give party status to providers on the basis of a "technical denial." (A technical denial is a denial based on an item or service failing to meet all of the requirements of a Medicare-covered benefit, rather than on a determination that an item or service is not reasonable and necessary under section 1862(a)(1)(A) of the Act, or on a determination that an item or service constitutes custodial care.) Many interpreted the proposed rule as maintaining the current policy that providers do not have appeal rights for these types of denials. Other commenters believed that our intent was to allow providers to appeal to the same extent as beneficiaries and agreed with the proposal. Still other commenters questioned whether the change in policy to expand appeal rights for providers would mean that contractors would no longer deny claims because the claims failed to meet the requirements of the Medicare benefit.

Response: A provider or supplier can appeal a properly submitted claim only after the contractor has issued an initial determination on that claim. Thus, if a contractor rejects a claim because the claim was improperly submitted (for example, the claim was missing the basic information needed to process it), that rejection does not constitute an initial determination.

Currently, § 405.710(b) allows a provider to appeal an initial determination on Part A coverage only when a contractor determines: (1) That an item or service is not covered because it constitutes custodial care; (2) that an item or service is not covered because it did not qualify as covered home health services because the beneficiary was not confined to the home or did not need skilled nursing care on an intermittent basis; (3) that an item or service is not covered because it was a hospice service provided to a non-terminally ill individual; (4) that the item or service is not covered because it is not reasonable and necessary; and (5) either the beneficiary or provider of services, or both, knew, or could reasonably have been expected to know, that the item or service is excluded from Medicare coverage. Historically, only beneficiaries were afforded the right to appeal claims that were denied because the items or services failed to meet the requirements of the Medicare covered benefit (for example, a denial of home health services due to the lack of a physician certification). Despite this restriction, however, providers routinely accessed the appeals process by acting as the beneficiary's appointed representative in situations where they would otherwise not have had appeal rights.

As discussed in the proposed rule, a clear goal of the BIPA legislation was to establish a uniform appeals process for Part A and Part B claims, and thus for all beneficiaries, providers, and participating suppliers. In keeping with this goal, we believe that the interests of the appeals process would be best served by ensuring that providers are afforded an equal opportunity to be heard with regard to all Medicare initial determinations. Therefore, as proposed, we are specifying that Medicare providers may file administrative appeals of initial determinations to the same extent as beneficiaries. With this change, we achieve consistency in our approach to which individuals or entities can bring an appeal under Part A and Part B.

This interim final rule does not change the available bases for claim denials. Contractors may continue to deny claims on the basis that the item or service is not a Medicare benefit, or more precisely, that the item or service in question does not adhere to all the requirements set forth in the definition of the Medicare benefit. Rather, this interim final rule changes the appeals status of providers and participating suppliers, allowing them to appeal all denials on their own accord.

Comment: One commenter requested clarification on whether a beneficiary can appeal even if the beneficiary has appointed a representative or initiated a valid assignment of appeal rights. The commenter expressed concern that under proposed § 405.906, any party to the initial determination can request a redetermination. A literal reading of this section would permit a beneficiary to pursue an appeal even if the beneficiary has an appointed representative or has assigned appeal rights to a provider or supplier. In addition, the commenter asked if beneficiaries could pursue an appeal at the same time as the provider.

Response: The commenter raises two sets of issues: (1) The appeal rights of a beneficiary who has appointed a representative; and (2) the appeal rights of a beneficiary who has assigned these rights to a provider or supplier.

Beneficiaries can either exercise their appeal rights themselves or through an appointed representative, or they can assign their appeal rights to the provider

or supplier that delivered the service or item. (We note that appointment of a representative and assignment of appeal rights are two different and unrelated actions.) Unlike assignment, appointment of a representative does not entail transferring one's appeal rights, nor does it make the appointed representative a separate party to the appeal. An appointed representative is chosen by a party to assist a beneficiary in exercising appeal rights with respect to one or more initial determinations. The beneficiary retains party status during the appeals process, and therefore, never loses the right to appeal to subsequent levels of the appeals process. To avoid confusion regarding representation, either the beneficiary or the appointed representative (but not both the beneficiary and the appointed representative) should request the appeal.

On the other hand, when a beneficiary completes a valid assignment of appeal rights, the beneficiary assigns appeal rights for the particular claim or claims to a provider or supplier who is not otherwise a party to the initial determination. If the beneficiary assigns appeal rights in accordance with § 405.912(f), then the beneficiary transfers any right to request a redetermination, reconsideration, hearing, or MAC review with respect to the item or services at issue, unless the assignment is revoked in accordance with § 405.912(g). While it is not permissible for a beneficiary to file an appeal when a valid assignment of appeal rights is in force, it is possible for more than one party to file a request for an appeal on the same claim when no assignment of appeal rights has been made (for example, a beneficiary and a supplier that has accepted assignment of a claim). We are providing under §§ 405.944(c) and 405.964(c) that if more than one party timely files a request for redetermination or reconsideration on the same claim before a redetermination or reconsideration is made on the first timely filed request, the contractor or the QIC will consolidate the separate requests into one proceeding and issue one determination. These provisions are consistent with the longstanding policy that multiple parties have t he right to appeal the same claim. We note, however, that has been very rare for more than one party to exercise this right.

Comment: One commenter pointed out that § 405.906(a)(1) lists a beneficiary who has filed a claim for payment or has had a claim for payment filed as a party to the initial determination. The commenter suggested that we revise this provision since beneficiaries in most instances do not file claims.

Response: As a general rule, we require providers and suppliers to submit claims to seek reimbursement for items or services that they have delivered to beneficiaries. Thus, beneficiaries generally do not need to file claims, but they continue to have the right to do so. (In some situations, however, beneficiaries are prohibited from filing claims on their own, such as for glucose test strips.) Accordingly, we believe that it is necessary to maintain this language in the interim final rule to accommodate those rare instances where beneficiaries may submit claims (for example, because a supplier improperly refuses or fails to submit a timely claim with Medicare for reimbursement). For clarity, we have added § 405.926(n) and § 405.926(o) to reflect that a provider or supplier's failure to request an initial determination or submit a timely claim does not constitute an initial determination, and that determinations with respect to whether an entity qualifies for an exception to the electronic claims submission requirement under 42 CFR, part 424, are not considered initial determinations.

2. Medicaid State Agencies (§ 405.908)

[If you choose to comment on issues in this section, please include the caption "Medicaid State Agencies" at the beginning of your comments.]

In the proposed rule, we drafted a separate provision acknowledging the right of a Medicaid State Agency to pursue an appeal on behalf of a beneficiary who is entitled to benefits under both Medicare and Medicaid. We proposed that a Medicaid State Agency would not be considered a party, unless the agency actually pursued a redetermination on behalf of a dually eligible beneficiary. A contractor would not automatically send a Medicaid State Agency notice of determinations made during the administrative appeals process, nor would the agency be permitted to request QIC reconsiderations, ALJ hearings or MAC reviews, unless the agency actually filed a request for redetermination for a beneficiary. If a Medicaid State Agency filed a request for a redetermination, it would retain party status for the claim throughout the rest of the appeals process.

Comment: With regard to a Medicaid State Agency filing an appeal on behalf of an individual that is entitled to both Medicare and Medicaid benefits, one commenter recommended that we clarify the definition of a dual eligible.

Response: A dual eligible beneficiary is one who is eligible for and enrolled to receive benefits under both the Medicare and Medicaid programs. To clarify this concept, we have replaced the proposed text "dually eligible for Medicare and Medicaid" in § 405.908. Instead, the text now states that "[w]hen a beneficiary is enrolled to receive benefits under both Medicare and Medicaid, the Medicaid State Agency may file a request for an appeal with respect to a claim for items or services furnished to a dual eligible beneficiary." We note that we further clarified in this provision that the Medicaid State Agency's appeal is only with respect to services for which has made payment or for which it may be liable.

Comment: A commenter recommended that we clarify what qualifies as a timely filed redetermination request under § 405.908.

Response: A request for a redetermination by a Medicaid State Agency will be considered timely if it meets the requirements at § 405.942. Section 405.942(a) specifies that a request for a redetermination must be filed within 120 calendar days from the date the party receives the notice of the initial determination. Although the Medicaid State Agency is not a party to the initial determination, it is filing a redetermination request with respect to a claim for items and services furnished to a beneficiary. Therefore, the timeliness of the request will be determined by the date that the beneficiary receives the initial determination notice, otherwise known as the Medicare Summary Notice (MSN). For purposes of calculating the date of receipt of the MSN under § 405.942(a)(1), it is presumed that the beneficiary received the MSN 5 days after the date on the MSN, unless there is evidence to the contrary.

3. Appointed Representatives (§ 405.910)

[If you would like to comment on issues in this section, please include the caption "Appointed Representatives" at the beginning of your comments.]

Under proposed § 405.910, we incorporated and modified several of the provisions in 20 CFR part 404, subpart R, and 42 CFR part 405, subparts G and H, as they relate to the representation of parties. These provisions eliminated the need for incorporation of the existing SSA regulations regarding appointment of representatives.

Proposed § 405.910(a) sets forth the definition of appointed representative as an individual authorized by a party, or

under State law, to act on the party's behalf in dealing with any of the levels of the appeals process. Appointed representatives do not have independent party status and take action only on behalf of the individual or entity they represent.

Under proposed § 405.910(d), we set forth that in order to be valid, an appointment both needs to be in writing, and signed by the party making the appointment and the individual agreeing to accept the appointment (even when the individual being appointed is an attorney). Proposed section § 405.910(e) establishes the time frame governing the duration of representation as: (1) The life of an individual appeal, and (2) for purposes of appeals of other initial determinations, one year from its original effectuation.

New section 1869(b)(1)(B)(iv) of the Act makes clear that section 206(a)(4) does not apply in the case of Medicare appeals. This section permits the award of attorney's fees (not to exceed 25 percent) from a claimant's entitlement to past-due disability benefits. Therefore, in proposed § 405.910(f), we are explicit that no award of attorney fees can be made against the Medicare trust funds. However, we requested comments on petitions to ALJs to review and approve attorney fees.

In proposed § 405.910(g) through § 405.910(k), we delineated the responsibilities and rights of an appointed representative. In proposed § 405.910(l), we established the rules regarding delegation. (Delegation is the act of empowering another to act as a representative.) In order for an appointed representative to designate another person to act as a representative (the designee), the appointed representative must: (1) Give the designee's name to the party; (2) secure the designee's acceptance of both the representation and the requirements of that representation; and (3) secure the represented party's acceptance of the new arrangement with a signed, written document. We note that the decision on whether to have an appointed representative belongs to the party, and we neither encourage nor discourage representation. Therefore, under proposed § 405.910(m), a party would have the ability to revoke an appointment for any reason, at any time.

Comment: A commenter suggested amending the regulation to require that appointed representatives for providers be members of the bar. However, this commenter also recommended permitting non-attorneys to act as representatives for beneficiaries, but only if these representatives waived receipt of a fee for their services.

Response: Section 1869(b)(1)(B)(iv) of the Act establishes that the requirements set out in sections 205(j) and 206 of the Act govern who may serve as a representative for a Medicare beneficiary. Section 405.910 of the regulations permits anyone who satisfies the requirements outlined in section 205(j)(2) to act as a representative. The provisions of § 405.910(b) discuss persons not qualified to act as an appointed representative. Nothing in section 205(j)(2) requires appointed representatives to be members of the bar. Therefore, we do not agree that it is appropriate or necessary to limit providers' access to the administrative appeals process by requiring them to retain attorneys if they wish to appoint a representative.

Similarly, there is nothing in section 205(j)(2) that requires non-attorneys who represent beneficiaries to waive their fees. However, we agree with the commenter that certain precautions be taken to prevent a conflict of interest when the party that provides an item or service is the same party representing the beneficiary in a claim appeal. Therefore, in accordance with section 1869(b)(1)(B)(iii) of the Act, new § 405.910(f)(3) requires that a provider or supplier who both furnished the service being appealed and represents the beneficiary in the Medicare claim appeal, must waive the right to collect a fee for acting as the appointed representative. Additionally, if the appeal involves a question of liability under section 1879 of the Act, the provider or supplier may not represent the beneficiary unless the provider or supplier also waives the right to collect payment for the item or service at issue.

Comment: We solicited comments on our proposal to require attorneys to petition ALJs for review and approval of fees. A few commenters suggested that appointed representatives who are members of the bar of one of the fifty States, the District of Columbia, or Puerto Rico, not be required to petition an ALJ in order to collect a fee. Instead, one commenter suggested that oversight should be left to the bar of which the attorney is a member.

There were also a number of comments regarding the ability of appointed representatives to charge fees. The commenters noted that the proposed rule addressed only fees charged by attorney representatives, and recommended that we address fees for non-attorneys in this interim final rule. One commenter recommended that the final rule include explicit language requiring non-attorney representatives to waive any right to charge and receive a fee. Finally, other commenters inquired about the applicability of the Equal Access to Justice Act (EAJA) to the new appeals process and recommended that the final rule reference the availability of attorney's fees.

Response: Section 1869(b)(1)(B)(iv) of the Act establishes that the provisions of sections 205(j) and 206 (other than subsection (a)(4)) of the Act apply to representation for Medicare claim appeals in the same manner as they apply to representation for Social Security claims. By incorporating these sections, the Congress maintained that for appeals before the Secretary, appointed representatives, including attorneys, must obtain approval of fees before charging a party.

Consistent with the current practice of fee petitions before ALJs, and sections 205(j) and 206 (other than subsection (a)(4)) of the Act, as applied by section 1869(b)(1)(B)(iv) of the Act, we are requiring in new § 405.910(f)(1) that an attorney or other person who represents a beneficiary, and who wishes to charge a fee for services rendered in connection with an appeal before the Secretary, must seek approval of the fee from the Secretary. Although it would be up to the Secretary to determine the reasonableness of the fee, we do not believe the provisions in sections 206(a)(2) and 206(a)(3) of the Act will be relevant in determining whether a fee is reasonable. In Social Security appeals, those provisions limit a representative's fee, in certain instances, to the lesser of 25 percent of past due benefits or $4,000 (with the $4,000 cap subject to an update factor determined by the Commissioner of Social Security). Unlike Social Security appeals, Medicare appeals do not involve past-due cash benefits; moreover, the benefits at issue can vary from as little as $100 (the minimum amount in controversy for an ALJ appeal) to $100,000 or more, and we do not believe that applying a 25 percent test to these divergent figures is reasonable. Therefore, the test in sections 206(a)(2) and 206(a)(3) of the Act is irrelevant in determining the reasonableness of representatives' fees. Also, section 206(a)(4) does not apply, because the Medicare program does not involve past-due cash benefits. The process for obtaining fee approval will be further described either in future rulemaking or in ALJ and MAC level procedural manuals or other issuances, as appropriate.

We do not consider services below the ALJ hearing level in connection with

claims in proceedings before Medicare contractors (such as intermediaries, carriers, QICs, QIOs and other independent review entities) to be services provided in connection with proceedings before the Secretary. Section 206(a) authorizes the Commissioner of Social Security to prescribe rules and regulations to govern the representation of claimants in proceedings before the Commissioner. This provision has been interpreted to include proceedings at the ALJ level and above. Thus, appeals before the Secretary of HHS have long been interpreted to include only the ALJ level and above. Therefore, the fee petition provisions do not apply to services rendered below the ALJ hearing level, nor do they apply to representatives of non-beneficiary appellants.

We also agree that fee limitations are appropriate for certain non-attorneys who represent beneficiaries. Accordingly, § 405.910(f)(3) requires providers and suppliers who furnished the items or services in question to waive the right to charge and collect any fee for representing a beneficiary in a claim appeal. This is required by section 1869(b)(1)(B)(iii) of the Act. To ensure that this policy is followed consistently, we will revise the Appointment of Representative form, CMS–1696–U4, to reflect this policy. In § 405.910(f)(4), we also added that the Secretary does not review fee arrangements made by a beneficiary for the purposes of making a claim for third party payment (as defined in 42 CFR § 411.21) even though that representation may ultimately include representation for a Medicare Secondary Payer recovery claim.

Guidelines for the application of Equal Access to Justice Act (EAJA) to claims before the Department may be found at 45 CFR part 13. (The final rule was published in the **Federal Register** at 69 FR 2843 (January 21, 2004)). The final rule governs the applicability of EAJA to the Medicare claim appeals process. The Department intends to review the EAJA provisions to determine what, if any, amendments may be necessary to reflect the changes being implemented in this regulation.

Comment: A commenter asked what, if anything, are the consequences of failing to satisfy all seven of the requirements set out in proposed § 405.910(d) for making out a valid appointment.

Response: All of the requirements in new § 405.910(c) are necessary to complete a valid appointment of representation. To clarify this matter, we are specifying under new § 405.910(d) that if any of the required elements are missing or defective, adjudicators must contact the party with a description of the missing documentation or information. Unless the defect is cured, the prospective appointed representative lacks the authority to act on behalf of the party, and is not entitled to obtain or receive any information related to the appeal, including the appeal decision. An individual may also use a CMS–1696 form to appoint a representative. That form contains all of the required elements to complete a valid appointment of representation.

Comment: We received several responses to our request for comments regarding alternative time frames for the duration of an appointment of representative. Some commenters simply wanted clarification of the policy in the proposed rule. Others understood our proposal to make appointments valid for one year, but wondered if the one-year period began on the date-of-service for the appealed claim, or on the date that the beneficiary, provider or supplier authorized another individual to appeal on their behalf. One commenter argued that because we offered no indication that representatives were initiating appeals without the consent of the appellants, limiting the duration of appointments would serve only to create unnecessary hardships for appellants. Providers, and suppliers would be prevented or delayed from entering the claim appeals process, and beneficiaries with chronic conditions would be required to renew the appointment every year.

Response: A number of the comments that we received indicate some confusion between the appointed representative provisions at § 405.910 and the assignment provisions at § 405.912. Appointing a representative and assigning appeal rights are two different and unrelated actions under the new appeals process. Beneficiaries have the option of either assigning their appeal rights to a provider or supplier, or appointing a representative to exercise their appeal rights for them.

Under the assignment provision, a beneficiary transfers his or her right to appeal a specific claim or claims to a provider or supplier who is not already a party to the initial determination. In doing so, the beneficiary completely relinquishes any right to appeal the claim or claims at issue and the provider or supplier becomes a party and may appeal.

Appointing a representative, however, does not transfer a party's appeal rights, nor does it make the appointed representative a party to the appeal. An appointed representative is chosen by a party for the duration of one year to assist the party in exercising appeal rights for one or more initial determinations. We believe that once an appeal of an initial determination has been filed, the appointed representative retains the right to manage that appeal through the entire appeals process, regardless of how long it takes to reach a final decision. In § 405.910(e)(3), we state that unless revoked, an appointment is valid for the life of the appeal.

In § 405.910(e)(4), we made an exception for appointments signed in connection with Medicare Secondary Payer recovery claims, because liability, no-fault, and worker's compensation claims often take more than one year to resolve. Where an appointment of representative is related to these recovery claims, the appointment is valid from the date that it is signed through the duration of any subsequent appeal.

We do not agree that either an appointment or the representative's ability to file appeals of future claims continues indefinitely. Appointed representatives have unlimited access to protected health care information, and as we stated in the proposed rule, we have an affirmative duty to ensure that our adjudicators only disclose protected health information to authorized third parties. Taking this into consideration, we believe that it is both necessary and appropriate to limit the duration of an appointment and a representative's ability to file additional appeals to a period of one year, beginning on the day that the appointment becomes effective.

In § 405.910(i)(4), we specifiy that for initial determinations involving MSP recovery issues, the notice of initial determination must be sent to the beneficiary and appointed representative. This differs from non-MSP determinations where only the beneficiary receives the notice of initial determination to prevent more than the minimum amount of personally identifiable health information from being disclosed. Unlike other notices of initial determination, which may include information on claims not at issue, MSP notices of initial determination are limited to include only the minimum necessary amount of information related to the claims at issue.

Section 405.910(e)(1) clarifies that the effective date of the appointment is the day that the Appointment of Representative (AOR) form or other written instrument contains the signatures of both the party and appointed representative. Also, we are

requiring under § 405.910(e)(2) that during this one-year period, representatives must submit a copy of the signed and dated original appointment with each additional appeal that they file on behalf of the party.

Finally, we made one other significant change to § 405.910. Although we proposed provisions in the context of appeals, we solicited comments on whether the appointment of representative procedures should apply for initial determination purposes as well. We did not receive comments on this issue, but we believe there is no reason to imply that different procedures or rules apply to initial determinations. Therefore, we have provided under § 405.910(a) of this interim final rule that the appointment of representative provisions apply for initial determinations, as well as for appeals. Also, under § 405.910(e)(3), an appointment signed in connection with the party's efforts to request payment of a claim is valid from the date that appointment is signed for the duration of any subsequent appeal, unless the appointment is specifically revoked. When a contractor issues an initial determination, it sends a notice of that action only to the party, and not to the party's appointed representative.

Comment: One commenter was concerned about the inability of an appointed representative to delegate an appointment to another person without first obtaining the party's signature. The commenter opined that requiring a beneficiary's signature in order to delegate an appointment would greatly impede a beneficiary's ability to receive timely representation. By way of example, the commenter noted that a signature requirement would prevent a family member acting as a representative for an incapacitated beneficiary from retaining an attorney or paralegal to represent the beneficiary in a Medicare claim appeal. Additionally, the commenter stated that the signature requirement would prevent appointed representatives who are members of a law firm or a legal services organization from designating a new representative within the firm or organization when program turnover or workload necessitated a change.

Response: Although we appreciate the administrative benefits to be gained from allowing an appointed representative to delegate an appointment to another individual, the privacy concerns that we noted previously seriously impact our ability to permit delegation in most instances. We believe that the benefits that are gained by ensuring that a beneficiary is made aware when an appointment has been delegated outweigh the burden of obtaining the beneficiary's consent. We also do not believe that this requirement will greatly impede the beneficiary's ability to receive timely representation.

In the case where a beneficiary is no longer mentally capable of giving consent or signing the appointment of representative form, the family member or friend should refer to State law. As defined in § 405.902, an authorized representative is an individual authorized under State or other applicable law to act on behalf of a beneficiary or other party involved in the appeal. Unlike an appointed representative, an authorized representative "stands in the shoes" of the beneficiary. State requirements differ with respect to what is required to legally represent an incompetent beneficiary. Individuals appointed or designated under State statutes may act as authorized representatives. For example, some States have health care consent statutes providing for health care decision-making by surrogates on behalf of patients who lack advance directives and guardians. Other States have laws that grant authority to individuals with durable powers of attorney. In an emergency, a disinterested third party, such as a public guardianship agency, may be an authorized representative, for example, in a situation where the beneficiary's inability to act has arisen suddenly (for example, a medical emergency, a traumatic accident, an emotionally traumatic incident, disabling drug interaction, or stroke), and there is no one who can be genuinely considered to be the beneficiary's choice as his or her authorized representative. Thus, an individual who has legal authority under State law is able to make decisions on behalf of a beneficiary, including the ability to delegate the appointment to another person, without first obtaining the beneficiary's signature.

Attorneys in law firms and legal service organizations present a unique situation. As a general rule, attorneys within the same law firm already are obligated to observe strict confidentiality rules with respect to client information, and therefore, the common practice of delegating cases to other attorneys within the firm does not warrant privacy concerns. Thus, we believe it is appropriate to permit attorneys to delegate another attorney within the same firm or organization as a substitute representative. Section 405.910(l)(2) is amended to reflect this policy.

Comment: A commenter asked that we provide information on how to change an appointed representative during the appeals process.

Response: As indicated in the proposed rule, we believe that the decision of whether to retain an appointed representative be left entirely to the party bringing the appeal. Section 405.910(m) permits a party to revoke an appointment at any time and for any reason by submitting a signed, written statement to the entity processing the appeal. The revocation is effective once it is received by the entity hearing the appeal. The party can then appoint a new representative.

4. Assignment of Appeal Rights (§ 405.912)

[If you choose to comment on issues in this section, please include the caption "Assignment of Appeal Rights" at the beginning of your comments.]

Under proposed § 405.912, we created new regulatory procedures for the assignment of appeal rights by a beneficiary to a supplier or provider of services. We proposed that a provider or supplier that furnished the item or service at issue and that wanted to take assignment of a beneficiary's appeal rights for a particular claim must waive any right to payment from the beneficiary in order to fully protect beneficiaries when their appeal rights are assigned. This does not prohibit the provider or supplier from recovery of any coinsurance or deductible or claiming payment in full where the beneficiary has signed an Advance Beneficiary Notice (ABN) accepting responsibility for payment. We proposed that the assignment be valid for the duration of the appeals process, but only for the items or services listed on the assignment form.

Comment: One commenter requested clarification on whether an assignment applies to an individual item or service, or to all items or services within an entire claim. The commenter believed that assigning different providers or suppliers for multiple items or services within a claim would be too confusing.

Response: We do not believe that it is appropriate or necessary to require beneficiaries to relinquish their rights to appeal individual items or services. Consistent with our longstanding policy where we allow beneficiaries to appeal individual items or services within a single claim, § 405.912 permits beneficiaries to assign their appeal rights for individual items or services to providers and suppliers. We believe that this will not cause confusion since each claim originates from a single provider or supplier. The provider or supplier

needs to ensure that the assignment form includes the full range of items or services furnished on the date of service.

Comment: One commenter expressed concern that obtaining assignment after services were provided would adversely affect providers with transient populations because their beneficiary contact information is usually for temporary residences. The commenter suggested that the assignment form be available to be signed at admission.

Response: We understand the concerns of the commenter, and agree that the assignment form may be completed at admission. Section 405.912(c) does not prevent a provider and beneficiary from being able to complete and execute the assignment at the time that the beneficiary receives services. When a provider needs to appeal an initial determination that denies payment for the services rendered, the provider can submit the previously signed assignment form with the request for redetermination.

Comment: One commenter suggested that the regulation be clarified to ensure that the waiver of collection from the beneficiary applies even if the appeal is unsuccessful.

Response: We agree that the regulation should be clarified to specify that the waiver of the right to collect payment by the assignee remains valid in the event of an unfavorable determination or decision. We have amended our proposed § 405.912(d)(1) to specify that the waiver remains in effect regardless of the outcome of the appeal decision. We have also taken the opportunity to correct an omission in § 405.912(d)(1). The waiver of payment also remains in effect if the assignment is revoked under § 405.912(g)(2) or § 405.912(g)(3). That is, if the assignee fails to file an appeal of an unfavorable decision or if an act or omission by the assignee is determined to be contrary to the financial interests of the beneficiary, the assignee will not be able to collect payment from the beneficiary.

Comment: One commenter recommended that the waiver of the right to collect from the beneficiary apply regardless of whether there is an ABN in effect. The commenter expressed concern that a provider or supplier might be inclined to require a beneficiary to sign an ABN for any item or service in order to protect any future collection of payment.

Response: We prohibit providers and suppliers from routinely issuing ABNs for all services. ABNs generally are issued only when the provider or supplier has reason to believe that Medicare is not likely to cover the furnished services. Thus, we are maintaining the provision at § 405.912(d)(2) that an assignee that furnished the item or service is not prohibited from recovering payment when an ABN has been properly executed. We believe an alternative policy would create disincentives for providers and suppliers to bring appeals on behalf of beneficiaries when they believe Medicare is denying coverage improperly. If providers and suppliers are faced with the choice of appealing what they believe to be an erroneous denial or collecting from the beneficiary in the event of an unfavorable decision, they may simply decide to place the burden of appeal on the beneficiary.

Comment: Some commenters raised concerns about our proposal to permit beneficiaries to revoke an assignment. One commenter recommended that assignment be irrevocable until the appeal is filed or the deadline for filing has expired in order to prevent a provider or supplier from wasting resources pursuing an appeal. The commenter suggested that we establish a time frame for a beneficiary to revoke an assignment. Another commenter requested that we define the specific circumstances that constitute abandonment.

Response: We believe that it is unnecessary to establish a time frame to limit a beneficiary's right to revoke an assignment. The inherent nature of an assignment protects the interests of a beneficiary since transferring the appeal rights to a provider or supplier precludes the provider or supplier from collecting payment from the beneficiary in the event of an unfavorable determination. We believe that beneficiaries will rarely revoke an assignment; therefore, the possibility of providers and suppliers unnecessarily pursuing appeals is remote. A somewhat more likely scenario involves abandonment, that is, inaction on the part of the assignee to undertake or proceed in the appeals process. Section 405.912(g)(2) addresses this situation by specifying that an assignment may be revoked "[b]y abandonment if the assignee does not file an appeal of an unfavorable decision."

Comment: One commenter supported the use of a standardized form for assignment. The commenter suggested that the form include an explanation of assignment and what an assignee does for a beneficiary. The commenter also suggested that proposed § 405.912(d)(2) should be revised to reflect that the assignment may be executed by the beneficiary or his or her representative.

Response: We agree with the commenter and are developing a standardized form for assignment, as required by section 1869(b)(1)(C) of the Act. This form, which has been consumer-tested with the beneficiary population, contains extensive information to assist beneficiaries in understanding the assignment and execution of their appeal rights.

As mentioned in an earlier response, we added a definition of an "authorized representative" at § 405.902. Authorized representatives (for example, a legal guardian or someone with a power of attorney) possess all the rights associated with the appeals process to the same extent as beneficiaries. Therefore, we do not believe that it is necessary for new § 405.912(c)(2) to reflect that an authorized representative may execute an assignment of appeal rights on behalf of a beneficiary. Appointed representatives under § 405.910, including attorneys, may assist the beneficiary or another party with Medicare appeals, but they do not have any other rights or responsibilities with respect to the beneficiary or another party, and may not sign documents as the beneficiary or party. Thus, an appointed representative may not assign appeal rights under § 405.912 without the beneficiary's or other party's consent.

5. Initial Determinations (§ 405.920 Through § 405.928)

[If you choose to comment on issues in this section, please include the caption "Initial Determinations" at the beginning of your comments.]

Section 1869(a)(2)(A) of the Act establishes that for all claims other than clean claims (a clean claim is a claim that has no defect or impropriety), an initial determination must be concluded, and a notice of that determination must be mailed, by no later than 45 days after the carrier or fiscal intermediary receives the claim. We proposed that interest would not accrue on non-clean claims that were not adjudicated within 45 days. By definition, non-clean claims are often claims that require additional documentation, and therefore take additional time to process.

With respect to clean claims, section 1869(a)(2)(B) of the Act requires that interest accrues if clean claims are not processed within 30 days. This standard remains the same as specified in sections 1816(c)(2) and 1842(c)(2) of the Act.

We proposed to continue to notify parties of the initial determination in writing. The proposed content of the notices included the basis for the determination and notification to the parties of their right to a

redetermination if they were dissatisfied with the outcome of the initial determination. Consistent with existing policy, the Remittance Advice (RA) and Medicare Summary Notice (MSN) would be used as a notice of initial determination.

We also proposed the types of actions that constitute initial determinations, as well as those that do not constitute initial determinations. We generally proposed to maintain the existing policies concerning initial determinations, while at the same time unifying the Part A and Part B rules. We have also included examples specific to Medicare Secondary Payer situations in listing the type of actions that constitute initial determinations. We specified our longstanding policy that SSA will continue to make Part A and Part B entitlement and enrollment determinations. As noted previously in section I.C.1 of this interim final rule, section 931 of the MMA requires the transfer of ALJ hearing functions from SSA to HHS. Although SSA will continue to make Part A and Part B entitlement and enrollment determinations and reconsiderations subject to the requirements set out at 20 CFR Part 404, Subpart J, HHS will be responsible for reviewing entitlement and enrollment decisions at the ALJ and MAC levels. We note, however, that this regulation does not provide the specific procedural requirements that will apply to the adjudication of entitlement appeals. These instructions will instead be provided separately once this interim final rule is published. We believe that this approach will ensure that beneficiaries, providers, suppliers, and other interested parties receive clear guidance regarding the procedures for appealing an entitlement determination at each level of the appeals process.

We addressed the circumstances under which an appeal can be filed when a beneficiary disputes the computation of coinsurance amounts. Previously, our rules stated that beneficiaries could appeal Medicare determinations regarding the "application of the coinsurance feature." We clarified this provision to state that the contractor's "computation of coinsurance" was considered an initial determination, and therefore, could be appealed. In making this proposal, we considered that for most Part B services, beneficiaries were responsible for a 20 percent coinsurance payment and, since the contractor calculated the percentage, a beneficiary should be able to appeal the contractor's computation. In instances where the coinsurance amount was not computed by the contractor, but rather, was an amount prescribed by regulation (for example, outpatient services), the issue of the appropriateness of the coinsurance amount was not appealable since it was an automatically calculated amount based directly on a fee schedule exempt from review.

We also specified that there be no administrative appeal rights available for certain aspects of initial determinations. For example, under section 1833(t) of the Social Security Act (the Act), administrative appeals are prohibited for issues involving the calculation of coinsurance amounts for outpatient services subject to prospective payment rules, and under section 1848(i) of the Act, the values used to calculate allowable amounts under the physician fee schedule may not be the subject of an administrative appeal. Additionally, we proposed some further examples of actions that are not initial determinations, such as waiver of interest determinations and certain Medicare Secondary Payer actions.

Comment: One commenter suggested that the initial determination notice contain more details about requesting a redetermination, such as the documentation needed to pursue an appeal. The commenter recommended that the notice give exact citations for the rules and policies upon which the determination is based and explain how to obtain them. The commenter also suggested that the notice include a toll free number that appellants can call to receive copies of coverage rules and policies.

Response: We agree with the commenter that initial determination notices contain information necessary for beneficiaries to initiate appeals. However, we believe that existing notice requirements are fully compatible with this objective, and we do not believe that additional detail is appropriate.

Currently, beneficiaries receive initial determination notices through the Medicare Summary Notice (MSN), and providers and suppliers receive notices on the Remittance Advice (RA). The MSN is a consumer-tested, customer-friendly monthly statement that lists all of the services or supplies billed to Medicare during a 30-day period. It contains information about requesting an appeal on the bottom of the last page and at the back of each page. The MSN indicates the date that an appeal must be filed in order for it to be considered timely. The MSN also allows beneficiaries to appeal by circling an item, explaining why they disagree, and signing and sending the notice, or a copy of the notice, to a specified address.

We also agree with the commenter that MSNs indicate when the basis for a claim denial involves a local or national coverage determination. Effective during 2003, CMS now requires fiscal intermediaries and carriers to provide references to coverage policies when they describe the basis for claim denials. However, based on nationwide testing of Medicare beneficiary focus groups, CMS does not include regulatory citations in MSNs because they are confusing to beneficiaries. We believe that referring to a local or national coverage determination is more meaningful to beneficiaries in helping them understand the reason their claim has been denied.

The MSN contains the Medicare toll-free number so that beneficiaries can obtain information about various aspects of the Medicare program, including individual claim determinations. Beneficiaries can also use the toll-free number to request a copy of the coverage rule or policy used as the basis to deny a claim, or they may access the policies via the Internet.

Thus, in light of the information already contained in MSNs, we do not believe that it is necessary to modify the initial determination notices sent to beneficiaries. However, we believe it is appropriate to include in the regulations the explicit notice requirements that are set forth under section 933(c)(1) of the MMA. Therefore, § 405.921(a)(1) specifies that contractors must write the MSNs in a manner calculated to be understood by the beneficiary. We have also set forth the statutory content requirements as to the contents of the notice in § 405.921(a)(2). That is, the notice must contain the reasons for the determination, including whether a local medical review policy, local coverage determination, or national coverage determination was applied, the procedures for obtaining additional information concerning the determination, such as the specific provision of the policy, manual, law, or regulation used in making the determination, and notification to the parties of their right to a redetermination if they are dissatisfied with the outcome of the initial determination. The notice also must include instructions on how to request a redetermination. Again, we believe that the existing MSNs meet all the new MMA requirements and have codified these beneficiary notice requirements in § 405.921(a). Furthermore, although the statutory requirements apply only with respect to beneficiary notices, we have adopted very similar requirements for notices to providers and suppliers under

§ 405.921(b). The format and content requirements adopted as the national standard for remittance advice transactions under HIPAA and the corresponding CMS requirements for electronic and paper remittance advice notices already require use of messages or codes to explain initial determinations, and the reasons for any full or partial denial decisions that apply to services on a claim, as well as the appeal rights in relation to the decision. Thus, the MMA requirements for beneficiary notices are generally already in use in the remittance advice notices to providers and suppliers.

Finally, we note that contractors will issue MSNs to beneficiaries only, and not to appointed representatives or assignees. Throughout § 405.910, we have reinforced the concept that appointed representatives have the same right as beneficiaries to receive information on claims only after an appeal has been filed. Consistent with HIPAA, a contractor may not disclose protected health information without a valid appointment. MSNs encompass a range of health services and supplies that were billed to Medicare within a 30-day period. Because an appointed representative may not have authority to receive information on all such services or supplies, we believe that it is appropriate for contractors to disseminate MSNs only to beneficiaries. Furthermore, we believe that it is unnecessary to incur the substantial costs to modify the standard systems to generate MSNs to appointed representatives.

Comment: We received several comments regarding procedures that should be established when contractors do not meet the statutory deadlines for making initial determinations. Section 521 of BIPA maintains the existing 30-day time frame for 95 percent of clean claims under sections 1816(c)(2) and 1842(c)(2) of the Act, and establishes a 45-day time frame for claims that are defective or require special treatment or substantiating documentation. Some commenters believe that we should create an escalation provision for initial determinations similar to the escalation provisions required by statute for QIC reconsiderations, ALJ hearings and MAC reviews. This would enable parties to proceed to the redetermination level of the appeals process when contractors fail to meet the 45-day statutory time frame. One commenter recommended that when the contractor fails to make an initial determination within 45 days, the claim bypasses the redetermination level and advances to the reconsideration level.

Some commenters argued for contractor penalties such as strict contractor evaluations, sanctions, or non-renewal of contracts based on noncompliance beyond a reasonable threshold. These commenters believed that any exceptions to the 45-day rule should be narrow. Other commenters urged us to assess interest penalties for non-clean claims that would mirror the provision for clean claims. Still other commenters thought that the 45-day time frame for non-clean claims might be too stringent and that we should set up specific, achievable time frames with appropriate penalties to ensure compliance.

Response: We understand the commenters' concerns regarding the need for contractors to process claims timely and pay them promptly. It is also important that contractors employ appropriate medical review strategies to ensure the appropriate payment of billed claims. When a contractor undertakes medical review on a claim, it is not always possible to pay within 45 days, particularly if a provider or supplier does not submit the additional documentation requested in a timely manner. We believe that protecting the Medicare Trust Funds through medical review of certain questionable claims that are flagged by our system edits is preferable to making inappropriate payments, absent proper evidence. We retain reputable independent third-party auditing firms to ensure that contractors are following all Medicare laws, rules, and regulations.

In addition, we strongly believe that providers and suppliers play a vital role in the FIs' and carriers' ability to meet their decision-making time frames. If providers and suppliers submit clean claims, they can avoid the delays that are associated with processing non-clean claims. The more complete the claim is upon initial submission, the greater the ability of the Medicare contractor to process the claim quickly. Until a determination can be made, however, we continue to believe that no interest should accrue on non-clean claims. In addition, the Congress has authorized interest only in the case of clean, complete claims.

We also believe that it would be inefficient and result in unnecessary costs to escalate undeveloped claims to the redetermination or reconsideration levels. These claims could not be reviewed or reconsidered because there would be no initial determination to review. Furthermore, the Congress weighed the merits of escalation and chose to implement that option only at the QIC level and above.

Comment: A few commenters suggested that we define the terms "non-clean" and "clean" in the context of claims.

Response: As defined in sections 1816(c)(2)(B)(i) and 1842(c)(2)(B)(i) of the Act, "[t]he term "clean" claim means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim." Claims that do not meet this definition are considered "non-clean" claims. Since the term "clean claim" is clearly defined in statute, we are maintaining this definition as proposed in § 405.902.

We have also included in § 405.902 other statutory and regulatory definitions, such as, beneficiary, provider, supplier, carrier and fiscal intermediary. We did not define these terms in the proposed rule because they are defined in 42 CFR part 400. However, for the convenience of Medicare appellants, we have decided to provide definitions in this section as well.

Comment: One commenter believed that we should clearly state whether a beneficiary who has paid for an item or service up front is entitled to any interest that would accrue if the contractor does not pay the clean claim within the statutory time frame, regardless of whether the claim was submitted by the beneficiary or on the beneficiary's behalf. The commenter argued that in this situation, the beneficiary would suffer irreparable harm by the delay in processing the claim, as opposed to the provider or supplier, and paying interest to them would result in their unjust enrichment.

Response: In the agreement and attestation statement signed by a provider, the provider agrees not to charge beneficiaries for services for which beneficiaries are entitled to have payment made on their behalf by the Medicare program. In accordance with the provider participation agreement, the provider may only bill the beneficiary upfront for any unmet deductible and the applicable coinsurance. Therefore, institutional providers are always paid directly by the FI, including any applicable interest.

Likewise, participating suppliers and suppliers who accept assignment are also precluded from charging the beneficiary more than the unmet deductible and the applicable coinsurance. If the supplier collects any additional payment from the beneficiary before submitting the claim, the supplier must show on the claim form

the amount collected. The carrier then will refund directly to the beneficiary the additional payment along with any applicable interest on the over collected amount. In situations where the supplier does not accept assignment on a claim, the carrier makes payment directly to the beneficiary and includes any applicable interest regardless of whether he or she paid the supplier up-front for the item or service.

Comment: One commenter asserted that the proposed rule's reference to SSA making initial determinations with regard to entitlement issues was incorrect.

Response: We disagree with the commenter and maintain our longstanding policy that SSA makes initial determinations concerning applications for enrollment, as well as determinations regarding Part A and Part B entitlement. Consistent with our current regulations at 42 CFR § 405.704(a)(3) and § 405.704(a)(4), we have also added language to § 405.924(a)(3) to specify that an initial determination includes a denial of a request for withdrawal of an application for hospital or supplementary medical insurance or a denial of a request for cancellation of a request for withdrawal of an application for hospital or supplementary medical insurance. Section 405.904(a)(1) clarifies the jurisdictional authority of SSA and DHHS with respect to initial determinations and appeals for applications and entitlement issues. That is, SSA will continue to perform initial determinations and reconsiderations, and DHHS" ALJs and MAC will conduct hearings and reviews. As noted above, we intend to provide further guidance on how ALJs and the MAC will process entitlement appeals in separate instructions.

Comment: We received a comment on whether proposed § 405.924(b)(13), which defines an initial determination as a determination having a current or potential effect on the amount of benefits to be paid, includes Resource Utilization Group (RUG) categories. The commenter asked that we clarify in the final rule that the appeal rights for RUG reclassifications established in CMS Transmittal A–00–08 are continued in the final rule. The commenter also believes that proposed § 405.906(a)(3) and § 405.940 appeared to grant providers the right to seek redeterminations when a RUG is down coded to another category. However, the commenter noted that this conflicted with the reopening provisions at § 405.980, which seemed to suggest that all adjustments to claims must be handled through the reopenings process.

Response: As the commenter points out, CMS Transmittal A–00–08, which is now in the Program Integrity Manual at Chapter 6, allows skilled nursing facilities (SNFs) to appeal denials based on section 1862(a)(1)(A) of the Act. Nothing in this interim final rule limits the right of appeal created by CMS Transmittal A–00–08.

Although down coding a RUG category may be considered an initial determination under new § 405.924(b)(12), if the down coding was alleged to be the result of a clerical error as defined in § 405.980(a)(3), then the request for appeal likely can be processed as a request for reopening. This approach is consistent with section 937(a) of the MMA and the reopening provisions at § 405.980, whereby errors or omissions may be corrected without pursuing appeal. We note that, in this interim final rule, we have added a new section at § 405.927 regarding initial determinations that may be subject to the reopenings.

We also note that we have added specific language to new § 405.924(b)(13) to make it clear that the issue of whether a waiver of adjustment or recovery under sections 1870(b) and 1870(c) of the Act is appropriate is an initial determination with respect to a provider, supplier, or beneficiary in the context of both non-Medicare Secondary Payer overpayments and Medicare Secondary Payer recovery claims.

Comment: One commenter questioned whether the amount of coinsurance owed under the outpatient prospective payment system (OPPS) would be considered an initial determination, given that § 405.924(b)(5) indicates that the computation of coinsurance amounts constitutes an initial determination. The commenter pointed out that § 405.926(b) states that "coinsurance amounts prescribed by regulation for outpatient services under the prospective payment system" are not initial determinations. The commenter believed that section 1833(t)(12) of the Act does not preclude administrative and judicial review of the computation of OPPS coinsurance amounts.

Response: Section 4523(a) of the Balanced Budget Act of 1997 (BBA) amended section 1833 of the Act by adding subsection (t) which provides for the implementation of a prospective payment system (PPS) for outpatient services. Section 1833(t)(12) of the Act precludes administrative or judicial review of the calculation of the unadjusted coinsurance amount, as well as administrative or judicial review of coinsurance amounts directly premised on base amounts calculated pursuant to section 1833(t)(3) of the Act. Therefore, the unadjusted coinsurance amount under 1833(t)(3) of the Act is not an initial determination subject to any type of review. On the other hand, if a party believes that an item or service was incorrectly coded, leading to a higher coinsurance amount for that service, the party can challenge that determination in an appeal.

Comment: One commenter argued that inherent reasonableness is an initial determination under proposed § 405.924(b)(13) because it is an issue that has a present or potential effect on the amount of benefits to be paid under Part A or Part B. Another commenter believed that a party who is dissatisfied with an initial determination should be able to appeal a claim where the amount of payment was determined based on the application of an inherent reasonableness policy.

Response: Sections 1842(b)(8) and 1842(b)(9) of the Act authorize the Secretary to deviate from the payment methodologies prescribed in the Act if the application of those methodologies would result in a payment amount for a particular service or group of services that is determined to be grossly excessive or deficient, and therefore, is not inherently reasonable. Section 1842(b)(8)(A)(i) of the Act requires the Secretary to describe in regulations the factors to be considered in determining an amount that is realistic and equitable.

Furthermore, pursuant to section 1842(b)(9) of the Act, before making any adjustment for inherent reasonableness, the Secretary is required to publish a notice of proposed determination in the **Federal Register** and allow no less than 60 days for public comment on the proposed determination. The public comment period on proposed inherent reasonableness adjustments gives the public an opportunity to raise issues and concerns regarding these adjustments. All issues and concerns that the public raises are given full consideration, and a final determination is published before the actual adjustments in payments are made. Any adjustment would be broadly applicable to a given service or group of services, rather than just to an individual claim determination. Thus, we do not believe that the Congress intended for inherent reasonableness adjustments to payment amounts to constitute initial determinations that are subject to the appeals process. We have modified § 405.926(c) to clarify this issue.

We agree with the commenter that where the amount of payment on a

claim was determined based on an inherent reasonableness policy, this would result in an initial determination that is appealable. It is important to note the difference between an initial determination made on a specific claim, and the payment policy or methodology used to make that initial determination. The latter is not considered an appealable initial determination under this subpart.

We have added six items that also do not constitute initial determinations under § 405.926. Under § 405.926(n), we incorporated CMS" longstanding policy that a finding that a provider or supplier failed to submit a claim, or failed to submit a timely claim, despite being requested to do so by the beneficiary or the beneficiary's subrogee, does not constitute an initial determination, and would preclude the claim from being subject to the appeals process. Second, consistent with section 1893(f)(3)(A) of the Act, as amended by section 935(a) of the MMA, we have added a conforming provision at § 405.926(p) that determinations by the Secretary of sustained or high levels of payment errors are precluded from administrative or judicial review. Also, consistent with section 938(a) of the MMA, § 405.926(q) provides that a contractor's prior determination related to coverage of physicians' services is not subject to the administrative appeals process or judicial review. However, a negative determination would not prevent an individual from obtaining a service, seeking reimbursement and, in the event of a denied claim, appealing the denial under section 1869(b) of the Act. Finally, consistent with established policies, we have added three items at § 405.926(o), § 405.926(r), and § 405.926(s). Under § 405.926(o), determinations with respect to whether an entity qualifies for an exception to the electronic claims submission requirement under part 424 of this chapter are not initial determinations. Section 405.926" provides that requests for anticipated payment under the home health prospective payment system under § 409.43(c)(ii)(2) are not initial determinations. Lastly, claim submissions on forms or formats that are incomplete, invalid, or do not meet the requirements for a Medicare claim and are returned or rejected to the provider or supplier also do not constitute initial determinations. We welcome comments on these additions.

6. Redeterminations (§ 405.940 through § 405.958)

[If you choose to comment on issues in this section, please include the caption "Redeterminations" at the beginning of your comments.]

a. Requesting and Filing a Redetermination Request

In the proposed rule, we proposed to continue the policy of permitting parties to file their requests for a redetermination not only with the appropriate CMS contractor, as indicated on the notice of initial determination, but also at a local SSA or CMS office. In maintaining this policy for filing requests, we proposed that the date the redetermination request would be considered to be *filed* meant the date the contractor, SSA, or CMS received the request. Additionally, we specified that for purposes of issuing a redetermination, the date of timely filing would be considered as the date that the contractor responsible for the redetermination received the redetermination request. We proposed to allow extensions to the time frames for redetermination requests if a party showed good cause for missing the 120-day deadline. In order to determine whether a party had shown good cause for missing the deadline, the contractor would consider: the circumstances that kept the party from making the request on time; whether the contractor's actions misled the party; and whether the party had any physical, mental, educational, or language limitations that prevented the party from filing a timely request, or from understanding or knowing the need to file a timely request for redetermination.

We also indicated that redetermination requests would need to be made in writing. Previously, Part B requests for review could be made by telephone; however, we proposed to eliminate telephone requests in order to provide a reliable record of the request, and to encourage the submission of evidence to support the request. We proposed that requests would need to be made using a standard CMS form. Alternatively, when not made on a CMS form, the request would need to contain all the elements listed in § 405.944(b), that is, the beneficiary's name, Medicare health insurance claim (HIC) number, specific date of service, and identification of the item or service for which the party was requesting the redetermination, and the name and signature of the party or appointed representative.

We solicited comments on alternative approaches that would be convenient and easy for appellants. We also proposed that a beneficiary or beneficiary's appointed representative could continue to file a request for an appeal using the instructions on the MSN, that is, he or she could satisfy the requirements by circling an item on the MSN, signing the bottom of the MSN, and returning the MSN to the contractor. In situations where more than one party requested a redetermination on the same claim, we proposed that the contractor would consolidate the requests into one proceeding in order to avoid duplication.

Comment: Several commenters suggested that we clarify the procedures for how fiscal intermediaries and carriers calculate and record the receipt date for redetermination requests. One commenter recommended that we establish that the receipt date is the date the request first arrives at the appropriate address. Another commenter objected to presuming that the receipt of the initial determination, which is used to calculate the time frame for a redetermination request, will be 5 days after the date of the initial determination notice. The commenter argued that often appellants receive initial determinations much later than the date on the notice. In some cases, the provider does not receive the initial determination until a month later. The commenter believed that 10 days would be a more realistic time frame for contractors to assume receipt and begin calculating whether a party met the 120-day time frame for requesting a redetermination.

A few commenters requested that we define "evidence to the contrary" of the presumed 5-day receipt date in order to prevent discrepancies in how different contractors handle requests for redeterminations. One commenter suggested that "evidence to the contrary" should be a receipt from a mail delivery service containing the date of delivery to the appropriate address. Another commenter asked whether a date stamp by the provider would be an acceptable way to verify the date of receipt of an initial determination.

Response: We appreciate the concerns about calculating and recording the receipt date for appeal requests based on the delivery time for the initial determination notice. We agree that a uniform process needs to be used for calculating and recording the date of receipt of an appeal request. Thus, we proposed to incorporate into the regulations CMS's clear, longstanding policy that the date of receipt is presumed to be 5 days after the date of the initial determination notice. We will carefully monitor our contractors to ensure that they calculate the time frames appropriately. If we determine that any additional instructions are

needed, we will provide them in manual instructions.

We understand that in some cases the initial determination notice will be received later than 5 days from the date of the notice, which is why the regulations allow more than 5 days where there is evidence to the contrary. An example of evidence to the contrary would include a postmark date or a receipt from a mail service containing the date of delivery to the party. We do not believe it would be appropriate to attempt to include in regulations all the possible ways for a party to demonstrate when the party received an initial determination notice. Instead, we will allow adjudicators to exercise their discretion as to whether a party's evidence demonstrates that the party received the initial determination beyond 5 days from the date on the notice. Finally, we note that 120 days is a significant amount of time for a party to file an appeal and that appellants also have an opportunity to request an extension of this deadline; thus, we believe that the calculation of the receipt date for appeal requests based on the prevailing 5-day standard will not pose an undue hardship for most appellants.

Comment: One commenter requested clarification on whether adjudicators could request appellants to provide proof to support good cause for failing to file an appeal within the allotted time frame.

Response: Adjudicators may request appellants to provide supporting documentation that demonstrates that they have good cause for filing an appeal beyond the deadline. We strongly encourage appellants to provide supporting documentation when requesting a contractor, QIC, ALJ, or the MAC to consider good cause for filing an appeal late. In fact, an adjudicator can summarily dismiss a request made on the basis of good cause when there is no evidence to support the request.

Comment: Some commenters raised objections to beginning the decision-making time frame on the date that the contractor received the redetermination request if an appellant filed an appeal at an alternative location. One commenter agreed with this approach, but indicated it would be difficult for appellants to know when the time frame for making a decision started. The commenter suggested that we add a requirement that the contractor notify the appellant when the request has been received and the date the time frame began. Another commenter suggested that we establish a definitive deadline by which an appeal would be presumed received by the appropriate contractor for purposes of tracking the adjudication time frame. The commenter thought that an appellant should be able to presume that a contractor received a request within 60 days; and therefore, the appellant should expect a decision within 90 days. Another commenter suggested that CMS develop a web-based system for local SSA, CMS or contractor staff to enter and immediately transmit the request to the appropriate adjudicator. A few commenters believed that the delayed decision-making time frame penalized beneficiaries for something that was beyond their control. They argued that the policy would be unfair to beneficiaries because they would not receive a timely decision when they used an alternative filing location.

Response: We recognize the commenters' concerns about the confusion and potential delays involved in transmitting requests filed at alternative locations to the appropriate contractor. Further, as noted above, under section 931 of the MMA, SSA's role in the Medicare claims appeal process will end with the impending transfer of the ALJ function from SSA to DHHS no later than October 1, 2005. In view of the reduced role of SSA in the processing of Medicare appeals, we do not believe it is appropriate to specify in the regulations that appeals may be filed at SSA offices. We have revised § 405.942(a) to eliminate the reference to alternative filing locations. We believe that directing appellants to only one filing location will reduce confusion and eliminate the potential delay in transmitting the request. We will also allow an extension to the filing deadline when a party, in good faith, sends a request to a government agency within the time period to file and the request does not reach the appropriate contractor until after the time period to file expires.

The elimination of alternative locations will obviate any routine need for notices informing appellants of the date of receipt at the adjudicating contractor. Given the elimination of alternative filing locations, we think it would be unnecessarily burdensome on contractors to notify all appellants of the receipt date, given that it could be easily calculated to within a few days. In addition, we are actively exploring the development of a web-based system that would permit appellants to access real-time information about the status of their appeals.

Comment: We received several comments on whether redetermination requests should be accepted orally or in writing. One commenter disagreed with the elimination of accepting requests over the telephone. The commenter believed that taking requests by telephone is a convenient and simple method for filing an appeal. Another commenter pointed out that telephone requests facilitated meeting the decision-making time frame. The commenter also indicated that telephone appeals are advantageous because additional documentation can be requested while the appellant is on the phone. Other commenters agreed that requests for redeterminations be made in writing only. They stated that when the request and the response are given on the telephone, it leaves room for interpretation on what occurred during the telephone call. Also, it could be difficult for the QIC to construct the case file if the redetermination was handled over the telephone. The commenter suggested alternative methods such as the use of a secure system for fax or electronic mail requests. Another commenter agreed with our discussion in the preamble to the proposed rule that the changes to the reopening process could resolve the types of issues addressed in the current telephone appeals process, and encouraged our efforts to clarify the reopening rules.

Response: We recognize that initiating a redetermination over the telephone can under some circumstances provide a faster process for appellants than a written appeal. In the past, providers and suppliers generally initiated reviews by phone for routine, uncomplicated matters. However, section 937(a) of the MMA requires CMS to develop a process whereby, in the case of minor errors or omissions that are detected in the submission of claims, a provider or supplier can be given an opportunity to correct these minor errors or omissions without the need to initiate an appeal. Contractors would also continue to handle these types of issues over the telephone through procedures other than appeals, such as reopenings, including any associated adjustments. The reopening process is discussed in more detail later in this preamble under its own heading.

Written requests offer other advantages of efficiency and accuracy. An appellant submitting a written request can submit evidence at the same time as the request. The early submission of evidence leads to resolving appeals at lower levels and promotes more accurate decision-making. Furthermore, many appeals involve judgment calls that require thought, research and analysis, much of which cannot be addressed in a phone call. Also, as noted by a commenter,

written appeals aid contractors in developing case files for use at later appeal stages.

Thus, as proposed, we will require that appellants request redeterminations in writing. We will work on identifying simple and convenient methods for appellants to request redeterminations in writing, such as via facsimile or electronic mail request. Finally, we note that contractors are by no means prevented from communicating with appellants by phone in situations where contact by telephone can provide information needed to resolve an appeal.

Comment: Some commenters raised questions about requests for redetermination made by more than one party. A few commenters objected to our proposal that where two or more parties requested an appeal on the same initial determination, the contractor's deadline for processing the appeal would be based on the latest filed request. One commenter disagreed with the consolidation of multiple requests into one proceeding, and argued that this would result in unwarranted delays. The commenter suggested that we stipulate in this final regulation that the decision-making time frame starts with the first request for redetermination. The commenter also thought that contractors should be required to act on beneficiary appeals when they are received, rather than waiting to see if another party appeals. Another commenter was concerned whether the contactor would wait until the end of the full 120-day filing deadline to see if another party would request an appeal.

Response: Instances when more than one party files a request for an appeal of the same claim have always been rare, and we do not expect any change in this regard under the new appeals procedures. Although we appreciate the concern that contractors might wait 120 days to see if another party appeals, contractors could not do so even if they wanted to, given the requirement that they process a redetermination within 60 days of a timely filed request. A delay will occur only if another request is received before the contractor issues a decision. Therefore, we do not believe that consolidating the decision-making time frame for appeals with multiple parties will create an impediment to the efficient resolution of appeals. To the contrary, we believe that when another party subsequently requests an appeal before a decision has been made on the original request, fairness demands that the two requests be combined into one case. We have amended § 405.944(c) to clarify this point.

Comment: Several commenters made recommendations about the place and method of filing redetermination requests. One commenter suggested that all review organizations have an address for delivery services other than the U.S. Postal Service. The commenter stated that appellants sometimes wish to use private services to deliver their appeals, particularly to ensure that contractors receive the appeals timely. A few commenters suggested that CMS provide appellants an opportunity to submit a redetermination request via facsimile or via e-mail. The commenter believed that these alternatives would create better efficiencies for appellants.

Response: We encourage appellants to use delivery services that will ensure the timely receipt by contractors of appeal requests. We will explore with contractors ways to achieve efficiencies in the appeals process, including establishing addresses for private delivery services. We also will look into the extent to which contractors can set up a process to accept facsimile and electronic requests in compliance with applicable security and privacy policies and procedures. Should these changes prove feasible, we will implement them through manual instructions.

Comment: Several commenters urged us to make the standard form for requesting a redetermination widely available to ensure accessibility by beneficiaries. They suggested including the form for requesting a redetermination with the initial determination notice. Alternatively, the initial determination should provide information about where to obtain the standard form. Commenters recommended that the standard form be available upon request by telephone, on the Internet, and at all SSA and CMS contractor offices.

Response: We agree that standardized forms should be readily accessible to beneficiaries. As mentioned earlier in our discussion about initial determinations, beneficiaries now routinely receive Medicare Summary Notices (MSNs). The MSN contains information on the appeals process and instructions for requesting an appeal. Beneficiaries can use the MSN to request an appeal by circling the item or service with which they disagree, explaining why they disagree, signing the MSN, and returning it or a copy to the specified address. Consumer testing has shown that the information on the MSN is complete and easy for beneficiaries to understand. In most cases, we believe that allowing beneficiaries to use the MSN to request an appeal is a more effective practice than referring them to a required form.

We will ensure that customer service representatives at our 1–800–MEDICARE number provide beneficiaries with accurate information on how they may obtain standardized appeal forms. Updated appeal forms will continue to be available on the Internet at *http://www.cms.hhs.gov/forms* and *http://www.Medicare.gov/Basics/forms*, as well as at CMS contractor offices.

b. Evidence Submitted With the Redetermination Request

In the proposed rule, we specified that a party should explain why he or she disagrees with the contractor's initial determination and include any evidence that the party believes should be considered by the contractor in making its redetermination. We wanted to encourage appellants to make their case at the earliest possible level. To facilitate this goal, we proposed that if appellants could not submit relevant documentation along with their redetermination requests, then they could provide later submissions. However, since it would be difficult to process the redetermination within the appropriate time frame, we proposed to permit contractors to extend the decision-making time frame by up to 14 days based on the later submission of evidence.

Comment: One commenter suggested that prior to issuing a redetermination, the contractor should request the necessary documentation from the appellant and allow the appellant 14 days to either submit the documentation requested or to certify that there are no additional records to submit. The commenter also indicated that if the appellant failed to provide the documentation, an unfavorable decision should be rendered based on failure to provide the necessary documentation. The commenter also questioned whether it was our intent to preclude the QIC from accepting documentation other than what is requested in the redetermination letter.

Response: We believe that the efficiency and accuracy of the appeals process is enhanced when appellants submit all necessary documentation with their redetermination requests. Although appellants have the opportunity to submit evidence related to the claim at issue at any time during the redetermination process, we strongly encourage appellants to submit, at the time of their request, all evidence that they want to be considered. If supporting documentation is not submitted with the request, the contractor may contact the appellant to try to obtain the missing information.

The contractor will not necessarily uphold an unfavorable initial determination based solely on the lack of documentation submission. The contractor must make a decision based on the information in the case file.

If the contractor believes that the appellant is missing specific information or documentation necessary for processing the redetermination, but cannot obtain the information before its deadline, the contractor will uphold the claim denial and then list the specific missing information in the redetermination letter. If the appellant requests a QIC reconsideration, the appellant should submit the documentation specified in the redetermination notice with the request for reconsideration. The QIC may accept any additional documentation, even if it is not specified in the redetermination notice. If the appellant fails to submit this evidence before the QIC issues its reconsideration, the appellant may be precluded from introducing the evidence at higher levels of the appeals process, absent a showing of good cause. (See the discussion below regarding the regulatory and statutory requirements for full and early presentation of evidence.)

c. Conducting a Redetermination and Time Frame for Making a Decision

Section 1869 of the Act provides little or no guidance with respect to the conduct of redeterminations, with the exception of establishing the filing and decision-making time frames. Thus, with few exceptions, we did not propose major changes to the existing procedures for first level appeals of claim determinations. To assist appellants who might be unable to submit relevant documentation along with the request for redetermination, and to promote the resolution of appeals at the earliest possible level, we proposed to allow later submission of documentation. If the appellant submitted evidence after the request, an automatic 14-day extension would be added to the decision-making time frame. *See* § 405.946(b).

Comment: One commenter contended that CMS exceeded its statutory authority by changing the standard with respect to the established time frame for a decision on a request for redetermination. The commenter disagreed with the proposal of an automatic 14-day extension to the time frame when an appellant submits evidence after the request. Another commenter agreed that additional time might be necessary to issue a decision when a party submits additional evidence. The commenter noted that we did not specify whether a party could submit additional evidence more than once, and if so, what the impact would be on the decision-making deadline. For example, would a 14-day extension apply each time a party submitted additional evidence, or would there by only one extension, regardless of how many times a party submitted additional evidence? The commenter suggested that we specify that there are no limits on evidence submission at the redetermination level and that a party can submit additional evidence as many times as it deems appropriate until a specific point near the time to issue a decision. The commenter recommended that evidence should be permitted until 5 days prior to the decision-making deadline (for example, additional evidence could be submitted until 55 days after the contractor received the redetermination request).

Response: We believe allowing extensions of decision-making time frames under some circumstances is consistent with the statute. We believe that an appeal request should include the pertinent evidence for an adjudicator to make an appropriate determination, as indicated in § 405.946(a). If the evidence is not submitted with the request, the 14-day extension allows time for an adjudicator to carefully review and consider additional evidence. It is unreasonable first to expect an adjudicator to prepare a decision based on incomplete information submitted with the appeal request, and then in as little as a few days, potentially rewrite a decision based on new evidence.

While a party, by regulation, may submit additional evidence as many times as it deems appropriate until the contractor issues a decision, the impact is that the contractor may extend its decision-making deadline by up to 14 days each time. The only way to avoid the need for extended decision-making time frames would be to preclude the submission of additional evidence by appellants after they file their redetermination requests. Note that although the contractor may extend the deadline, this does not mean that we expect the contractor to take the maximum time to issue the decision in all cases. As mentioned in the comment above, we urge appellants to submit all necessary documentation with their requests in order to avoid delays. We note that from the outset, appellants have twice the amount of time to request an appeal as adjudicators do to conduct the appeal.

Comment: Some commenters argued that we should impose penalties on fiscal intermediaries and carriers that fail to meet the 60-day deadline for issuing a redetermination. In addition, the commenters recommended that we establish specific remedies for appellants, such as the ability to escalate cases to QICs, when contractors fail to meet their time frames. One commenter argued that non-enforcement of the time frame would have a negative impact on beneficiaries, since they cannot proceed to the QIC until the contractor issues a redetermination.

Response: We do not believe that it is appropriate to permit escalation of redeterminations when contractors do not meet their deadlines. We believe this is consistent with the statute in that the Congress seems to have weighed the merits of escalation and chose to implement that option only at the QIC level and above. The statute also already directs that the Secretary monitor the timeliness of all contractors' redeterminations. Sections 1816(f) and 1842(b)(2) of the Act require us to develop criteria, standards and procedures to evaluate a fiscal intermediary's or carrier's performance of its functions. Measuring the timeliness of redeterminations is a critical part of this process, and a contractor's inability to process redeterminations within the required 60-day time frame will be enforced through corrective action plans and other tools that CMS has available to ensure that carriers and fiscal intermediaries fulfill their statutory and contractual obligations. Under our ongoing Contractor Performance Evaluation (CPE) process, CMS devotes extensive resources to onsite surveys of contractors to ensure that they meet these obligations.

Comment: One commenter recommended that we prohibit Medicare contractors and QICs from raising new issues during an appeal. Any issues that are different from those in dispute should be raised through the reopening process. The commenter stated that bringing up new issues creates great confusion for appellants.

Response: A redetermination consists of a fresh examination of all the issues involved in a claim to determine whether it is payable. Therefore, the redetermination is not limited to validating the original reason for the denial of the claim at issue in the appeal. All applicable statutory and regulatory provisions, as well as CMS-issued policies and procedures, bind contractors making redeterminations (for example, CMS Rulings, Medicare manual instructions, program memoranda, national coverage determinations, local coverage

determinations, and regional medical review determinations). As a result, all these authorities must be considered as part of the redetermination.

d. Withdrawals and Dismissals

In the proposed rule, we proposed to allow parties to withdraw redetermination requests within 14 days of the original request in order to avoid situations where the request for withdrawal and the decision crossed in the mail. We also proposed several reasons a contractor might dismiss a request (for example, where a request for redetermination did not contain the minimum elements for a redetermination request set forth in proposed § 405.944). We also proposed to dismiss a request if the party filing the request died and there was no information in the record to determine whether another party might be prejudiced by the redetermination.

We also proposed that when a contractor dismissed a request, a written notice would be sent to the parties. Also, a dismissal could be vacated at any time within 6 months from the date of the dismissal notice for good and sufficient cause. Finally, an appellant could request a QIC reconsideration of the dismissal within 60 days of the dismissal notice. See proposed § 405.974(b).

Comment: A commenter recommended that the dismissal notice under § 405.952(c) should inform the appellant of the right to request that the contractor vacate the dismissal within 6 months.

Response: We agree that the dismissal notice should include information about vacating the dismissal. We have revised § 405.952(c) to require that the dismissal notice state that there is a right to request that the contractor vacate the dismissal action.

Comment: Proposed § 405.952(a) permits a party to withdraw its appeal request by filing a written and signed request for withdrawal within 14 calendar days of the filing of the redetermination request. A commenter questioned whether a contractor would disregard a request for withdrawal made after the 14th day. The commenter argued that there was no legitimate reason to issue a redetermination if someone wanted to withdraw an appeal request. The commenter recommended that as long as the withdrawal request was received before the contractor issued a redetermination, then the request for redetermination should be dismissed.

Response: We agree with the commenter and will not limit requests for withdrawal to within 14 days of filing the request for redetermination. Under this interim final rule, a request for withdrawal must be received before a redetermination has been issued. We encourage appellants to submit written requests early to avoid having the notice of a redetermination and a request to withdraw cross in the mail.

Comment: Proposed § 405.952(b)(2) requires a contractor to dismiss a request for a redetermination if the contractor determines that a party has failed to make out a valid request for redetermination that substantially complies with § 405.944. Proposed § 405.944(b) requires an appellant to either use a standard CMS form or submit a written request containing four elements: (1) The beneficiary's name; (2) the beneficiary's health insurance claim number; (3) the specific services(s) and item(s) for which the redetermination has been requested, as well as the specific date(s) of service; and (4) the name and signature of the party or appointed representative of the party. Two commenters pointed out that these elements do not mirror the requirements contained on the current standard CMS form to request a review.

The commenters requested us to clarify if the current review form would comply with § 405.944. They also inquired as to whether we would develop a new form. If CMS developed a new form, the commenters suggested providing space on the form for all of the required elements listed in the proposed rule. Additionally, one commenter requested that CMS develop and disseminate a standard form as quickly as possible so that parties can become familiar with the information required in the form.

Response: We realize that the current standard forms for requesting a review and reconsideration, CMS forms 1964 and 2649 respectively, do not contain all of the elements required under § 405.944. However, we are in the process of revising all of our current appeal forms. The standard CMS form will contain all of the elements specified in § 405.944. Once we complete the new forms, they will be released and made available to appellants at contractor offices, CMS offices, on the Internet, and by calling 1–800–MEDICARE. We intend to release the new forms in conjunction with the implementation of these interim final regulations.

Comment: One commenter contended that allowing contractors to dismiss redeterminations when appellants fail to make out valid requests effectively denies appellants the ability to pursue appeals. Other commenters maintained that requiring specific elements in order to make a request would penalize unrepresented beneficiaries or those that have limited English-speaking abilities or mental capacity. One commenter argued that unrepresented beneficiaries should be given notice of any deficiencies and an opportunity to correct and file an amended redetermination request within a reasonable time period (for example, 10 business days after receipt of the notice). The commenter also recommended that the notice of an incomplete request should inform the party of the information necessary to request a redetermination; otherwise, the party would not know what information was missing.

Response: We do not agree that contractors should be required to inform appellants of the defects in their redetermination requests instead of being able to issue dismissals. Section 405.944(b) requires only four elements for making out a valid redetermination request: (1) The beneficiary's name; (2) the Medicare health insurance claim number; (3) the specific services(s) and item(s) for which the redetermination is requested and the specific date(s) of service; and (4) the name and signature of the party or representative of the party. This constitutes the minimum information needed to process an appeal, and we believe that it is entirely appropriate to require the party appealing to provide this basic information. Absent this information, it would be difficult, if not impossible, to ascertain whether the individual requesting the appeal is in fact a party or representing a party, or to identify the claim at issue. We believe that accepting appeal requests with insufficient basic information about the claim and requiring contractors to inform appellants of the defects in their appeal requests would make for an inefficient appeals process. Note that identification of the specific items or services for which a redetermination is being requested can be accomplished in a variety of relatively simple ways. For example, a beneficiary may simply circle the denied service in question on the MSN. Alternatively, for revised initial determinations (for example, overpayment cases or Medicare Secondary Payer recovery cases), appellants can meet this criterion by including a copy of the "demand letter" used to initiate these cases. Thus, meeting these minimum requirements is not onerous.

In arriving at the decision to allow contractors to dismiss invalid redetermination requests under § 405.952(b)(2), we considered the fact that a dismissal does not necessarily

terminate a party's right to file an appeal. If the 120-day time frame for filing a redetermination has not expired at the time a contractor issues a dismissal, then a party may correct the defect and resubmit the appeal. Also, a contractor may vacate a dismissal at any time within 6 months from the date of the dismissal notice, if good and sufficient cause is shown. Alternatively, if a party believes that the contractor inappropriately dismissed a request, the party can request a reconsideration by the QIC within 60 days of the dismissal.

Therefore, we are adopting our proposed policy in this interim final rule of dismissing requests that do not meet the requirements of § 405.944. A contractor may, but is not required to, contact appellants to give them an opportunity to cure a defect in their redetermination request before dismissing it. We believe that this policy is reasonable given that it is clear how a party must make out a valid redetermination request. As under the former appeals process, we will continue to allow a beneficiary to file an appeal by following the requirements detailed on the MSN. We will instruct our contractors to take into consideration any special needs of unrepresented beneficiaries, or those with limited capacities or abilities. Also, we are in the process of creating a redetermination form that will assist appellants who are unfamiliar with the process (for example, unrepresented beneficiaries) with their requests.

Comment: One commenter requested clarification on the circumstances under which a request for redetermination would be dismissed when a beneficiary dies. The commenter requested clarification about any potential liability of the deceased beneficiary's estate, including recovery by a State. The commenter believed that § 405.952(b)(4) also should clarify the situations an adjudicator must consider to determine whether dismissing the redetermination request may prejudice another party. The commenter indicated that in almost every situation, the beneficiary's estate would be prejudiced by the determination and argued that a dismissal would preclude the beneficiary's family or estate from protecting its right to seek reimbursement.

Response: We have revised the proposed language in § 405.952(b)(4) to make the needed clarifications. A contractor will dismiss a redetermination request when the beneficiary whose claim is being appealed dies while the request is pending, under the following circumstances: (1) The beneficiary's surviving spouse or estate has no remaining financial interest in the case based on whether either remains liable for the services or subsequent similar services; (2) no other individual or entity with a financial interest in the case wishes to pursue the appeal; and (3) no other party filed a valid and timely redetermination request. For example, the contractor will dismiss the request if the beneficiary or the beneficiary's representative filed the request for redetermination but the beneficiary was not held liable for the services at issue. The contractor will inquire whether another party wishes to continue the appeal. However, the contractor will not be required to inquire whether any other party wishes to continue the appeal unless a valid and timely request for redetermination is filed. We wish to note that when a beneficiary dies and the request for redetermination is subsequently dismissed, a party, including the beneficiary's estate, may request the contractor to vacate the dismissal under § 405.932(c) for good and sufficient cause. Examples of good and sufficient cause include when there is the possibility of Medicaid liability or when there is a possibility the State (which pays Medicaid funds) will attempt recovery of its payment from the estate.

As mentioned in our discussion above on parties to initial determinations and appeals, § 405.906(c) now establishes that in the event of the death of a beneficiary, a provider or supplier may appeal if there is no other party available to appeal an initial determination. Thus, the provider or supplier of the item or service may request a redetermination in these situations, consistent with the clear direction of section 939 of the MMA.

Comment: A commenter requested that we clarify the meaning of "otherwise transmit" in proposed § 405.952(d) in terms of a contractor providing a dismissal notice to the parties at their last known addresses. The commenter pointed out that the type of transmission is particularly important for beneficiaries who do not have access to facsimile and electronic mail.

Response: The dismissal notice, like a redetermination notice, will be delivered through first class U.S. mail. Although contractors do not currently transmit notices by facsimile or electronic mail, we want to ensure that the regulations allow them the flexibility to do so in the future should CMS believe that other notification methods are appropriate. Nevertheless, even if contractors use alternate means to provide dismissal notices, we will instruct contractors to allow parties to elect their preferred method of delivery.

7. Redetermination, Notification, and Subsequent Limitations on Evidence" (§ 405.954, § 405.956, and § 405.966)

[If you choose to comment on issues in this section, please include the caption "Redetermination, Notification, and Subsequent Limitations on Evidence" at the beginning of your comments.]

When a contractor's redetermination fully reverses the initial determination, we proposed to maintain the current policy that proper notification would be achieved through the MSN or the RA, which contractors send to beneficiaries, and providers and suppliers, respectively. If a redetermination affirmed the initial determination, either in whole or in part, we proposed that a redetermination notice contain: (1) A clear statement indicating the extent to which the redetermination is favorable or unfavorable; (2) a summary of the facts; (3) an explanation of how the pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case; (4) a summary of the rationale for the redetermination; (5) notification to the parties of their right to a reconsideration, the procedures that a party would follow in order to request a reconsideration, and the time limit for requesting a reconsideration; (6) a statement of the specific missing documentation that would need to be submitted with a request for a reconsideration; (7) an explanation that if the specific supporting documentation specified in the notice is not submitted with the request for a reconsideration, the evidence will not be considered at an ALJ hearing, unless the appellant demonstrates good cause as to why the evidence was not provided previously; and (8) any other requirements specified by CMS. When a redetermination notice is sent to a provider or supplier announcing a full or partial reversal of the initial determination, the Medicare contractor must also issue an electronic or paper remittance notice to the provider or supplier to explain the payment.

In general, the proposed requirements for the redetermination notice were similar to existing instructions concerning the content of contractor appeal determinations. However, our proposal that contractors also specify supporting documentation that would need to accompany a reconsideration request was a new requirement.

Comment: We received many comments on the requirement for the redetermination notice to include a statement of the specific missing

documentation that must be submitted with the reconsideration request. In general, the commenters agreed with the requirement to identify additional supporting documentation in the redetermination notice. They also agreed that this change would improve the efficiency of the appeals process by assisting appellants in knowing the type of documentation to submit.

Several other commenters objected to this provision. Two commenters argued that the statute and Medicare regulations require filing certain documentation with particular types of claims (for example, claims for power wheel chairs require submission of a power wheelchair Certificate of Medical Necessity (CMN)). They argued that if the statute and regulations do not require the submission of a particular piece of documentation, but a contractor needs that documentation before it will pay a claim, then the contractor should be required to explain why it needs the documentation and consider the impact of requiring compliance with the a request (consistent with the Paperwork Reduction Act of 1995 (PRA)). They proposed that the carrier or fiscal intermediary explain in detail the rationale for collecting any additional documentation not required for submitting a particular claim. The commenter argued that the rationale should include the legal and medical necessity reason for such collection.

Response: We believe that the appeals time frames and procedures mandated by section 521 of BIPA and Title IX of the MMA clearly require greater efficiency in the Medicare appeals process. This belief is reinforced by section 933(a) of the MMA, which requires that a provider or supplier may not, in any subsequent level of appeal, introduce evidence that was not presented at the reconsideration conducted by the QIC, unless there is good cause that precluded the introduction of that evidence at or before that reconsideration. However, absent advance notice of what documents are needed to support a claim, appellants may have difficulty determining what constitutes relevant evidence for their claim appeals. Thus, although not required by the statute, we believe that requiring contractor redetermination notices to identify necessary missing documentation will provide very valuable information for appellants to present their cases to QICs. Therefore, we believe this provision is advantageous to appellants since it should result in a better understanding of the basis for the unfavorable redetermination and lead to more accurate reconsiderations.

Comment: One commenter recommended revising the new evidence provisions to preclude the subsequent submission of information only to the extent that it involves objective medical information (for example, a specific blood gas percentage or patient height and weight). Another commenter suggested that we distinguish between the submission of new evidence that involves readily available clinical documentation directly implicated in the claim dispute and other evidence (for example, expert opinions, clarifying treating physicians' opinions, or evidence from providers not directly involved in the dispute). The commenter recommended only precluding clinical documentation.

Other commenters argued that this provision was too burdensome for providers, suppliers, and beneficiaries, particularly when they do not have easy access to supporting documentation that may be required. Some of the commenters suggested that we exempt beneficiaries from these rules because they do not have ready access to medical records and other documentation.

One commenter believed that the proposed rule was too lenient and recommended that we limit the rules on submission of evidence at the redetermination and reconsideration levels. The commenter suggested that we require appellants to sign a form certifying that they do not have any more records to submit.

Response: We do not believe that it is either practical or consistent with the statute to limit the requirement on full and early presentation of evidence by attempting to distinguish between evidence that is readily available to the provider and that which is obtained from providers not directly involved in the claim dispute. Similarly, we cannot limit this provision to objective medical information. Given the vast amount of medical services and items that could be involved in a claim dispute, it would be extremely difficult to draw clear distinctions among the numerous types of documentation that might be needed. Nevertheless, where it is not feasible to obtain this documentation, as indicated in § 405.1028, an ALJ will make a determination on whether good cause for failure to submit the evidence to the QIC exists. This applies to all documentation, including the items listed in the notice of redetermination.

Finally, we note that, consistent with section 933(a) of the MMA, we have specified in the interim final rule that the limitation on the presentation of new evidence, absent good cause, applies only to providers and suppliers, and not to beneficiary appellants. The limitation on the presentation of new evidence will also apply to beneficiaries represented by providers or suppliers to ensure that providers or suppliers do not attempt to circumvent these rules by offering to represent beneficiaries. Further, to the extent that beneficiaries may not be as sophisticated as providers or suppliers regarding the administrative appeals process this consideration would not apply in the case of a beneficiary represented by a provider or supplier. Thus, although contractor redetermination notices will uniformly identify any necessary missing documentation, beneficiaries, except those represented by providers or suppliers, will still be permitted to introduce evidence after the QIC reconsideration level (although for efficiency reasons, they would be better served by doing so as soon as possible). We believe it would be unnecessarily burdensome to require appellants to certify that they have no further evidence to submit. (See section II.D.3 below for a further discussion of rules related to evidence at QIC reconsiderations.)

Comment: Several commenters made additional suggestions for improving the notices that inform parties of the decision on an appeal. Some commenters suggested including a form to request a reconsideration on the back of the redetermination notice. Other commenters suggested that CMS make available upon request the laws, regulations, policy manuals, national coverage determinations (NCDs), local coverage determinations (LCDs), and local medical review policies (LMRPs) that were used to make the decision. They recommended that notices should include the correct citations to the appropriate provisions. One commenter recommended that if the MSN is used to inform a beneficiary of a redetermination that is wholly favorable, the MSN should be sent within the proper time frame. This commenter also suggested that the appointed representative receive a copy of the decision.

Response: We agree that including a form to request a reconsideration with the redetermination notice would assist appellants and help them to provide the information QICs need to process reconsiderations. At one time, we had considered including a reconsideration request form on the reverse side of the redetermination notice, but consumer-testing results indicated that appellants found this confusing. We intend to continue exploring how best to make available a reconsideration request form with the redetermination. Consistent

with section 1869(a)(5) of the Act, as amended by section 933(c)(1) of the MMA, we require in § 405.956(b)(9) that contractors make available upon request correct information on the laws, regulations, policy manuals, national coverage determinations (NCDs), local coverage determinations (LCDs), and local medical review policies (LMRPs) that were used to make the decision.

We appreciate the commenter's concern about receiving MSNs within a reasonable amount of time from the date of a fully favorable redetermination. However, it is more efficient and cost-effective for beneficiaries to receive MSNs on a monthly basis, as opposed to each time a claim or appeal is processed. Thus, if an adjustment is made to a claim as the result of an appeal decision, the beneficiary will not receive the MSN until the next scheduled monthly release. We believe that this is an acceptable amount of time, and it continues a longstanding Medicare practice. CMS will monitor contractor performance in this regard.

To ensure that appellants are made aware of the outcome of a fully favorable redetermination in a timely manner, we added § 405.956(a) and § 405.956(c) to reflect that contractors must send a written notice to the appellant within 60 calendar days of receipt of the request for a redetermination. The written notice must contain a clear statement indicating that the redetermination is wholly favorable to the appellant.

Additionally, we wish to clarify that all parties to the appeal are required to receive a copy of an unfavorable or partially favorable redetermination notice, with the sole exception of overpayment cases involving multiple beneficiaries. Our experience has been that beneficiaries often are confused by the copies of notices that they receive in conjunction with overpayment and recovery letters to providers and suppliers. To minimize confusion, under § 405.956(a)(2), we specify that in these situations, contractors are permitted to issue written notices only to appellants.

Although we agree that an appointed representative must receive a copy of the redetermination, we do not agree, for privacy reasons, that the appointed representative also should receive a copy of the MSN. MSNs contain information about other claims filed during the previous month, with which the appointed representative may have no authorized involvement.

Comment: A commenter pointed out that we did not impose a deadline for a contractor to make payment on a claim after a favorable decision. The commenter recommended that we require payment to be made within 60 days of the date of the favorable decision.

Response: We agree that payment should be made within a reasonable time from the date of a favorable determination. We will continue to evaluate contractors' performance in effectuating favorable decisions.

8. Reconsiderations (§ 405.960 Through § 405.978)

[If you choose to comment on issues in this section, please include the caption "Reconsiderations" at the beginning of your comments.]

a. Time Frame for Filing a Reconsideration Request

Proposed § 405.962(a) specified that appellants who wished to file a request for reconsideration would be required to do so within 180 days of receipt of the redetermination notice, or within additional time as the QIC might allow for good cause. In proposed § 405.964, we set forth the place and method for filing a request for reconsideration. We would permit parties to file requests with the QIC, CMS, or SSA offices. For purposes of establishing whether an appellant had timely filed a request for reconsideration, a request would be considered filed on the date it was received by the QIC, SSA, or CMS. However, for reconsideration requests submitted to CMS or SSA offices, the QIC's decision-making period would not begin until the QIC received the request.

We also specified that reconsideration requests could either be made using a standard CMS form, or some other written document, as long as it contained the key elements captured by the form; that is, the beneficiary's name, HIC number, date(s) of service and service(s) at issue, and the name and signature of the party or representative of the party. If the reconsideration request did not contain any one of the essential elements referenced above, we proposed that the QIC would dismiss the reconsideration on the basis that the party failed to make out a valid request.

We also proposed in §§ 405.964(c) and 405.970(b)(3) that QICs would consolidate multiple requests for reconsideration into a single proceeding, and would issue one reconsideration determination to all parties within 30 days of the latest reconsideration request.

Proposed § 405.970 set forth the general requirement that QICs would complete their reconsiderations within 30 days of receiving a timely filed request. By no later than the close of the 30-day decision-making period, a QIC would either issue its reconsideration, notify all parties that it would not be able to complete its review by the decision-making deadline, or dismiss the request for reconsideration. Pursuant to section 1869(c) of the Act, the notice that the QIC is unable to complete its reconsideration within the decision-making period would advise the appellant of the right to request escalation of the appeal to an ALJ. Under § 405.970(d), appellants would be able to submit a written request directing the QIC to escalate the appeal. We proposed that whenever a QIC received an escalation request, the QIC would take one of two actions within 5 days: (1) Complete its reconsideration and notify the parties of its decision; or (2) acknowledge the escalation request in writing and forward the case file to the ALJ.

Comment: A few commenters expressed concern about how appellants that filed appeals at alternative sites would know whether or when the proper adjudicator received their reconsideration request. To address this situation, the commenters recommended requiring adjudicators to send acknowledgement letters to appellants that file at alternative locations. Other commenters suggested requiring all adjudicators to use addresses that are accessible by delivery other than the U.S. postal service to enable appellants to file directly with the proper adjudicator.

Response: As discussed above in the context of requests for redeterminations, we agree with the commenter that appellants who use alternate filing locations would have difficulty determining if and when the proper adjudicator received their request. Our experience has been that very few appellants use alternative filing locations (for example, SSA field offices). However, when they do so, requests often do not arrive timely at the proper adjudicating entity. Moreover, as noted previously, consistent with section 931 of the MMA, SSA will no longer play a role in Medicare claims appeals. For these reasons, and consistent with the policy for redetermination requests, we have revised § 405.964(a) to specify that all requests for a reconsideration must be filed with the QIC indicated on the notice of redetermination. Just as we plan to do with intermediaries and carriers, we also will explore with QICs ways that we can create efficiencies in the appeals process, including establishing addresses for private delivery services.

Comment: Many commenters disagreed with the proposal of "tolling

the decision-making clock" for a QIC reconsideration when an appeal is filed at an alternative location (for example, at an SSA office rather than with the QIC). Commenters perceived this provision as unfairly penalizing appellants that used alternative filing locations. Rather than beginning the decision-making time frame only when a QIC receives an appeal request, commenters suggested that CMS develop an electronic filing system. An electronic filing system would allow appellants to continue filing their appeals at alternative filing locations and permit adjudicators to receive the appeals almost immediately, thereby eliminating the need to toll the decision-making clock. (Note that the issue of tolling the decision-making deadline also applies to other levels of the appeals process.)

Response: As discussed above, we believe the best way to facilitate a QIC's ability to adjudicate a reconsideration timely is to require that all reconsideration requests be filed at the QIC. Thus, the comments on the "tolling of the clock" issue are no longer pertinent. Note that redetermination notices will clearly specify the proper entity to whom to direct a reconsideration request. We do recognize that the development of an electronic filing system would make the appeals process more efficient; therefore, we intend to pursue this goal both with QICs and the new Medicare administrative contractors that are mandated by the MMA.

Comment: Some commenters inquired whether carriers and intermediaries would be required to create case files, or to forward redetermination letters and documentation to the QIC for reconsiderations. One commenter argued that the QIC's success in meeting its decision-making time frame would depend upon the contractors' compliance with a time frame to forward cases to the QICs. If contractors are responsible for forwarding case files to QICs, the commenters suggested that CMS establish a time frame in the regulation for performing this activity. One commenter recommended a 15-day time frame to complete both the preparation and forwarding of the case file.

Response: In order to achieve the statutory time frame for QIC decisions, efficient processing and forwarding of case files to the QICs is essential. From an appellant's perspective, however, this will be a seamless process, and we believe that the proper vehicle to address the mechanics of case file transmission is through our contractor evaluation process and manual instructions, rather than through regulations.

Comment: Some commenters pointed out that currently, some contractors define the date of receipt as the day that the contractor logs in the request, while others define it as the day the request is received in the contractor's mailroom. To eliminate confusion, one commenter asked that CMS clarify in the final rule that the date of receipt of a reconsideration request would be the date that the request arrived in the QIC's mailroom.

Response: We recognize the need for consistency in this regard and agree that inefficiencies in logging in an appeal request should not adversely affect an appellant. We intend to address the issue through the QIC contracts and instructions.

b. Withdrawal or Dismissal of a Request for Reconsideration

Proposed § 405.972 established provisions for withdrawing and dismissing requests for reconsideration. We proposed that appellants should be able to withdraw their reconsideration requests by filing a written request for withdrawal to the QIC within 14 calendar days of filing the reconsideration request. Under proposed § 405.972(b), we set forth the reasons why a QIC would dismiss a request for reconsideration (for example, if the party failed to make out a valid request consistent with the requirements identified in § 405.964). We also proposed under § 405.972(c) to allow appellants to request an ALJ review of a QIC dismissal of a reconsideration request if the request was filed within 60 days of the QIC's dismissal notice.

Comment: Some commenters asked us to give a rationale for allowing appeals of dismissals and remanding reversed dismissals. Other commenters argued that a reconsideration regarding the dismissal of a redetermination request should be final and not appealable. In addition, the same commenters asked that we include a provision that a subsequent reversal of a dismissal have no effect on a party's appeal rights.

Response: Although we recognize that permitting appeals of dismissals can be inefficient at times, we believe our approach of providing for review of dismissals at the next adjudicative level balances the need for review with the need for finality. Because dismissals will only be based on the circumstances involving the appeal request (for example, whether the party included the proper elements in its appeal request, (or whether it is a proper party to request an appeal) rather than the merits on whether the claim is payable, we do not believe further review is necessary. Accordingly we are adding § 405.1004(c) to specify that an ALJ's decision with respect to a QIC's dismissal of a reconsideration request is final and not subject to further review. Finally, we are not adopting the commenter's suggestion that a subsequent reversal of a dismissal have no effect on a party's appeal rights. On the contrary, a subsequent reversal by an ALJ of a dismissal would restore the party's reconsideration rights. Thus, it is necessary for the case to be remanded for the QIC to render a decision on the substantive issue of whether a claim must be paid.

Comment: We received many comments and questions on the procedural aspects of the dismissal provision in the reconsideration section of the proposed rule. Commenters asked us to specify the circumstances in which a dismissal would be appropriate and to identify what an appellant would need to show in order to successfully appeal the dismissal of a reconsideration request. The commenters also asked us to clarify the circumstances under which an adjudicator can dismiss a reconsideration request when a beneficiary dies.

Response: Section 405.972(b) describes the circumstances that warrant dismissal of a reconsideration request, either entirely or as to any stated issue. A dismissal is appropriate when the person or entity requesting a reconsideration is not a proper party under § 405.906 or does not otherwise have a right to a reconsideration under section 1869(b) of the Act. A dismissal also is warranted where a party fails to make out a valid request for reconsideration under § 405.964(a) and § 405.964(b) or fails to file a request within the proper time frame under § 405.962.

On appeal, the party contesting the dismissal must provide evidence sufficient to refute the basis for the dismissal. For example, if a reconsideration request were dismissed because the person filing the appeal is not a proper party, then the appellant would have to show that they are in fact a proper party.

We have amended § 405.972(b)(4) to identify, in the event of a beneficiary-appellant's death, the circumstances an adjudicator must consider to determine whether dismissing the reconsideration request prejudices another party. The adjudicator will look to determine whether all three circumstances are present: (1) The beneficiary's surviving spouse or estate has no remaining

financial interest in the case, based on whether either remains liable for the services, or for subsequent similar services under the limitation of liability provisions, based on the denial of the services at issue; (2) no other individual or entity with a financial interest in the case wishes to pursue the appeal; and (3) no other party to the redetermination filed a valid and timely reconsideration request. For example, the QIC will dismiss the request if the beneficiary or the beneficiary's appointed representative filed the request for reconsideration, but the beneficiary was not held liable for the services at issue. The QIC will inquire whether the provider or supplier of the item or service wishes to continue the appeal. However, the QIC will not be required to inquire whether any other party wishes to continue the appeal unless a valid and timely request for reconsideration is filed by another party. We wish to note that when a beneficiary dies and the request is subsequently dismissed, a party, including the beneficiary's estate, may request the contractor to vacate the dismissal under § 405.972(d) for good and sufficient cause. Examples of good and sufficient cause include the possibility of Medicaid liability or the possibility that the State (which pays Medicaid funds) will attempt recovery of its payment from the estate.

As mentioned in our discussion above on parties to initial determinations and appeals, § 405.906(c) reflects that in the event of the death of a beneficiary, a provider or supplier will be able to appeal if no other party is available to appeal the redetermination. Thus, the provider or supplier of the item or service is able to request reconsideration in these circumstances.

Comment: Some commenters criticized the policy regarding dismissals of incomplete reconsideration requests. Rather than dismissing incomplete reconsideration requests, commenters thought that a better policy would be to inform appellants of the defect and afford them an opportunity to cure the defect. At a minimum, the commenters suggested an exception for beneficiaries.

Response: Consistent with the previous discussion of dismissals of redetermination requests, we do not agree with the commenters that QICs must be required to inform appellants of the defects in their reconsideration requests instead of being able to issue dismissals. We believe that this policy is reasonable given the new redetermination notice requirements and the simplicity of the elements of a valid reconsideration request.

Section 405.964(b) requires only five elements for making out a valid reconsideration request: (1) The beneficiary's name; (2) the beneficiary's Medicare health insurance claim number; (3) the specific service(s) and item(s) for which the reconsideration is requested and the specific date(s) of service; (4) the name and signature of the party or representative of the party; and (5) the name of the contractor that made the redetermination. We added the requirement that the party specify the contractor that made the redetermination to facilitate the QIC obtaining the case file from the appropriate contractor. Since QICs need this basic information in order to process an appeal, we believe that it is appropriate to require the party appealing to provide adequate information to identify the specific claim at issue. Further, the name and signature of the appellant is necessary to ascertain whether the individual requesting the appeal is in fact a party. This basic information is all that is required under § 405.964(b), and it essentially mirrors the information that would have already been provided by an appellant at the redetermination level. Thus, we believe that requiring QICs to accept appeal requests with insufficient information about the claim and to inform appellants of the defects in their appeal requests makes for an inefficient appeals process.

As under the former appeals process, CMS will create a standardized reconsideration form that will assist appellants, particularly unrepresented beneficiaries, with their requests. Furthermore, a dismissal of a request for reconsideration does not necessarily terminate a party's right to file an appeal. If the 180-day time frame for filing a request for reconsideration has not expired at the time a QIC issues a dismissal, then a party may correct the defect and resubmit the appeal. Additionally, if a party believes its reconsideration was inappropriately dismissed, it can either ask the QIC to vacate its dismissal, or appeal the dismissal to an ALJ.

Comment: A few commenters asked how the dismissal of a consolidated appeal or a remand resulting from a reversed dismissal affects a party's appeal rights.

Response: Under § 405.964(c), QICs are required to consolidate multiple requests for reconsideration of the same claim into one proceeding. The dismissal of a party's individual appeal request within a consolidated appeal does not affect any remaining party's appeal. When a dismissal is appealed to the next level, the adjudicator will determine if the dismissal is correct. If the adjudicator reverses the dismissal, the dismissal is vacated and remanded to the previous level of appeal. The remand of a vacated dismissal is meant to ensure that appeals are resolved at the lowest level possible. If one party's appeal is remanded on a consolidated appeal, all other parties' appeals on the same claim are remanded. The previous adjudicator will reopen the dismissal and issue a new determination. This new determination will provide appeal rights.

Comment: A few commenters opined that appellants should be able to withdraw a reconsideration request any time after filing the appeal request, but before a decision is rendered.

Response: Consistent with our policy for redetermination requests, we agree with the commenters that an appellant should be allowed to withdraw an appeal request any time after a request is filed, but before the QIC issues a decision. Thus, we have removed the proposed provision that a withdrawal request must be filed with the QIC within 14 calendar days of the filing of the reconsideration request. Section 405.972(a) now reads "an appellant that files a request for reconsideration may withdraw its request by filing a written and signed request for withdrawal * * *. The request for withdrawal must be received in the QIC's mailroom before the reconsideration is issued."

c. Evidence Submitted With the Reconsideration Request

Proposed § 405.966(a) describes the type of evidence that accompanies reconsideration requests and specifies that the failure to submit documentation listed in the redetermination notice at the reconsideration level generally prevents the introduction of that evidence at subsequent appeal levels. Under proposed § 405.966(b), if appellants submit additional documentation after their request for reconsideration has been filed, including documentation listed in the redetermination notice, the late submission results in an automatic 14-day extension of the QIC's decision-making time frame. Section 933(a) of the MMA subsequently added a similar, new statutory requirement with respect to the full and early presentation of evidence.

Comment: When filing a request for reconsideration, proposed § 405.966(a) requires a party to present evidence and allegations of fact or law related to the issue in dispute and explain why it disagrees with the redetermination. In addition, the evidence would need to include any missing documentation

identified in the redetermination notice. Absent good cause, the failure to submit evidence generally prevents its introduction at subsequent levels of the appeals process. Many commenters perceived this "penalty" for failing to comply with the requirement for early presentation of evidence as too harsh.

Some argued that requiring beneficiaries to submit evidence and make allegations of fact and law at the reconsideration level changes the nature of the appeal from an informal review to an adversarial proceeding. These commenters believe that beneficiaries generally lack the resources and sophistication to make a showing at the time a reconsideration request is filed and are better able to present evidence and explain their case in a hearing. Other commenters indicated that requiring early presentation of evidence is unfair to all appellants, not just beneficiaries, especially since the proposed rule would allow CMS to enter an appeal as a party at the ALJ level and to submit evidence and position papers. To address this issue, commenters recommended either eliminating this provision entirely, or creating an exception to this requirement for unrepresented beneficiaries.

Response: Section 1869(b)(3) of the Act, as amended by section 933(a)(1) of the MMA, now specifies that providers and suppliers may not introduce evidence in any appeal that was not presented at the reconsideration conducted by the QIC, unless there is good cause that prevented the introduction of that evidence at or before that reconsideration. This statutory change is largely consistent with the policy identified in the proposed rule; therefore, we are adopting this provision as proposed for provider and supplier appellants.

However, we are establishing an exception to the "full and early presentation of evidence" requirement for beneficiaries. Specifically, we have added § 405.966(c) to allow beneficiary-appellants to submit documentation that was specified as missing in the notice of redetermination at any time during a pending appeal without the need for good cause. Note that § 405.966(c)(2) clarifies that this exception does not apply to beneficiaries who are represented by providers or suppliers. See the discussion above at Section II, B&, "Redetermination, Notification, and Subsequent Limitations on Evidence", for a complete discussion of this issue.

We will develop manual instructions requiring QICs to help beneficiary-appellants to obtain documentation requested in the notice of redetermination.

Any case involving the late submission of evidence, including appeals by beneficiaries, will continue to result in a 14-day extension of the decision-making time frame. We believe this policy is necessary to encourage all appellants to submit evidence with their appeal requests and to ensure that adjudicators have adequate time to thoroughly review all evidence prior to issuing a decision. A 14-day extension does not apply when the submission of evidence is in response to a request by a QIC, unless the QIC's request pertains to documentation specified in the redetermination notice.

Any evidence submitted after the reconsideration level by providers, suppliers, or beneficiaries who are represented by a provider or supplier, will be evaluated against a good cause standard for late filing described at § 405.1028. Note that the full and early presentation of evidence requirement established under section 933 of the MMA and § 405.966 does not apply to CMS, and therefore, it does not limit CMS' ability to introduce evidence at the ALJ level. CMS still must submit any evidence within the time frame designated by the ALJ. An extension of this deadline is permissible for good cause at the discretion of the ALJ.

Comment: Proposed § 405.966(b) allows the QIC to automatically extend its time frame by 14 additional days when a party submits additional evidence after filing its reconsideration request. One commenter recommended that the automatic 14-day extension apply only once, even if an appellant makes more than one late submission.

Response: Consistent with our policy for redeterminations, a party may submit additional evidence as many times as it deems appropriate until the QIC issues a decision, but the QIC may extend its decision-making deadline by up to 14 days each time. Thus, we have clarified in § 405.966(b) that the 14-day extension applies each time a party submits additional evidence. We note that this provision also applies to late submissions of evidence by other parties to the appeal. The 14-day extension allows time for the QIC to carefully review and consider the additional evidence. Again, although the QIC may extend the deadline, by no means do we anticipate that QICs will use the maximum time to issue decisions in all cases. The only time that the submission of evidence will not trigger the automatic 14-day extension is when the QIC requests documentation not previously requested in the redetermination notice.

9. Conduct of a Reconsideration (§ 405.968 and § 405.976)

[If you choose to comment on issues in this section, please include the caption "Conduct of a Reconsideration" at the beginning of your comments.]

In proposed § 405.968, we defined a QIC reconsideration as "an independent, on-the-record review of an initial determination, including the redetermination." If an initial determination involved a finding on whether an item or service was reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A)) of the Act, a QIC's reconsideration must be based on clinical experience and medical, technical, and scientific evidence, to the extent applicable. Under proposed § 405.968(b), QICs would be bound by NCDs. QICs would be required to follow LCDs, LMRPs and CMS program guidance unless the appellant questioned the policy and provided a persuasive reason why the policy should not be followed.

Under proposed § 405.976, we specify that reconsiderations be in writing and contain several substantive elements, including: (1) A clear statement as to whether the reconsideration is favorable or unfavorable; (2) a summary of the facts; (3) an explanation of how the pertinent laws, regulations, coverage rules, and CMS policies apply to the facts; (4) an explanation of the medical and scientific rationale for the reconsideration when the case involved determining whether an item or service was reasonable or necessary for the diagnosis or treatment of an illness or injury; and (5) a clear statement of the QIC's rationale for its decision. Consistent with proposed § 405.968(b)(3), if the QIC's decision conflicts with an LCD, LMRP, or with program guidance (for example, a CMS manual instruction), the notice needs to include the QIC's rationale for not following the policy in question. Similarly, consistent with proposed § 405.976(b)(5), the reconsideration notice needs to address how any missing documentation affects the reconsideration and the limitations on the presentation of evidence at the ALJ hearing level.

Comment: We received many comments on the provision requiring QICs to give deference to a local coverage determination (LCD) or local medical review policy (LMRP) unless an appellant questions the policy and provides a reason why the policy should not be followed that the QIC finds persuasive. Some commenters thought that CMS had exceeded its statutory

authority by binding QICs to LCDs and LMRPs and questioned the propriety of requiring QICs to give deference to policies that they allege sometimes contradict statutes and regulations, and that are not promulgated through notice-and-comment rulemaking. They also expressed concern over whether unrepresented beneficiaries would be able to effectively challenge CMS policies and noted that requiring QICs to give deference to LCDs and LMRPs would prevent QICs from reviewing these policies.

Response: We continue to believe that it is both appropriate and consistent with the statutory intent of BIPA to require QICs to consider LCDs and LMRPs and other CMS program guidance and to apply these policies appropriately in a particular case. A QIC is not required to follow a given policy in an individual case if it believes that the policy is not legally persuasive under specific circumstances. However, this does not mean a QIC may ignore or invalidate an LCD for all subsequent appeals. The Congress created a new and entirely separate process for reviewing the validity of LCDs in section 1869(f) of the Act, as added by section 522 of BIPA. Section 1869(f) of the Act permits beneficiaries who are seeking coverage from an item or service to challenge the reasonableness of an LCD. A challenge to an LCD under section 522 of BIPA is reviewed by an ALJ.

As the commenter suggests, however, we have reevaluated the proposed requirement that a QIC could choose not to follow LCDs, LMRPs, and CMS program guidance only if the appellant questioned the policy and provided a persuasive reason why the policy should not be followed. As a result, we have revised § 405.968 to provide that a QIC may decline to follow a policy in a particular case either at the request of a party or at its own discretion.

Thus, as revised, § 405.968 states that a QIC is not bound by LCDs, LMRPs, or CMS program guidance, but will give substantial deference to these policies if they are applicable to a particular case. Moreover, a QIC may decline to follow a policy if the QIC determines, either at a party's request or at its own discretion, that the policy does not apply to the facts of the particular case. Thus, QICs will not review LCDs, LMRPs, or other CMS guidance. Rather, they will evaluate the applicability of the LCD, LMRP, or CMS guidance to a particular claim denial. Their decisions will not affect subsequent cases and are not precedential. A QIC does not have the authority to require CMS or a contractor to withdraw or revise its LCDs, LMRPs, or other guidance. This amended provision eliminates the burden imposed on appellants, including beneficiaries, to challenge CMS policies in the claim appeals process. (See section II.G.5 of this preamble for a related discussion of ALJ and MAC consideration of local coverage policies.)

We also note that section 522 of BIPA created a new review process that enables certain beneficiaries to challenge LCDs at the ALJ hearing and MAC review levels and NCDs at the MAC review level. Thus, we believe that it is important to note how the coverage appeals process could affect QICs in processing claim appeals.

If a party appeals a denial that is based on an LCD or NCD by filing only a claim appeal, then adjudicators will apply the coverage policy that was in place on the date the item or service was received, regardless of whether some other beneficiary has filed a coverage appeal based on the same LCD or NCD. This policy is consistent with original Medicare policy that requires LCD or NCD changes to only be applied prospectively to requests for payment.

If an appellant files both a claim and a coverage appeal based on the same initial determination, both appeals will go forward. The claim appeal adjudication time frames will not be impacted because the appeals will be conducted simultaneously. In adjudicating the claim appeal, adjudicators will apply the coverage policy that was in place on the date the item or service was provided, unless the appellant receives a favorable coverage appeal decision. If the appellant receives the favorable coverage decision prior to a decision being issued for the claim appeal, then pursuant to 42 CFR § 426.488 and § 426.560, the claim appeal will be adjudicated without consideration of the invalidated LCD or NCD provision(s). If an appellant receives a favorable decision in the coverage appeal after receiving an unfavorable claim appeal decision, then the appellant is entitled to have the claim appeal reopened and revised for good cause, subject to the provisions in § 405.980 and § 405.986, without consideration of the invalid LCD or NCD provision(s). As a result of these clarifications, we have added § 405.1034(c) to permit ALJs to remand an appeal to a QIC in this situation.

Comment: Although a few commenters agreed with the proposal that all QIC proceedings would be "on-the-record," most commenters opposed this proposed policy and recommended that QICs be required to offer appellants an opportunity for a hearing, as has been the case under the existing Part B fair hearing process. Commenters stated that requiring all QIC proceedings to be held on-the-record was contrary to congressional intent and would limit an appellant's ability to interact with the adjudicator. The commenters believed that appellants would be deprived of an important opportunity to provide adjudicators with clarifications and additional information not contained in the record, and that adjudicators would not have an opportunity to personally assess a beneficiary's physical/mental condition. Commenters suggested that beneficiary appellants in particular would be adversely affected by this policy. Other commenters agreed that QICs should not be required to conduct in-person or telephone reconsiderations within the statutory decision-making time frame, but expressed concern over the accuracy of the QICs' on-the-record decisions.

Response: As the commenters point out, under the existing appeals process, appellants have had an opportunity to request a "fair hearing" with respect to Part B determinations. This process, which has involved on-the-record, telephone, or in-person proceedings, has served as the second level of appeals for Part B claims, consistent with section 1842(b)(3)(C) of the Act, which specifies that an individual will be granted an opportunity for a fair hearing by the carrier in any case where the amount in controversy is at least $100. Section 1842(b)(2)(B)(ii) of the Act establishes a 120-day deadline for the fair hearing decision. The existing regulations governing appeals under Medicare Part B, in Subpart H of Part 405, describe the available hearing procedures.

However, the right to a fair hearing has never been part of the appeals process for Part A claims. For these claims, § 405.710 establishes a right to a "reconsideration." Neither the statute nor the implementing regulations under Subpart G of Part 405 provide for any type of hearing before the ALJ level for Part A claims. Neither the statute nor the regulations establish a minimum amount in controversy for Part A reconsiderations.

In contrast to the pre-BIPA statute, revised section 1869 of the Act establishes a uniform set of appeals requirements for all Part A and Part B claim determinations. The required procedures now available under the statute consist of a "redetermination" by an intermediary or carrier, a "reconsideration" by a QIC, a "hearing" before an ALJ, and then a "review" by the DAB. As under the existing Part A process, the statute does not establish any minimum amount in controversy

for reconsiderations and sets this amount at only $100 for ALJ hearings.

Section 1869 of the Act, as amended by BIPA and the MMA, does not require, or even mention, a hearing at the QIC level. Instead, section 1869(c)(3)(B)(i) of the Act specifies that in conducting a reconsideration, the QIC "* * * shall review initial determinations" and that when the determination involves whether an item or service is reasonable and necessary under section 1862(a)(1)(A) of the Act, "* * * such review shall include consideration of the facts and circumstances of the initial determination by a panel of physicians or other appropriate health care professionals and [decisions] shall be based on applicable information, including clinical experience (including the medical records of the individual involved) and medical, technical, and scientific evidence." The statute then specifically provides for "hearings" at the ALJ level under section 1869(d)(1). Finally, the Congress established rigorous decision-making time frames at all levels of the appeals process that will significantly reduce the amount of time in which an appellant who chooses to use the ALJ process will obtain a decision.

Taking into consideration all of the above information, we believe our proposal is consistent with the substantially revised appeals methodology, including faster decision-making time frames, physician reviewers, and lower amount in controversy thresholds. We believe that the Congress was fully aware of the historical meaning of the terms "reconsideration" and "hearing" and did not use them lightly in the new statute. Appellants retain the right to a hearing at the ALJ level, and this hearing will take place generally within the same time frame as a "fair hearing" under the previous Part B appeals process. Thus, we continue to believe that the statute does not intend or require that the QIC reconsideration process include an opportunity for a hearing. Finally, we note that QICs are not precluded from contacting appellants and obtaining necessary information from them by phone or other means.

Comment: A few commenters inquired about the QICs' ability to hear or raise new issues. One commenter recommended that QICs be prohibited from raising new issues. Most commenters, however, agreed that QICs should be able to hear or raise new issues not raised at the initial determination or redetermination levels. In a related question, another commenter asked whether a QIC panel would adjudicate an appeal if a section 1862(a)(1)(A) issue (that is, a medical necessity issue) was raised for the first time at the reconsideration level.

Response: A reconsideration is a new and independent review of an initial determination and we believe adjudicators at the reconsideration level should be permitted to raise and develop any issues that they believe are relevant to the claims in the case at hand. Accordingly, we have added § 405.968(b)(5) to clarify this policy. Section 1869(c)(3)(B)(i) of the Act requires that a reconsidered determination involve consideration by a panel of physicians or other health care professionals when the initial determination is based on section 1862(a)(1)(A) of the Act. Thus, if a medical necessity issue was raised for the first time at the reconsideration level, we believe that review by a panel of health professionals would be required. Although the panel may consider new issues involving the claims in dispute, it must not adjudicate new claims for which the contractor has not issued a redetermination.

Comment: One commenter thought that the redetermination and reconsideration levels were redundant and suggested eliminating one in order to make the appeals process more efficient.

Response: Section 1869(a)(3)(A) of the Act gives appellants who are dissatisfied with their initial determination the right to request a redetermination. If an appellant is dissatisfied with the redetermination, then section 1869(b)(1)(A) of the Act grants the appellant the right to request a reconsideration. Thus, both the redetermination and reconsideration levels are unambiguously required by statute. It is not within CMS' discretion to eliminate either the redetermination or reconsideration levels of appeal.

a. Time Frame for Making a Reconsideration

Comment: Proposed section 405.970(c) specified that, by no later than the close of the 30-day decision-making time frame, a QIC must issue to the parties either a reconsideration, a dismissal, or a notice stating that the QIC will not be able to complete its review by the deadline. The notice would also advise the appellant of the right to request escalation of the appeal to an ALJ. CMS further specified that, whenever a QIC receives an escalation request, the QIC, within 5 days, would either complete its reconsideration and notify the parties of the decision, or acknowledge the escalation request and forward the case file to an ALJ.

A number of commenters felt that BIPA unequivocally requires QICs to issue reconsiderations within 30 days of their receipt of a request for reconsideration. Thus, they were critical of the proposed policy to allow a QIC to issue a notice to an appellant indicating that it is unable to complete a reconsideration within the prescribed decision-making time frame. The commenters complained that allowing QICs to issue these notices, rather than an actual reconsideration, contradicts the statutory intent and creates a loophole for QICs to avoid compliance with the decision-making time frames established by BIPA.

Response: We realize that the Congress intends for QICs to issue reconsiderations in response to timely filed reconsideration requests within 60 days as stated in section 1869(c)(3)(C)(i) of the Act (as amended by section 940(a)(2) of the MMA). We disagree, however, with the assertion that the drafters envisioned that QICs would be able to issue timely decisions for every reconsideration request no matter what the circumstances involved. To the contrary, the Congress clearly expected that there would be situations in which QICs would not be able to comply with the statutory decision-making time frames, as evidenced by the inclusion of the escalation provisions of section 1869(c)(3)(C)(ii) of the Act, "Consequences of Failure to Meet Deadline." Here, the Congress created a new right for appellants to escalate appeals to the ALJ level in the event that the QIC failed to mail the notice of reconsideration within the decision-making time frame. In order to accommodate appellants' ability to exercise this right, it is essential that QICs provide appellants with a notice when a reconsideration cannot be issued timely.

Sections 405.970(a)(2) and 405.970(c)(2), therefore, do not conflict with the statutory intent or create a loophole for avoiding compliance with the statutory decision-making time frames. Rather, these provisions help guarantee that appellants will be able to exercise their right to escalate an appeal by ensuring that appellants receive timely notice of the QIC's inability to issue a reconsideration within the statutory time frame. We believe this process is highly preferable to not informing an appellant of this fact. We also wish to point out that if an escalation request is received prior to the end of the 60-day adjudication period, the QIC will proceed with its review of the reconsideration request

and either (1) issue its reconsideration by the end of 65 days (the 60-day period plus 5 days from receipt of the request to escalate) or (2) send notification to the party on the 60-day deadline that the QIC cannot complete its review by the 60-day deadline and escalate the request at that time.

Comment: Two commenters expressed concern over applying the 30-day decision-making time frame to reconsiderations of post-pay audit cases involving statistical sampling. The commenters stated that the large volume of claims to be reviewed for these types of cases would prevent QICs from ever meeting the 30-day time frame or would force the QICs to simply rubberstamp the redetermination in order to meet the 30-day deadline. The commenters further surmised that ALJs would regularly overturn QIC reconsiderations on these "big box" cases for lack of development. The commenters recommended that CMS either provide a longer decision-making time frame for these types of cases, or bypass the reconsideration level for these cases and allow appellants to go to the ALJ hearing level if they are dissatisfied with the audit determination.

Response: We appreciate the commenters' observation that it will be difficult for the QICs to process "big box" cases resulting from complex post-payment audits that involve individual consideration of multiple claims in a timely manner, even under the new 60-day time frame established by section 940(a)(2) of the MMA. At this point, we do not have a basis for direct evaluation of this issue since the QICs are not yet conducting reconsiderations. However, we know that in the former appeals process when a fair hearing officer receives a "big-box" case, it generally has taken 60 days to review the extensive medical records and other documentation associated with these cases. As mentioned in the previous response, we believe that the Congress expected that there would be situations in which QICs would not be able to comply with the decision-making time frame, as evidenced by the inclusion of the escalation provision of section 1869(c)(3)(C)(ii) of the Act. Thus, if an adjudicator fails to complete a reconsideration of a "big-box" case within 60 days, an appellant has the option of either waiting for the QIC's reconsideration, or requesting escalation of the case to the ALJ hearing level. We intend to work very closely with carriers, FIs, and QICs to identify ways to streamline the redetermination case file transmission and reconsideration procedures in order to facilitate the achievement of this deadline.

b. Notice of a Reconsideration

Comment: Because the proposed rule gives providers and participating suppliers the same appeal rights as beneficiaries, some commenters wondered who would receive the reconsideration notice if both the beneficiary and the provider or supplier filed timely appeals.

Response: Section 405.964(c) establishes that "[i]f more than one party timely files a request for reconsideration on the same claim before a reconsideration is made on the first timely filed request, the QIC must consolidate the separate requests into one proceeding and issue one reconsideration." Thus, pursuant to §§ 405.970(c)(1) and 405.976(a)(1), all of the parties will receive a copy of the reconsideration. This applies to all reconsiderations, including consolidated cases. To minimize confusion for beneficiaries who have no financial liability in overpayment cases involving multiple beneficiaries, we added an exception at § 405.976(a)(2) that QICs need to issue written notices only to the appellants in these cases. Therefore, the beneficiary will only receive a written notice of the reconsideration in such an overpayment case when he or she files an appeal request or it is a consolidated case.

We also note that we have added a requirement at § 405.976(b)(7) that the QIC must also indicate whether the amount in controversy meets the threshold requirement for an ALJ hearing if the reconsideration is partially or fully unfavorable. We believe this addition will be beneficial to appellants as well as to adjudicators at those levels where AICs apply.

c. Publication of Reconsiderations

Comment: Citing the statutory requirement to make reconsiderations available, two commenters suggested that the final rule include information about publication of QIC reconsiderations. Specifically, the commenters thought that CMS should establish a time frame for publication of QIC decisions and identify how the public would be able to view and obtain copies of reconsiderations, in order to ensure that appellants have access to prior reconsiderations as they make their own reconsideration requests.

Response: Section 1869(c)(3)(G) of the Act requires QICs to make reconsiderations available, but does not require CMS or the QICs to "publish" all reconsiderations. However, we do not believe that this interim final regulation is the appropriate vehicle to provide information regarding the availability of reconsiderations. CMS is working with the QICs to determine how best to provide the public with specific information regarding prior QIC reconsiderations.

Although we expect QICs to issue consistent reconsiderations, and appellants will have access to those prior reconsiderations, it is worth noting that reconsiderations, like all other Medicare administrative appeal decisions, have no precedential value. Moreover, based on current workload, there may be as many as one million QIC reconsiderations a year; given the large volume of anticipated reconsiderations, we do not intend to "publish" them, but we will ensure they are made available.

d. QIC Qualifications

Comment: Many commenters asked that the final rule include more explicit information about the QICs. In particular, commenters wanted the final rule to identify the minimum qualifications for the QIC panel members and reviewers, clearly define the role of the QIC panel in the reconsideration process, and describe the on-going training that would be made available to the panel members and reviewers. Most of these commenters strongly believe that QIC panelists should be licensed, practicing health care professionals with sufficient expertise in the relevant area of medicine involved in the appeal, and also possess some legal experience. One commenter suggested that the requirements currently used for Quality Improvement Organization (QIO) reviewers might be a good model for developing the QIC reviewers' qualifications. Commenters also asked that the final rule spell out the provisions that would be put in place to ensure the QICs' independence.

Response: We agree with commenters that details regarding the qualifications of the QICs' panel members and reviewers, the structure of the QICs, and their operational policies need to be established before implementation of the new appeals process. Both BIPA and the MMA have provided extensive direction in regard to QIC independence requirements and the eligibility requirements for QIC reviewers, and we intend to ensure through the QIC contracting process that QICs are fully compliant with these requirements. We have also established QIC training requirements through the procurement process. However, we do not believe it is necessary or appropriate to address these types of issues in regulations, and instead will follow the normal business

practice of including this information in the contracts with the QICs.

Comment: Although commenters overwhelmingly agreed that using panels of health care professionals at the QIC level would be an improvement over the current appeals process, at least one commenter questioned the cost-effectiveness of using these panels for appeals involving low dollar claims and recommended that we develop alternative ways of reviewing these kinds of appeals.

Response: We appreciate the commenter's concern and recognize that using panels of physicians and other health care professionals to review appeals of section 1862(a)(1)(A) denials will not always be cost-effective. However, based on the unambiguous language in section 1869(c)(3)(B)(i) of the Act, the Congress clearly intended that panels of physicians or other health care professionals review all appeals involving determinations on whether an item or service is reasonable or necessary, regardless of the dollar value of the claim(s) involved. We intend to work with QIC's to determine the most cost-effective means of fulfilling this statutory requirement.

10. Reopenings of Initial Determinations, Redeterminations, Reconsiderations, Hearings and Reviews (§ 405.980 through § 405.986)

[If you choose to comment on issues in this section, please include the caption "Reopenings of Initial Determinations, Reconsiderations, Hearings, and Reviews" at the beginning of your comments.]

Section 1869(b)(1)(G) of the Act, as added by BIPA, provides for the reopening and revision of any initial determination or reconsidered determination according to guidelines prescribed by the Secretary. As we pointed out in the proposed rule, clear reopening provisions are needed not only to comply with BIPA, but also to address longstanding confusion over the reopening rules for Medicare claim determinations. Thus, we proposed to establish a unified set of reopening regulations that consolidate and clarify the existing reopening provisions of subparts G and H of part 405. (*See* 67 FR 69327.)

First, proposed § 405.980(a) establishes the general rule that a reopening is a remedial action taken by a carrier, intermediary, QIC, ALJ, the MAC, or any other entity designated by CMS to change a final determination or decision made with respect to an initial determination, redetermination, reconsideration, hearing, or review, even though the determination or decision may have been correct based upon the evidence of record. (For purposes of reopenings, the term "contractors" includes carriers, intermediaries, and program safeguard contractors.) Under proposed § 405.980(a)(4), we define a clerical error as human and mechanical mistakes (for example, mathematical or computational mistakes, or inaccurate data entry).

Proposed § 405.980(b) through § 405.980(e) specify the time frames and requirements for reopening initial determinations, redeterminations, reconsiderations, hearing decisions, and reviews, both for reopenings initiated by contractors, QICs, ALJs, or the MAC, as well as those requested by parties. Either a party can request a reopening, or a contractor can reopen on its own motion, for any reason, within one year from the date of the notice of the initial determination or redetermination. A party or a contractor has a 4-year time frame for requesting or initiating reopenings for good cause. However, although a party can request a reopening, the contractor can nevertheless determine that there is not good cause to reopen the case. (An example of good cause to reopen based on a clerical error is when payment for a claim is denied because an erroneous code, which is not covered by Medicare, was used and it is later determined that the procedure was miscoded.) We also proposed that a contractor can reopen within 5 years from the date of the initial determination or redetermination if the contractor discovers a pattern of billing errors or identifies an overpayment extrapolated from a statistical sample.

Finally, we proposed to maintain the longstanding policy that reopenings are permitted at any time on claim determinations that have been procured through fraud or similar fault. Proposed § 405.980(b)(4)(ii) defines similar fault as "to obtain, retain, convert, seek, or receive Medicare funds to which a person knows or should reasonably be expected to know that he or she or another for whose benefit Medicare funds are obtained, retained, converted, sought, or received is not legally entitled. This includes, but is not limited to, a failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter." Similar fault is intended to cover instances where Medicare payment is obtained by those with no legal rights to the funds, but where law enforcement is not proceeding with a recovery based on fraud. This includes instances where a provider has been paid twice for the same claim where the contractor erroneously pays for codes that should not have been paid, but there is no evidence that the provider intentionally failed to refund the money; or where there is the manipulation of legitimate codes to obtain a higher reimbursement. While this last example might appear to be an example of fraud, it is also an example of an instance when the similar fault provision might be used. The similar fault provision is appropriately used where fraudulent behavior is suspected but law enforcement is not proceeding with recovery on the basis of fraud.

Proposed § 405.980(d)(1) and § 405.980(e)(3) provide 180 days from the date of a reconsideration for either a party to request, or a QIC to initiate, a reopening. Similarly, both the parties and the adjudicators at the ALJ and MAC levels also have 180 days from the date of a hearing or review decision to request or initiate a reopening. The party, QIC, ALJ, or the MAC have to establish good cause for a reopening.

Proposed § 405.982 through § 405.984 require contractors, QICs, ALJs, or the MAC to mail notices of revised determinations or decisions based on reopened determinations, reconsiderations, or decisions to the appropriate parties at their last known addresses. In the case of a reopening that results in a favorable decision and issuance of additional payment to a provider or supplier, a revised remittance advice (RA) must be issued to the provider or supplier that explains the payment and reports the appeal rights; this RA will serve as the notice of the reopening determination. In the case of a reconsideration that results in additional payment to a provider or supplier, both a reconsideration determination notice and an electronic or paper remittance advice notice must be issued. Proposed § 405.986 specifies how a party, contractor, QIC, ALJ, or the MAC would establish good cause for a reopening. In this interim final rule, we have revised proposed § 405.986(b), to clarify that although a change in substantive law or interpretative policy is not good cause for reopening, the provision does not preclude contractors from reopening claims to effectuate a decision issued under section 1869(f) of the Act, as amended by section 522 of BIPA. The final regulation implementing the coverage appeals process was published after the notice of proposed rulemaking for this regulation was issued. Thus, we have now added language at § 405.980(b)(5) to enable contractors to reopen claim determinations at any time in order to effectuate favorable coverage appeals decisions issued to a beneficiary. We

wish to make clear that this provision does not allow retroactive application of coverage decisions to payment denials.

a. Reasons and Conditions for Reopenings

Comment: Several commenters mentioned that the proposed definition for a reopening does not acknowledge that the purpose of a reopening is to ensure correct payment amounts; and therefore, a reopening may result from either an overpayment or an underpayment. They believed that CMS should clarify in the regulations that a reopening can be initiated for either an overpayment or an underpayment.

Response: We agree with the commenter that the underlying goal of the reopening process is to pay claims appropriately, subject to considerations of administrative finality. In the proposed rule (67 FR 69327), we state that, "the purpose for conducting a reopening should be to change the determinations or decisions that result in either overpayments or underpayments." To accommodate this concept in the regulations, we have added text at § 405.980(a)(1) that makes clear that a reopening is an action to change a final determination or decision that results in either an overpayment or an underpayment.

Comment: One commenter requests clarification on the conditions for reopening. The commenter seeks further clarification on whether good cause is required for reopenings that occur within 1 year from the date of the initial determination or redetermination, or whether a contractor would grant a request for reopening for any reason within the one-year time frame.

Response: The authority for a contractor to reopen a claim or appeal within one year from the date of the initial determination or redetermination for any reason exists under § 405.750(b)(1) and § 405.841(a). Therefore, we have removed proposed text formerly in § 405.980(a)(2)(i) in order to avoid the implication that contractor reopenings within one year are premised on good cause. This is consistent with § 405.980(b)(1) and § 405.980(c)(1), which maintain the authority for contractors to reopen claims or appeals within 1 year for any reason. Thus, contractors do not need to establish good cause under § 405.986(a) to reopen within 1 year.

We also note that under § 405.980(b)(3), contractors may reopen at any time if there exists reliable evidence that an initial determination was procured by fraud or similar fault. In addition, we have added § 405.986(c) to provide that if a third party payer changes its assessment of whether it has primary payment responsibility more than 1 year after the date of Medicare's initial determination, the contractor is without authority to find good cause to reopen a claim.

b. Distinguishing Between Reopenings and Appeals

Comment: Two commenters express uncertainty over whether CMS intends for contractors to process corrections of clerical errors as reopenings or appeals. One commenter contends that CMS provides conflicting information by suggesting in one section of the preamble that adjustments resulting from clerical errors are handled through the reopenings process, while stating in another section of the preamble, that either a party would need to exhaust all appeal rights, or the time limit to file an appeal would need to expire, in order for the contractor to conduct a reopening to correct these errors. Another commenter maintains that the proposed rule requires human or mechanical errors to go through the appeals process instead.

Response: As we stated in the proposed rule, "requests for adjustments to claims resulting from clerical errors must be handled through the reopenings process. Therefore, when a contractor makes an adjustment to a claim, the contractor is not processing an appeal, but instead, conducting a reopening" (67 FR 69327). Moreover, section 937 of the MMA subsequently amended the Act to specify that in the case of minor errors or omissions that are detected in the submission of claims, CMS must give a provider or supplier an opportunity to correct that error or omission without the need to initiate an appeal. We equate the MMA's minor errors or omissions to fall under our definition of clerical errors, located in § 405.980(a)(3). We believe that it is neither cost efficient nor necessary for contractors to correct clerical errors through the appeals process. Thus, § 405.927 and § 405.980(a)(3) require that clerical errors be processed as reopenings rather than appeals. Consistent with the process that we developed in consultation with Medicare contractors, and representations of providers and suppliers as required under section 937 of the MMA, we have made a conforming change at § 405.980(a)(3) to specify that contractors must grant reopenings for clerical errors or omissions. Section 405.980(a)(4) of this interim final rule states that a contractor may reopen and revise its initial determination or redetermination on its own motion at any time if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based. In the event that a contractor does not believe that a clerical error exists, the contractor must dismiss the reopening request and advise the party of its ability to pursue to the appeals process on the claim denial, provided the timeframe to request an appeal has not expired. It should be noted that the party would be requesting an appeal of the original denial, not the dismissal of the reopening request. Reopenings continue to be discretionary actions on the part of the contractors; therefore, their decision not to reopen is not subject to appeal.

Similarly, we believe that improper denials based on duplicate claims essentially involve clerical errors that can be best resolved through the reopenings process. When a provider or supplier receives a denial based on the contractor's determination that the claim is a duplicate and the provider or supplier believes the denial is incorrect, and the contractor agrees that the denial was incorrect, the contractor should reopen the denial. Thus, we added text at § 405.980(a)(3)(iii) to specify that if a provider or supplier wishes to resolve a denial based on a claim being erroneously identified as a duplicate, the contractor should process the request as a reopening rather than as an appeal. In the event the contractor does not believe the denial was improper, the contractor must dismiss the reopening request and advise the party of any appeal rights, provided the timeframe to request an appeal on the original denial has not expired.

Comment: One commenter was concerned that the proposed rule would limit opportunities for reopenings, because proposed § 405.980(a)(5) would preclude a reopening when a party has filed an appeal request. The commenter asked whether one can assume that a reopening will not be granted when a provider requests an appeal of a denial or partial payment such as that resulting from a provider submitting an incorrect CPT code, diagnosis code, or modifier.

Response: Under normal circumstances, a valid request for an appeal must be processed as an appeal, and once an adjudicator receives a valid appeal request, the entity that made the previous determination generally no longer has jurisdictional authority to reopen that determination. We have revised § 405.980(a)(4) to clarify this point.

Section 405.980(a)(4) ensures that the reopening and appeal processes are not engaged at the same time. We recognize,

however, that in certain situations, it will be apparent that the provider that is requesting an appeal is actually bringing a clerical error to the attention of the contractor. Under this interim final rule, irrespective of the provider's or supplier's request for an appeal, a contractor will treat the request for appeal of a clerical error as a request for a reopening. Therefore, as a practical matter, under § 405.980(a)(4), the contractor must transfer the provider's or supplier's appeal request to the reopenings unit for processing. On the other hand, if a contractor receives a request for a reopening, but disagrees that the issue is a clerical error, then the contractor must dismiss the reopening request and advise the party of any appeal rights, provided that the timeframe to request an appeal on the original denial has not expired.

CMS understands that educational efforts must be undertaken in conjunction with this regulation to make the provider and supplier communities aware of their ability, and the contractor's obligation to resolve clerical errors through the reopenings process. Until that education occurs, many providers and suppliers may continue to believe that their only, or best, recourse is to request an appeal.

c. Similar Fault and Reopenings Within 5 Years

Comment: As noted above, proposed § 405.980(b)(4)(ii) defines similar fault as "to obtain, retain, convert, seek, or receive Medicare funds to which a person knows or should reasonably be expected to know that he or she or another for whose benefit Medicare funds are obtained, retained, converted, sought, or received is not legally entitled. This includes, but is not limited to, a failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter." Several commenters believe that this definition is too broad and allows contractors to reopen almost any claim, for any reason.

Response: The definition of similar fault covers situations where a contractor identifies an inappropriate billing that does not rise to the level of fraud. It is necessary to define similar fault as those situations when a contractor has identified inappropriate billing by a provider or supplier that knows or could have been reasonably expected to know that the claim should not have been paid for items or services, but the situation is not one where a law enforcement agency has made a determination that the billing is fraudulent. The similar fault provision is appropriately used where fraudulent behavior is suspected but law enforcement is not proceeding with recovery on the basis of fraud. We do not believe this definition is overly broad, given the implicit requirement that the fault be "similar" to fraud.

Comment: Several commenters express concern over the provision in the proposed rule at § 405.980(b)(3), which allows a contractor to reopen initial determinations and redeterminations within 5 years of discovering a pattern of billing errors, or identifying an overpayment extrapolated from a statistical sample. The commenters point out the difficulty and burden in locating documentation on older claims. The commenters also argue that CMS does not provide a rationale for the proposed 5-year time frame.

Response: CMS proposed this provision in an effort to accommodate overpayments identified by external auditors and law enforcement agencies. There were instances where auditors utilized a 5-year sampling methodology, identified an overpayment, and instructed the Medicare contractor to recoup the overpayment. Since the audit results were usually amounts extrapolated from a statistical sample based on 5 years of records, carriers and intermediaries experienced difficulty collecting the overpayments because § 405.750(b)(2) and § 405.841(b) bound carriers and intermediaries to a 4-year limit for the identification and collection of overpayments where a law enforcement agency did not make a fraud determination.

However, we recognize providers' concerns with this proposal and consequently have decided to remove it from the final regulation. To the extent that law enforcement findings suggest a need for reopenings in situations that involve inappropriate billing patterns, but fall short of outright fraud, contractors may rely on the similar fault provision at § 405.980(b)(3) to reopen claims.

Comment: One commenter asks whether proposed § 405.980(b)(4), which allows contractors to reopen initial determinations procured by fraud or similar fault, is limited to initial determinations that have not been appealed or reopened.

Response: Section § 405.980(a)(4) of this interim final rule requires that when a party files a valid request for an appeal, the adjudicator no longer has jurisdiction to reopen the pending claim or appeal at issue. However, in cases of fraud or similar fault, the government may be pursuing legal action for claims it suspects are fraudulent, an activity which falls outside of the administrative appeals process. In the event legal action results in a favorable decision for CMS, CMS has the ability to reopen the claims in question and recoup any overpayment. Additionally, if a claim has gone through the appeals process on a completely separate issue, CMS may reopen the claim, but only to address an issue not previously decided on appeal. For example, if a claim is denied as not medically necessary and that denial on medical necessity is the issue being brought before the adjudicator on appeal, yet an issue of fraud is discovered on the same claim, the claim may be reopened to address the issue of fraud not previously considered on appeal. The reopening action on the fraud issue would occur only after the claim had proceeded through the appeals process on the medical necessity issue. Any unfavorable decision that was issued based on the subsequent reopening would generate appeal rights and any party to that determination would be able to contest any new denial through the appeals process. A previously appealed claim could also be reopened by the adjudicator to correct a later discovered clerical error.

Comment: One commenter asks if it is CMS' intent to revise § 405.355(b), which allows a reopening for the collection of an overpayment within 3 years from the date of the initial determination.

Response: Section 405.355(b) pertains to the waiver of an adjustment or recovery from a provider or other individual who is deemed to be without fault. The provision does not address a contractor's ability to reopen an initial determination or redetermination, and is not affected by this interim final rule.

d. Authority To Reopen

Comment: One commenter recommends that CMS require in the regulation text that a determination or decision can be reopened only by the entity that rendered the decision. For example, only a QIC can reopen a QIC's decision.

Response: As originally proposed, §§ 405.980(a)(1)(i) through 405.980(a)(1)(iv) specify that only the entity that issues a determination, reconsideration or other decision can initiate a reopening of that decision. Although this remains true in most instances, we note that this interim final rule contains an exception to this general principle at § 405.980(a)(1)(iv), whereby the MAC can reopen an ALJ's hearing decision. It should be noted that this is a continuation of CMS' current practice and does not constitute a change in policy. We also note that § 405.986(b) specifies that a change in

legal interpretation, regulations, or program instructions (or a declaration of what the law means or meant), whether by the judiciary or otherwise, does not form a basis for reopening.

e. Time Frames and Notice Requirements

Comment: One commenter recommends that CMS establish a time frame for processing and completing reopenings.

Response: We agree that, wherever possible, a party must have a reasonable expectation as to the administrative finality of a decision on a claim or claims in question. However, since an adjudicator can reopen at any time for fraud or similar fault, we do not believe that CMS can establish meaningful time frames for processing and completing reopenings. Instead, CMS will monitor the processing of reopenings by contractors during performance reviews and desk audits.

Comment: One commenter states that an adjudicator must be required to send both a reopening notice and a decision notice resulting from the reopening. The commenter contends that a reopening notice helps the party determine the adjudicator's time frame for issuing a decision. Also, the decision notice must provide the basis and evidence supporting the reopening.

Response: We are not requiring adjudicators to provide a notice to a party when they reopen claims and appeals, since any action that might result from the reopening will result in a party receiving a notice of the revision. Section 405.982 provides that adjudicators must issue notices of revised determinations or decisions which, in the event of an adverse revised determination or decision, must state the rationale and basis for the revision, and information about appeal rights. In the case of an adverse determination, a party would need this information should the party decide to appeal. In addition, if a contractor's reopening of an initial determination results in an overpayment determination, then the contractor must issue a demand letter to the affected party. If the reopening results in a favorable determination, then a revised MSN and RA will be generated.

f. Establishing an Evidentiary Burden of Proof To Reopen

Comment: One commenter recommends that CMS add to the regulation text that a contractor has an evidentiary burden of proof, particularly with respect to those reopening actions that occur after the 1-year limit on reopenings for any reason.

Response: Our policy that, within 1 year, for any reason, contractors may reopen claims and parties may request reopenings, is fair and equitable; moreover, no evidentiary standard is needed in the those situations. For reopenings after that time, the rules we proposed are sufficient; that is, contractors must have good cause for reopening claims within 4 years and must have obtained reliable evidence for reopening at any time for fraud or similar fault. No matter what the outcome of a reopened and revised determination, parties retain the right to challenge the new determination at the appropriate appeal level.

g. Inability To Appeal a Decision on Whether To Reopen

Comment: One commenter expresses concern that a party cannot seek review of a determination not to grant a request for reopening. The commenter argues that not allowing an appeal violates a party's due process rights.

Response: It is our longstanding rule that failure to grant a request for reopening is not reviewable. The Supreme Court has upheld this concept. *See Your Home Visiting Nurses Services, Inc.* v. *Shalala*, 525 U.S. 449 (1999); *Califano* v. *Sanders*, 430 U.S. 99 (1977). This does not violate the party's due process rights, because the administrative appeals process for Medicare claims already affords ample due process to the party. The reopenings process simply offers, but does not guarantee, an additional process if a party misses the time frame for filing an appeal or if the party has exhausted his or her appeal rights. For purposes of administrative finality and efficiency, CMS cannot sanction an endless cycle of reopening requests and appeals.

h. Enforcement of the Good Cause Standard

Comment: One commenter recommends that CMS create enforcement provisions for the good cause standard when contractors reopen claims. The commenter says that contractors often ignore the guidelines set out in regulations and manuals and cite a request for medical records as good cause for a reopening, even though the medical records existed at the time the contractor initially reviewed the claim.

Response: The regulations require that contractors abide by the good cause standard for reopening actions after one year from the date of the initial or revised determination. CMS assesses a contractor's compliance with Federal laws, regulations and manual instructions during audits and evaluations of the contractors' performance. Thus, the necessary monitoring and enforcement mechanisms are already in place.

i. Applying Similar Reopening Standards to Adjudicators and Parties

Comment: One commenter recommends that CMS apply the same reopening standards to adjudicators and parties and that a party be able to challenge an adjudicator's reopening action.

Response: As discussed above, an adjudicator's decision on whether to reopen a claim or an appeal is discretionary and not subject to an appeal. However, the reopening standards that apply to parties and adjudicators are very similar in this interim final rule. The only provisions that necessitate a difference are those provisions, which allow adjudicators to reopen at any time if reliable evidence exists that a determination or decision was procured by fraud or similar fault, and § 405.980(b)(5), which allows contractors to reopen at any time to effectuate a decision issued under the coverage appeals process. Clearly, a party that obtains payment through fraudulent or other similar means has no use for this provision. Again, if a contractor issues a revised determination or decision that is unfavorable, the affected party has the right to appeal.

11. Expedited Access to Judicial Review (EAJR) (§ 405.990)

[If you choose to comment on issues in this section, please include the caption "Expedited Access to Judicial Review" at the beginning of your comments.]

In proposed § 405.990, we incorporate the current regulations governing the expedited appeals process (EAP) at § 405.718 and § 405.853 with only two changes. First, since under BIPA the appeals process is the same for both Part A and B claims, we consolidated the Part A and B regulations governing expedited review of cases involving those claims. Second, under BIPA, ALJs are bound by all NCDs rather than only by NCDs based on section 1862(a)(1)(A) of the Act. Therefore, the regulations no longer limit expedited review to cases involving NCDs based on section 1862(a)(1)(A) of the Act.

In addition, we establish under proposed § 405.992 the standards that apply to ALJs and the MAC for policies that are not subject to the expedited appeals process. These standards have been moved to § 405.1060 in this interim final rule and are discussed in detail in the ALJ section. (*See* section II.G.5 of this preamble).

Comment: One commenter questions the requirement in § 405.990 for a $1,000 amount in controversy and the requirement for unanimous, written concurrence from all parties in order to request use of the EAP. The same commenter also requests that we make a number of clarifications in § 405.990, including stating explicitly that use of the EAP is not automatic, the decision by the review entity is not reviewable, and certification from the review entity does not trigger an action in Federal district court; the appellant must file a suit.

Response: As noted above, proposed § 405.990 includes no significant changes to the existing EAP process. The policies cited by the commenter (decisions to certify a case are not reviewable, a certification does not automatically trigger a Federal suit and written concurrence from all parties) are longstanding elements of the EAP process. Since publication of the proposed rule, however, the MMA has revised the applicable statutory requirements. In this interim final rule, we intend to maintain the proposed policies, as well as the changes necessitated by section 932 of the MMA. Therefore, we are revising § 405.990 so that it is consistent with the MMA requirements.

Section 932 of the MMA states that the Secretary must establish a process under which a provider or supplier or a beneficiary may obtain access to judicial review when a review entity determines that the Departmental Appeals Board (DAB) does not have the authority to decide the question or law or regulation relevant to the matters in controversy and that there is no material issue of fact in dispute. As a result, we are modifying proposed § 405.990(f)(1) and § 405.990(f)(2) to require that requests for expedited access to judicial review (EAJR) be evaluated by a review entity. (Note that in this interim final rule we have replaced references to the EAP with EAJR in order to avoid confusion with the expedited appeals process under § 405.1200 through § 405.1206, which permits beneficiaries to request an expedited appeal of provider service terminations.) Also, in § 405.990(a), we define a review entity as a decision-making body composed of up to three reviewers who are ALJs or members of the DAB, as determined by the Secretary. The MMA also establishes a 60-day decision-making time frame for EAJR requests. Therefore, we have amended § 405.990(f)(2) to implement this change.

Section 932 of the MMA provides that a review entity's determination "shall be considered a final decision and not subject to review by the Secretary." This language plainly has two effects—(1) a review entity's determination that is favorable to the party requesting EAJR is the final agency decision for purposes of judicial review, and (2) an ALJ or the MAC may not alter an unfavorable determination in the regular appeals process. Therefore, in § 405.990(f)(3), we are prohibiting an ALJ or the MAC from reviewing a decision by the review entity that either certifies that the requirements for EAJR are met, or denies the request. In § 405.990(h)(3), we cross reference to § 405.1136 since requests for EAJR certified by the review entity must also meet the requirements under that section for filing a civil action in a Federal district court.

Finally, as required under the MMA, if a provider, supplier, or beneficiary is granted judicial review, § 405.990(j) requires the application of interest to the AIC.

12. ALJ Hearings (§ 405.1000 Through § 405.1064

[If you choose to comment on issues in this section, please include the caption "ALJ Hearings" at the beginning of your comments.]

a. Introduction

In the proposed rule, we included new procedures to both implement section 1869 of the Act, as amended by BIPA, and codify in the Medicare regulations at 42 CFR, part 405, subpart I, all of the requirements that apply to ALJ and MAC proceedings. Most of the previous regulations used by the ALJs and the MAC were set forth in 20 CFR, part 404 of SSA's regulations, which focuses on SSA's disability appeals procedures. We note that we are generally carrying over relevant provisions of these rules applicable to Medicare proceedings, but will discuss in the preamble any new regulations that make substantive changes to the ALJ and MAC processes.

In addition to receiving comments on the proposed new provisions, we received some comments on the carry over of regulations that are already in effect for Medicare ALJ hearings and MAC review. Since most of these comments were associated with general concerns about changes to the ALJ process, we note them, where applicable, in the sections below.

Finally, as noted above, this interim final rule includes some straightforward changes to the ALJ and MAC process required by the MMA.

b. Escalation

(1) General Application

One of the most significant changes required under section 521 of BIPA is the introduction of an appellant's right to escalate a case to an ALJ if a QIC fails to make a timely reconsideration, or to the MAC if an ALJ hearing does not produce a timely decision on an appeal of a QIC reconsideration. As we noted in the proposed rule, the statute does not allow an appellant to proceed beyond the initial contractor level until he or she has received a redetermination from that contractor, even if the contractor does not issue the initial determination or redetermination within the statutory time frames. This is consistent with the pre-BIPA regulations, which require an appellant to complete all steps of the appeals process in sequence, except when an appellant invokes the expedited appeals process described in §§ 405.718 [Part A appeals] and 405.853 [Part B appeals].

BIPA, however, adds the option to advance a case to the next level of appeal when, in certain circumstances, an adjudicator does not act on the appeal within the statutory deadline. In the proposed rule, we use the term "escalation" to describe this movement of a case to the next level of appeal.

Section 1869(c)(3)(C)(i) of the Act, as amended by section 940(a)(2) of the MMA, requires the QICs to decide appeals within 60 days. Sections 1869(c) and 1869(d) of the Act, as amended by the MMA, now provide that an appellant may escalate an appeal as follows: (1) By requesting an ALJ hearing if the QIC does not decide the appeal within 60 days; (2) by requesting a review by the MAC if the ALJ does not decide the appeal of a QIC reconsideration within 90 days; and (3) by requesting judicial review if the MAC does not complete its review of an ALJ decision within 90 days. (At the ALJ and MAC levels, the statutory time period for completing the action begins on the date the appeal is timely filed.) When an appellant does not request escalation to the next level, the case remains with the current adjudicator until a final action is issued. We have revised proposed §§ 405.990 and 405.1136(c) to conform to these requirements.

We emphasized in the proposed rule that appellants must consider carefully the type of review that is best to resolve their case before deciding to escalate an appeal, because the type of proceedings and adjudicator varies with each step. For example, appellants who escalate a case from the ALJ level to the MAC will ordinarily not have the opportunity to

present their case during an oral hearing, unless they received an oral hearing at the ALJ level before escalating their case to the MAC. We also indicated that the statutory decision making deadlines apply only where there is a decision issued at the prior level. We did not propose any alternate deadlines for escalated cases, but encouraged comments on whether the final rule must include time frames and, if so, what time frames are be appropriate.

Comment: Most commenters on this point argue that allowing unlimited time for escalated cases is contrary to statutory intent; they recommended that cases that are escalated to the ALJ and MAC levels be subject to a time limit. Commenters varied, however, on how to establish appropriate time frames. Recommendations included: (1) Requiring escalated cases to be decided within the "normal" 90 days; (2) adding an additional 30 days to the "normal" 90-day time frame; and (3) adding the adjudication time frame from the previous level to the current level. Under the third recommendation, which preceded the enactment of the MMA, a case escalated from the QIC level to the ALJ would have a 120-day time frame (the pre-MMA 30-day QIC time frame plus the 90-day ALJ time frame) and a case escalated from the ALJ level to the MAC would have a 180-day time frame (90-day ALJ time frame plus the 90-day MAC time frame.) Adjusting this suggestion to reflect the new MMA adjudication period for the QICs, the time frame for the ALJ level would be 150 days.

Response: We hold that our original proposal is consistent with the language of the statute. Moreover, as we noted in the proposed rule, when ALJs and the MAC receive cases that have not completed the process below, they will require more time to determine what issues are properly before them and how to resolve those issues. As indicated in the proposed rule, however, we see value in establishing time limits for escalated cases to ensure that appellants do not wait indefinitely for a decision. After considering the commenters' suggestions, we have decided to establish a 180-day decision deadline for cases escalated to the ALJ and MAC levels. (For purposes of this discussion, we call these requirements the "escalated time frames.") These new time frames are, in essence, a modification of the third recommendation described above. Given the nature of ALJ proceedings, which includes scheduling and conducting a hearing, we do not believe that adding the QIC's adjudication time is sufficient.

As a corollary to the above decision, we are revising the regulations to provide that, in certain circumstances, an appellant has a right to escalate a case to the next level when the ALJ or MAC does not decide that case within its escalated time frame. Thus, § 405.1016(c) now specifies that for a case escalated to an ALJ, the ALJ must issue a decision no later than 180 days after the date that the request for escalation is received by the ALJ hearing office. We also revised sections 405.1100 and 405.1106(b) to establish a parallel deadline for a case that is escalated from the ALJ to the MAC.

(2) Specific Provisions Affected by Escalation

In the proposed rule, we note that the statute does not provide a specific mechanism for appellants to request escalation, nor does it indicate the effect of an escalation request on case development or other adjudication efforts the QIC, ALJ or MAC may be conducting when the escalation request is received. We are particularly concerned about the adverse impact on appellants and adjudicators if cases that are close to completion are deemed automatically escalated at the end of the statutory adjudication period. To alleviate this problem, we proposed that, when a QIC, ALJ, or the MAC receives a request for escalation after the adjudication period has expired, it will defer sending the case to the next level for 5 days after the request is received. If possible, the QIC or ALJ will issue its action within the 5-day period. If fully favorable to all parties, the determination or decision will be sent to the appropriate CMS contractor for effectuation. If the action is not fully favorable, any party to the appeal can file a request for an ALJ hearing or MAC review, as applicable, within the 60-day appeals period. If the QIC or ALJ is not able to decide the case within the 5-day period, the appellant will be notified and the case will be forwarded to the next level of appeal. We provide in proposed § 405.1104(b) the procedures an ALJ must follow when the ALJ is not able to issue a final action or remand within 5 days of receipt of the request for escalation.

We also proposed similar rules for cases in which an appellant requests escalation from the MAC level to Federal district court when the amount in controversy is $1,000 or more. We proposed that the MAC can, if feasible, issue a final action within 5 days of the request for escalation. We also provided in proposed § 405.1132(b), that when the MAC is not able to issue a final action within 5 days of receipt of the request for escalation, it will send a notice to the appellant acknowledging receipt of the request for escalation. A party can then file an action in Federal district court within 60 days after it receives notice of the MAC's decision.

Comment: One commenter expresses concern that the procedures outlined in § 405.1132(b) are not parallel to the procedures governing escalation from the QIC and ALJ levels, and are too burdensome. The commenter suggests that if the MAC does not issue an action within 5 days of the receipt of the request for escalation, the appellant must be able to proceed directly to court without issuance of a MAC "decision."

Response: Our use of the word "decision" in proposed § 405.1132(b) was an error and did not convey clearly the intention of the provision. We are revising the regulation to clarify that when the MAC issues its "notice" acknowledging that the MAC has not been able to complete its action within the statutory period, the appellant can file a civil action with the district court within 60 days of receipt of the MAC's acknowledgment notice. We recognize that the commenter may view the notice as an unnecessary step, since an appellant escalating to the ALJ or MAC level need only file the request for escalation and wait for a response (either an action from the QIC or ALJ or a notice that the case has been forwarded to the next level). However, we believe that the notice described in § 405.1132(a)(2) of this final rule will benefit appellants in several ways. We anticipate that some appellants may file a request for escalation before the MAC's 90-day period has expired; prompt notification of when the time period will expire and an indication, if possible, of when the MAC anticipates issuing its decision, will save appellants unnecessary court costs. We also note that BIPA has not changed the mechanism whereby appellants who are dissatisfied with the final decision of the Secretary may bring a civil action in Federal district court. Section 1869(b)(1)(A) of the Act provides that judicial review of the Secretary's final decision continues to be governed by section 205(g) of the Act. Under that provision, appellants seeking judicial review of the Secretary's action must file a civil action within 60 days of the Secretary's decision, or within any additional time allowed by the Secretary. We believe that the notice we intend to provide under § 405.1132(b) is within our authority under section 205(g), and will provide a useful benchmark for both appellants and the

courts to determine when a civil action in an escalated case is timely filed. We have revised the regulation text of § 405.1132(b) to make the effect of the notice clearer.

Similarly, we have retained, at § 405.1134, the provision carried over from SSA's appeals regulations that allows the MAC to extend the time to file a civil action for good cause. This regulation is also consistent with the language in section 205(g) quoted above, and provides protection for beneficiaries and other appellants who may need additional time to file a civil action or who wish to protect their right to commence a civil action while a request to the MAC to reopen its action is pending. In our experience, the above provisions are particularly helpful to beneficiaries proceeding pro se and in no way diminish their access to the Federal courts.

c. Conduct of ALJ Hearing—General Rules

In our November 15, 2002 proposed rule, we discussed how ALJ hearings in Medicare cases are currently conducted and how we proposed to conduct those hearings in the future. Section 1869(b)(1)(A) of the Act, as amended by BIPA, provides that any individual who is dissatisfied with an initial determination can request a reconsideration, as well as a hearing, provided that the request for the hearing is timely filed and that the amount in controversy requirements are met, as provided by section 205(b) of the Act. Traditionally, the Secretary has granted individuals entitled to a 205(b) hearing an in-person hearing. Regulations at 20 CFR § 404.948, which are incorporated into the current regulations governing Part A and Part B appeals, allow an appellant to waive an in-person hearing and request a decision based on the written record. We stated in the proposed rule that we would continue that policy and we did not receive any comments on this proposal.

We also indicated in the proposed rule that we intend to offer appellants an opportunity for hearings by telephone or videoteleconferencing (VTC), as available. We note at the time the proposed rule was published, VTC was available only at selected hearing sites throughout the country. We also explained the advantages of offering telephone and VTC hearings as alternatives to in-person hearings. These advantages include: (1) Providing a hearing in a convenient setting for beneficiaries who have trouble traveling even short distances; and (2) providing a more convenient site for providers and suppliers who may not wish to travel to a more distant hearing site. Finally, we stated that we were proposing the above alternatives to an in-person hearing because we believed they would enable ALJs to complete more cases within the 90-day adjudication period and give some appellants, who currently waive their right to a hearing and request an on-the-record decision because of traveling or scheduling difficulties, an opportunity to present their case orally.

On January 5, 2001, SSA issued a proposed rule in which it proposed to authorize use of VTC in conducting hearings before ALJs. *See* 66 FR 1059. SSA's final rule with comment (68 FR 5211), published February 3, 2003, addressed the public comments on the proposed rule and invited comment on the one significant change in the final rule, which provides that appellants may object to VTC only with respect to their own appearance. Because SSA's ALJs have been conducting Medicare hearings, the reasons articulated in the final rule with comment for adopting VTC as a alternative to an in-person hearing reflect SSA's experience with conducting Medicare hearings, as well as retirement and disability hearings. In responding to public comments, the final rule with comment identifies the factors that supported including VTC as a means of providing a 205(b) hearing. In summary, SSA found that:

- Use of VTC, where available, has decreased the necessity of sending ALJs to remote sites to hold in-person hearings. This, in turn, has decreased processing times, since to make travel to remote hearing sites as effective as possible, ALJ hearing offices ordinarily wait until they have a sufficient number of hearing requests to schedule a full day of hearings.
- Use of VTC decreases the difficulty of obtaining expert witnesses for a hearing, since it can be difficult to find medical experts who are available to travel to remote sites.
- The time ALJs have spent traveling to remote sites can be used to perform their adjudicatory responsibilities.
- Surveys of appellants, including beneficiaries, rated VTC procedures positively. A large percentage has rated the procedures as "convenient" or "very convenient." Test data showed that processing time for these hearings was substantially less than for hearings conducted at remote sites, and that the ratio of hearings held to hearings scheduled was significantly higher for hearings using VTC procedures than for hearings scheduled in person.

Because SSA's regulations at 20 CFR, part 404 subpart J governing procedures for ALJ hearings are incorporated by reference in the former regulations governing Part A and Part B appeals, SSA's VTC rules, codified at 20 CFR §§ 404.929, 404.936, 404.938 and 404.950, have been effective for Part A and Part B ALJ hearings since March 5, 2003. Like other relevant SSA rules, we have incorporated certain policies regarding the use of VTC into this interim final rule. (On December 11, 2003, SSA issued a final rule on VTC, which responded to comments on the February 3, 2003, rulemaking, but did not change any of the regulation text. *See* 68 FR 69003). Thus, where available, ALJs have been conducting hearings via VTC in Medicare cases for over a year. Our knowledge of this new process, as well as our experience with telephone and in-person hearings and on-the-record decisions, forms the basis of our responses to the comments described below.

Comment: One commenter states that the proposed rule does not indicate whether a party may object to the type of hearing (in-person, by VTC, or by telephone) scheduled by the ALJ. The commenter also notes that a proposal for Medicare ALJ hearings conducted by telephone was rejected after criticism from claimant organizations, legal groups and other organizations was received. One of the main concerns at that time was a fact finder's potential difficulty in assessing witness credibility and demeanor in a telephone hearing.

Response: This interim final rule makes clear that an appellant can object to the type of hearing scheduled by the ALJ, including proceedings by telephone or VTC. As noted in our discussion in the proposed rule, some appellants waive any type of oral hearing on the grounds that they believe that written submissions to the ALJ will adequately present their case. In the past, others have waived the right to an oral hearing, stating that they are unable to leave their homes or cannot travel as far as the ALJ hearing office or other designated site. In our experience, telephone and VTC hearings offer an opportunity for individuals to present their case orally without the burden of extensive travel and, thus, provide an alternative to presenting their case solely in writing. Given these advantages and benefits, we are convinced of the advantages of incorporating VTC procedures into the Medicare hearings process, particularly in view of the BIPA time frames. Therefore, we have revised § 405.1020 to require ALJ hearings to be conducted by VTC if the VTC technology is available, but allow the appellant to request an in-person hearing, which will be granted upon a finding of good cause,

with the understanding that the request constitutes a waiver of the 90-day time frame for holding a hearing and rendering an opinion.

ALJs may determine that an in-person hearing should be conducted if VTC technology is not available or special or extraordinary circumstances exist. For example, an ALJ could find special and extraordinary circumstances for holding an in-person hearing when the case presents complex, challenging or novel presentation issues that necessitate an in-person hearing. Similarly, an appellant's proximity to and ability to go to the local hearing office for the hearing may constitute special and extraordinary circumstances that warrant the scheduling of an in-person hearing.

Additionally, § 405.1020(e)(4) of this interim final rule specifies that a party who objects to either a VTC or telephone hearing has a right to request an in-person hearing, which will be granted upon a finding of good cause. An ALJ could find good cause to grant a request for an in-person hearing when a party demonstrates that the case presents complex, challenging or novel presentation issues that necessitate an in-person hearing. Similarly, an ALJ may find good cause to schedule a hearing based on a party's proximity to and ability to go to the local hearing office. Consistent with SSA's current policy, § 405.1020(i)(5) provides that a party may object to the use of a VTC or telephone hearing only with respect to his or her own testimony, but not with respect to the entire hearing.

We anticipate that providers and suppliers will be particularly interested in VTC hearings, because they reduce the amount of nonproductive travel time previously associated with in-person hearings.

We believe that VTC and telephone hearings are convenient not only for providers and suppliers, but also for beneficiaries and their representatives. In particular, we note that many beneficiaries are represented by an adult child whose ability to take time off from work to attend an in-person hearing is often limited. Use of telephone hearings and VTC enables these individuals to pursue their parents' appeals without undue disruption of their daily routine. Moreover, because the interim final rule makes clear that an in-person hearing may be requested by all appellants, appellants who believe that their appeal can be presented effectively only in person, will have the right to request an in-person hearing, which will be granted upon a finding of good cause. In light of the new policy on the use of VTC and telephones for ALJ hearings, § 405.1020, § 405.1022, and § 405.1036 require ALJs to conduct VTC hearings whenever the technology is available and allow ALJs to offer to conduct telephone hearings if the hearing request or administrative record suggests that a telephone hearing may be more convenient for one or more of the parties.

d. Actions That Are Reviewable by an ALJ

Current regulations governing the Part A and Part B appeals process do not provide ALJs jurisdiction to overturn dismissals issued by a contractor or a carrier hearing officer. In the proposed rule, we proposed giving ALJs the authority to decide or review all final actions issued by a QIC, including dismissals for untimely filing, failure to exhaust administrative remedies, or *res judicata*. The proposed rule also specifies that if an ALJ decides that the QIC's dismissal is improper, the ALJ will remand the case to the QIC for a substantive decision.

Comment: One commenter questions the propriety of allowing an ALJ to review a contractor's dismissal order and whether that review constitutes a reopening of the contractor's action.

Response: Under the pre-BIPA appeals process, ALJs have sometimes identified contractor dismissals that were inappropriate. Because the regulations did not provide appellants a direct right of appeal of dismissals, referring those cases to CMS or the contractor was cumbersome and delayed the resolution of the appellant's appeal. We believe that providing a direct right of appeal will provide both a simpler and more cost-effective method to challenge a dismissal the party believes is inappropriate. Because we are providing a direct appeal right, the ALJ's remand to the contractor is not a reopening of the contractor's dismissal order. To clarify the effect of the remand order, we have revised § 405.1004(b) to provide that when the ALJ determines that the QIC's dismissal was in error, the ALJ will vacate the QIC's dismissal and remand the case to the QIC for a reconsideration. Consistent with the discussion above regarding appeals to QICs of contractor dismissals, appeals of dismissals will be permitted only at the next adjudicative level, and we have added § 405.1004(c) to clarify that an ALJ's decision regarding a QIC's dismissal of a reconsideration request is final and there is no subsequent appeal right.

e. Authorities That Are Binding on an ALJ

In the proposed rule, we explain that the Medicare statute, CMS regulations, and CMS Rulings bind ALJs. Prior to BIPA, ALJs and the MAC were also bound by NCDs, based on section 1862(a)(1) of the Act, but not NCDs, based on other statutory provisions. Under BIPA, all NCDs, whether based on section 1862(a)(1) of the Act or on other grounds, are binding on ALJs and the MAC. This change is reflected in §§ 405.732 and 405.860, as amended at 68 FR 63692, 63715, 63716 (November 7, 2003), and is also reflected in § 405.1060 of this interim final rule.

We also note a change in this interim final rule to § 401.108, which pertains to the binding nature of CMS Rulings on CMS components, and SSA to the extent that it adjudicates matters under the jurisdiction of CMS. In light of the transfer of responsibility for the ALJ hearing function from SSA to HHS, we are amending § 401.108(c) and creating a new § 405.1063 to specify that CMS Rulings bind HHS components that adjudicate matters under CMS' jurisdiction. We recognize that this is an expansion of the current policy, but believe this new requirement will help ensure consistency among appeals decisions.

In the proposed rule, we also address the degree to which ALJs and the MAC must defer to non-binding CMS and contractor policies such as LCDs, LMRPs, manual instructions and program memoranda. As reflected in proposed § 405.992, ALJs and the MAC are expected to give deference to these policies. The proposed regulations also provide, however, that a party can request that an ALJ or MAC disregard a policy, but the request must provide a rationale for why the policy should not be followed in the particular case.

Comment: Several commenters disagreed with the proposed regulation, because they believed that it placed an undue burden on appellants, particularly unrepresented beneficiaries, to identify policies applicable to their case and to explain why the policy should not be followed.

Response: New § 405.1060 through § 405.1062 alter the regulation text proposed under § 405.992 to clarify the applicability of NCDs, LCDs, LMRPS, and CMS program guidance to ALJs and the MAC. Section 405.1062 gives ALJs and the MAC the authority to consider whether guidance documents (for example, LCDs, LMRPs, and manuals) should apply to a specific claim for benefits on their own motion, rather than doing so only at the appellant's

request. This eliminates barriers for those beneficiaries who are not able to raise these issues on their own. We note, however, that particularly with the advent of the Internet, an increasing number of beneficiary appeals contain challenges to medical policies citing medical research and other grounds. These appeals will be easier to pursue because notices of redetermination under § 405.956 will now include more detailed explanations concerning the basis for a claim denial, including the application of a LMRP or LCD.

Comment: Requiring ALJs to defer to CMS and contractor policy alters the ALJ's role as an independent fact finder and, thus, changes the character of a 205(b) hearing.

Response: We disagree with the commenter's characterization of the proposed hearing process. Under this regulation, ALJs will continue their traditional role as independent evaluators of the facts presented in an individual case. Requiring an ALJ to consider CMS policy and give substantial deference to it, if applicable to a particular case, does not alter the ALJ's role as fact finder. Indeed, ALJs have always been bound by Medicare policies included in CMS regulations, CMS rulings, and NCDs based on section 1862(a)(1) of the Act.

The Federal courts have considered and applied deference standards in considering the validity of various Medicare policies, and have also recognized that ALJs and the MAC properly consider issues relating to deference as well. For example, in *Abiona* v. *Thompson*, 237 F. Supp. 2d 258 (E.D.N.Y. 2002), the court upheld a decision in which the MAC denied anesthesiologists' requests for payment of post-surgical administration of patient-controlled analgesia (PCA). In its decision, the MAC relied, inter alia, on the preamble to the Medicare physician fee schedule and a CMS program memorandum, both of which provided that payment for physician services related to PCA was included in the global fee paid to the surgeon and, therefore, was not routinely payable to anesthesiologists.

In response to the above comments and to provide a clearer standard of review, we have revised the regulation to provide that: (1) ALJs and the MAC must give substantial deference to LCDs, LMRPs, CMS manuals or other program guidance; (2) the applicability of a CMS manual instruction or other non-binding issuance may be raised by either the appellant or the MAC or ALJ on their own motion; and (3) the ALJ or MAC may decline to follow a policy in a particular case, but must explain the reason why the policy was not followed. These decisions apply only for purposes of the appeal in question, and do not have precedential effect.

The ALJ or MAC will review the facts of the particular case to determine whether and how the policy in question applies to the specific claim for benefits. If an ALJ or MAC decision concludes that a policy should not be followed, the decision will explain why the policy was not followed in light of the facts of the particular case. We believe this will provide a useful framework for deciding cases in which a particular, non-binding policy is the focus of the appeal.

Section 522 of BIPA created a new coverage appeals process that enables certain beneficiaries to challenge LCDs and NCDs. Because a beneficiary can conceivably bring an appeal under both the section 522 coverage appeals process and the section 521 claims appeal process, we are clarifying in this interim final rule how adjudicators will handle simultaneous appeals. These clarifications are consistent with CMS' final rule that created the new process to allow LCD and NCD challenges. *See* 68 FR 63692 (November 7, 2003). If a party appeals a denial that is based on an LCD or NCD by filing only a claim appeal, then adjudicators will apply the coverage policy that was in place on the date the item or service was received, regardless of whether some other beneficiary has filed a coverage appeal based on the same LCD or NCD. This policy is consistent with original Medicare policy that requires changes to LCD or NCDs to be applied prospectively to requests for payment.

If an appellant files both a claim and a coverage appeal based on the same initial determination, both appeals will go forward. The claim appeal adjudication time frames will not be impacted because the appeals will be conducted simultaneously. In adjudicating the claim appeal, adjudicators will apply the coverage policy that was in place on the date the item or service was provided, unless the appellant receives a favorable coverage appeal decision. If the appellant receives the favorable coverage decision prior to a decision being issued for the claim appeal, then pursuant to 42 CFR § 426.488 and § 426.560, the claim appeal will be adjudicated without consideration of the invalidated LCD or NCD provision(s). If an appellant receives a favorable decision in the coverage appeal after receiving an unfavorable claim appeal decision, then the appellant is entitled to have the claim appeal reopened and revised for good cause, subject to the provisions in § 405.980 and § 405.986, without consideration of the invalid LCD or NCD provision(s). As a result of these clarifications, we have added § 405.1034(c) to permit ALJs to remand an appeal to a QIC in this situation.

f. Aggregating Claims To Meet the Amount in Controversy

Prior to the enactment of section 521 of BIPA, the statute and regulations provided different amounts in controversy for Part A and Part B appeals. Under Part A, an appellant received a reconsideration of the initial determination regardless of the monetary value of the claim, but had to meet a $100 threshold to receive a hearing before an ALJ. Similarly, an appellant contesting an initial determination issued on a Part B claim received a review determination regardless of the amount in controversy. However, there was a $100 amount in controversy requirement for a Part B carrier hearing and a $500 threshold for an ALJ hearing with respect to a Part B claim determination (except for home health where the threshold for ALJ appeals was $100).

The pre-BIPA aggregation provisions found at former section 1869(b)(2) of the Act directed the Secretary to devise a system for allowing appellants to combine claims to meet the amount in controversy as follows:

> In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

The Secretary implemented the above provisions in a final regulation published March 16, 1994 (the existing regulations can be found in § 405.740 and § 405.817). The regulation established two methods of aggregation: one for individual appellants and one for multiple appellants. Individual appellants appealing either Part A or Part B claims were allowed to aggregate two or more claims within a specified period, regardless of issue, to meet the jurisdictional minimums for a carrier hearing and ALJ hearing. Multiple appellants, however, were allowed to aggregate their claims only under the statutory requirements; that is, if the claims involved the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals.

BIPA 521 changed the amount in controversy requirements. Section 1869(b)(1)(E) of the Act provides that the amount in controversy for an ALJ

hearing will be $100 for appeals of both Part A and Part B claims. In addition, the aggregation provisions were revised: Two or more appeals are allowed to be aggregated when the appeals either involve the delivery of similar or related services to the same individual by one or more providers and suppliers, or there are common issues of law and fact arising from services furnished to two or more individuals by one or more providers or suppliers.

In the proposed rule, we proposed to limit aggregation of claims under BIPA to those that meet the statutory requirements for aggregation, that is, those that involve the delivery of similar or related services to the same individual, or common issues of law and fact arising from services furnished to two or more individuals. Individual appellants will no longer be allowed to aggregate all timely filed claims, regardless of issue. We explained that this change was appropriate because under BIPA, unlike the previous appeals system, appellants will have a right to appeal to an independent contractor (a QIC) regardless of a claim's monetary value. We also proposed the following related policies:

- To continue our pre-BIPA policy of restricting claims that may be aggregated to those that are appealed within 60 days after receipt of all reconsiderations being appealed, because to do otherwise would in essence extend the time to file a request for hearing beyond the 60-day limit;
- To provide separate rules for claims that are escalated from the QIC to the ALJ level to ensure that only appeals that meet the amount in controversy requirements are escalated to the ALJ level; and
- To require appellants to explain in their request for aggregation why they believe the claims involve common issues of law and fact or the delivery of similar or related services.

Comment: Two commenters believe that the proposed limits on aggregation are too restrictive, because some claims with low dollar amounts, but involving important issues, will not reach the ALJ level. One commenter added that there are some claims, such as therapy evaluations, that usually fall below the $100 limit. Another commenter recommended that the 60-day deadline to file a request for ALJ hearing be tolled to enable an appellant to aggregate the appeal with another claim still pending with the QIC.

Response: The statute requires ALJs and the MAC to apply the applicable amount in controversy standard under § 405.1006 for an ALJ hearing. Moreover, as we noted in the preamble to the proposed rule, with the creation of the QICs, appellants will have access to a review by an independent contractor regardless of a claim's monetary value. Our experience suggests that the large majority of Part A and Part B appeals decided by the QICs will equal or exceed the threshold amount in controversy. We also believe that the QIC review will provide sufficient due process for claims below the threshold amount in controversy. (In addition, as noted below, the Congress has recently provided that the amount in controversy be increased annually beginning in 2005.) Moreover, as explained in the proposed rule, extending or tolling the time for an appellant to aggregate a claim with another would in essence extend the statutory deadline to file a request for hearing beyond the 60-day deadline and would also prevent ALJs and the MAC from completing appeals within the statutory deadlines.

Comment: Several commenters asked for specific guidance in calculating the amount in controversy for services where reimbursement is governed by a specific formula or fee schedule.

Response: The interim final rule does not alter the pre-BIPA regulation's instructions for calculating the amount remaining in controversy. Regardless of the type of service or payment methodology, the amount remaining in controversy for an ALJ hearing is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the initial contractor or ordered by the QIC, and less any deductible and applicable coinsurance amounts. (Section 405.1006(d)(1)).

Finally, section 940(b)(1) of the MMA provides that, for requests for an ALJ hearing or judicial review made after 2004, the amount in controversy thresholds will be increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved. Amounts determined under this formula that are not a multiple of $10 will be rounded to the nearest multiple of $10. We have proposed to revise § 405.1002, § 405.1006, and § 405.1136(a) to reflect this statutory change. When this formula results in revisions to the amount in controversy, CMS will alert the public through a **Federal Register** notice, or other appropriate vehicle.

g. The ALJ Hearing

(1) When CMS or Its Contractors May Participate in an ALJ Hearing

As we explained in the proposed rule, previous regulations have not addressed whether CMS or its contractors can participate in ALJ hearings. Occasions have arisen, however, in which an ALJ has determined that input from CMS or a contractor will help resolve an issue in a case. In some instances, ALJs have requested position papers, testimony, or other evidence from CMS or a contractor, but these proceedings have been cumbersome, because the regulations did not provide specific procedures for input. After reviewing the outcome of other cases, CMS, as well as the Department's Office of Inspector General (in its report issued in September 1999 (OEI–04–97–00160)), concluded that the cases might have been resolved more appropriately if CMS or the contractor had been party to the appeal.

In response to the above concerns, we included several provisions in the proposed rule that define the extent to which CMS and its contractors may participate in the hearing process. We were also mindful that section 1869(c)(3)(J) of the Act specifically provides that the new independent contractors, the QICs, will participate in hearings to the extent required by the Secretary. Consistent with this provision, we proposed to revise our regulations to allow a representative of CMS, or a CMS contractor, to participate in an ALJ hearing at the request of an ALJ, the QIC or CMS. Participation may include filing position papers (within the time frame specified by the ALJ) or providing testimony to clarify factual or policy issues in a case, but will not include those aspects of full party status (for example, the right to call witnesses or to cross-examine the witnesses of the appellant or another party to the hearing). Because the role of a participant will be non-adversarial, we proposed to allow participation of the QIC, CMS, or CMS' contractors in cases brought by all appellants, including beneficiaries. We also explained in the proposed rule that an ALJ will not have the authority to require CMS or a contractor to participate in a case, nor may the ALJ draw any inferences if CMS or a contractor decides not to participate. Consistent with the practice before an ALJ, we amended § 405.1120 and § 405.1124 by adding language to clarify that the MAC is prohibited from drawing any adverse inferences if CMS or a contractor decides not to participate in a MAC review.

In addition, we proposed allowing CMS or its contractor to enter an appeal at the ALJ level as a party, unless an unrepresented beneficiary brings the appeal. In this circumstance, CMS or its contractor will have all the rights of a party, including the right to call witnesses or cross-examine other witnesses, to submit additional evidence within the time frame specified by the ALJ, and to seek MAC review of a decision adverse to CMS. Similar to the participation rules, an ALJ will not have the authority to require CMS or a contractor to enter a case as a party or to draw any inferences if it does not participate in the case.

One reason for these proposals is to allow ALJs and the MAC to resolve issues of fact and law more quickly and reduce the need for remands for additional development. Another aim is to reduce the number of cases referred to the MAC for own motion review because factual issues have not been addressed during the ALJ proceedings. In that regard, we note that these new regulations link CMS' ability to refer certain types of cases to the MAC for own motion review to the extent to which CMS has been a party or has participated in the appeal below. For example, under § 405.1110(b), if CMS or its contractor does not participate as a party or otherwise in a case at the ALJ level, any subsequent referral to the MAC for own motion review is limited to ALJ decisions or dismissals containing errors of law or a broad policy or procedural issue that may affect the public interest. This provision affords appellants a measure of administrative finality when CMS chooses not to participate as a party or otherwise in a case at the ALJ level and the resolution of the case hinges on the weight of the evidence rather than the controlling law and policy.

Comment: Although we received some positive comments concerning expanding CMS' role in the appeals process, most of the commenters who addressed this aspect of the proposed regulations are opposed or suggested modifications to the process. Those opposed are concerned that allowing CMS or its contractors to be parties or participate will change the nature of the hearing from an informal process to an adversarial hearing process not contemplated by the Congress. Some of these commenters stated that the change will particularly disadvantage beneficiaries.

Response: We disagree to some extent with the commenters' characterization of the nature of the ALJ hearing process under the pre-BIPA statutory and regulatory scheme. While CMS or its contractors are not explicitly recognized as parties in fee-for service appeals under the pre-BIPA statute (former section 1869(b)(2) of the Act), appeals brought by enrollees of managed care organizations (MCOs) are, by statute and regulation, adversarial at the ALJ, MAC, and Federal district court levels. Notably, sections 1852(g)(5) and 1876(c)(5)(B) of the Act, which reference the right to a "205(b) hearing," provide that the MCO, as well as the enrollee, is a party to the hearing. MCOs that receive adverse decisions at the ALJ and MAC levels may appeal those decisions to the MAC and Federal district court, as applicable.

Our experience with these managed care hearings and appeals suggests that most beneficiaries, including those who are not represented, are able to participate fully in the hearing process even when the MCO appears at the hearing. This is due, in part, to the control exercised by the ALJ, one of whose roles is to ensure that all parties receive a full and fair hearing. We expect that ALJs will continue to fulfill this role under these new rules for fee-for-service appeals. Neither the existing nor the proposed regulations contemplate that the ALJ will conduct a trial-like proceeding with formal rules of evidence. (Moreover, as noted above, CMS or its contractors may not invoke full party status when the appellant is an unrepresented beneficiary.)

In addition, fee-for-service appeals conducted under 42 CFR part 405, subparts G and H, are currently adversarial when liability under sections 1879 or 1842(l)(1)(C) of the Act is an issue. When a provider or supplier has concluded that the service it provided to a beneficiary is not covered and asserts that it has informed the beneficiary of potential non-coverage before providing the service, the interests of the provider or supplier and the beneficiary concerning liability are adverse and can be contested during the ALJ hearing.

We also disagree with the commenters' conclusion that the Congress did not envision that CMS or its contractors might, in some instances, be represented at a hearing and before the MAC. As noted in the proposed rule, section 1869(c)(3)(J) of the Act provides that the new independent contractors, the QICs, will participate in hearings to the extent required by the Secretary. This is a clear indication that the Congress recognized the benefit of agency participation in the appeals process. Thus, we continue to believe that limited expansion of CMS role in the ALJ hearing process is appropriate, necessary, and consistent with the statute.

Comment: As noted above, several commenters favored the provision allowing CMS' and its contractors to invoke party status or otherwise participate at the hearing level, stating that participation will create a full and fair record. These commenters suggested various changes to the regulations to clarify who may participate and how the various parties to the hearing would be notified.

Response: Consistent with the above comments, we expect that allowing CMS or a contractor party status or participation, combined with the new rules concerning the submission of evidence, will create a record that is more complete at an earlier stage in the appeals process. These commenters noted the benefit to the Medicare program of a fully developed record that clearly conveys the program's coverage and payment policies. We believe a fully developed record will benefit all participants to the hearing. For example, after the statute was amended in 1986 to provide for ALJ hearings for Part B claims, some beneficiaries appealed the amount of payment awarded to their physicians under the reasonable cost system because they did not understand how the amounts had been calculated. In those circumstances, the hearing and resulting decision essentially served an informational purpose. Similarly, CMS participation at a hearing may assist beneficiaries, as well as adjudicators, in understanding concepts (for example, the distinction between hospital inpatient and observation admissions) that may affect coverage for certain benefits. We also hope to alleviate the difficult position that many ALJs currently face in adjudicating a case completely and impartially when the appellant introduces expert evidence, in the form of testimony, for the first time during the ALJ proceedings, and the ALJ does not have a routine avenue of obtaining information on the same topic from the agency.

We also expect that a fully developed record at the ALJ level or below will lead to a reduction in MAC remands to the ALJ level, as well as CMS referrals to the MAC for own motion review. In order to encourage this development, § 405.1110(c)(2) provides that if CMS or its contractor does not participate at the ALJ level, the MAC will exercise own motion review only if the ALJ's action contains an error of law or abuse of discretion material to the outcome of the case, or if the case presents a broad policy or procedural issue that may affect the general public interest. In other words, cases in which CMS or its

contractor decide not to participate at the ALJ level as a party or otherwise will not be reviewed by the MAC on its own motion if the perceived error concerns the ALJ's evaluation of the facts of the case rather than an error of law or procedure.

Proposed section 405.1000 listed the types of contractors that may participate as parties in hearings before an ALJ, to include Quality Improvement Organizations (QIOs). Therefore, we have amended § 405.1000 to include this technical change.

Comment: Several commenters noted that the proposed regulations do not address sufficiently how the participation of CMS or its contractors will affect ALJ hearing procedures such as the issuance of the notice of hearing and the potential for discovery.

Response: We have modified several of the regulations to clarify how a hearing will be handled when CMS or its contractor invokes party status or decides to participate in a hearing. For example, in § 405.1020(c) we require the ALJ to send a copy of the notice of hearing to both the QIC and the contractor that issued the initial determination. (The QIC or the contractor will be responsible for advising CMS of any significant cases in which the agency may decide to participate.)

Comment: Several commenters raised concerns that the proposed regulations contain more formal procedures than the previous regulations and will, therefore, inhibit the ability of an unrepresented beneficiary to pursue an appeal.

Response: Many of the provisions cited by the commenters are identical to those that have been part of the current regulations since 1980 and, in our experience, have not been difficult for unrepresented beneficiaries to follow. For example, a few commenters suggested that the requirement that a beneficiary object to the issues in the notice of hearing will require the beneficiary to file formal objections or pleadings. This is not the intent of the regulation, nor in our experience has it inhibited beneficiaries from pursuing their requests for hearings. Section 405.1024 of the regulation is a carryover from 20 CFR § 404.939, which has applied to Social Security retirement, disability, and Medicare hearings since August 1980. *See* 45 FR 52078, 52081 (August 5, 1980). We decided to maintain this regulation not to formalize the proceedings, but rather to give beneficiaries and other parties the opportunity to make corrections in those instances, albeit rare, in which the ALJ hearing office does not correctly identify the issue to be decided or the parties to the hearing. It is in the interest of the parties and the adjudicator to correct these mistakes at the earliest opportunity so that hearings do not have to be postponed or supplemented because necessary parties were not sent the notice of hearing or appropriate expert witnesses were not obtained because the issues before the ALJ were not properly identified before the hearing. Parties may respond to the notice, as they do now, in an informal manner. The regulation does not require or anticipate formal written submissions.

Comment: Several commenters indicated that while the proposed rules include a provision for issuing subpoenas, they do not require CMS to respond to discovery requests or orders.

Response: BIPA does not explicitly provide for discovery during ALJ proceedings, and given the time frames for adjudications under BIPA, we do not envision that most hearings will include discovery. However, in light of these and other comments relating to discovery, we believe it is appropriate to permit discovery when an ALJ hearing is adversarial (that is, whenever CMS or its contractor is a party to an ALJ hearing). Therefore, we have added § 405.1037 to permit limited discovery when CMS participates in an ALJ hearing as a party. Our experience indicates that most information that is relevant to issues before an ALJ can be obtained by direct request by the ALJ or subpoena. Therefore, we anticipate that extensive discovery will not be necessary.

In general, we allow discovery for matters relevant to the specific subject matter of the ALJ hearing, but only if they are not privileged or otherwise protected from disclosure, and the ALJ determines that the discovery request is not unreasonable, unduly burdensome or expensive, or otherwise inappropriate. We also limit discovery by permitting a party only to (1) request of another party the reasonable production of documents for inspection and copying, and (2) take the deposition of another party if the proposed deponent agrees to the deposition or the ALJ finds that the proposed deposition is necessary and appropriate in order to secure the deponent's testimony for an ALJ hearing. An ALJ will decide on a case-by-case basis the time frame within which a party that seeks discovery must submit its request and when all discovery must be concluded.

Section 405.1037(d) sets forth rules for motions to compel and protective orders. A party that files a motion to compel or a protective order must also include a self-sworn declaration describing the movant's efforts to resolve or narrow the discovery dispute.

As a general rule, the MAC may review an ALJ discovery or disclosure ruling only during the course of its review as specified in § 405.1100, § 405.1102, § 405.1104, or § 405.1110. However, there may be immediate MAC review where an ALJ's ruling authorizes discovery or disclosure of a matter for which an objection based on privilege or other protection from disclosure (such as case preparation, confidentiality, or undue burden) was made to the ALJ. An ALJ must stay all proceedings affected by a ruling for a minimum of 15 days when the ALJ receives notice that a party intends to seek MAC review of the ruling. If the MAC grants a request for review or takes own motion review of a ruling, the ALJ ruling will be stayed until the MAC issues a written decision that affirms, reverses, or modifies, the ALJ's ruling. When CMS requests review of an ALJ ruling, the MAC must grant the request, and the ruling is automatically stayed pending the MAC's order. With respect to requests from a party other than CMS for review of a discovery ruling, if the MAC does not grant review or take own motion review within the time allotted for the stay, then the stay will be lifted and the ruling will stand.

If a party requests discovery against another party to the ALJ hearing, the ALJ adjudication time frame specified in § 405.1016 will be tolled. Tolling the ALJ's decision-making time frame pending resolution of the discovery dispute will ensure that ALJs have an appropriate opportunity to consider the merits of an appeal, while also maintaining an appellant's ability to escalate to the MAC if the ALJ is unable to issue a decision within the statutory time frame.

In developing the discovery procedures, we considered their potential effects on appellants and other parties to an appeal. We believe that reasonable discovery can enhance the fairness of proceedings and the accuracy of decisions. We also believe that discovery should be limited to hearings where CMS has joined as a party because it has not been previously available for ALJ hearings and these hearings will be adversarial because of CMS party status. Additionally, ALJs will not be able to schedule and hold hearings in an efficient manner if broad discovery is permitted. As previously mentioned, we expect the number of appeals in which CMS elects to participate as a party to be quite low. When CMS does participate as a party, we expect the need for discovery to be

minimal. Also, because we anticipate that the majority of appeals in which CMS elects to participate as a party will involve overpayments, CMS will not arbitrarily invoke party status, subject itself to possible discovery requests, and risk additional interest liability in an attempt to delay the proceedings. Therefore, we believe that it is unlikely that these procedures regarding discovery will negatively impact the appellant and other parties to an appeal.

When all other discovery efforts have failed, parties may also obtain evidence by requesting subpoenas. The Social Security Act provides for the use of subpoenas, and the proposed regulations, like the current SSA regulations applicable to ALJ hearings, allow an ALJ, through independent initiative or at the request of a party, to issue subpoenas concerning the attendance and testimony of witnesses and production of evidence. The ALJ will rule on whether and to what extent a party's requests for subpoenas will be granted, taking into account any objections that may be raised. We note that if a party fails to comply with a subpoena, neither the ALJ nor a party may seek judicial enforcement; instead, the ALJ must make application to the Secretary for such enforcement. Similarly, the Administrative Procedure Act and the current regulations applicable to Part A and Part B appeals allow the MAC to issue subpoenas. Therefore, we have amended § 405.1122 by adding paragraph (d), which largely mirrors § 405.1036(f) and describes the MAC's ability to issue subpoenas and the requirements for submitting a subpoena request.

We recognize that this interim final rule does not fully discuss how the discovery and subpoena provisions apply to CMS when it enters an ALJ hearing as a party. Therefore, following publication of this interim final rule containing the regulatory provisions on subpoena and discovery procedures, we will issue a CMS Ruling clarifying the application of these provisions to CMS.

(2) Issues Before an ALJ

In the proposed rule, we generally adopted the provisions from 20 CFR § 404.946 regarding issues before an ALJ. Section 405.1032(a) generally discusses the types of issues that an ALJ may consider at a hearing. ALJs may consider all of the issues brought out in the previous determinations that were not decided entirely in a party's favor. Under certain circumstances, ALJs may also consider issues decided favorably.

Comment: Some commenters objected to § 405.1032(a) allowing an ALJ to consider issues decided favorably to a party by a QIC or other contractor even if those issues are not raised on appeal. One commenter suggested that this regulation places the ALJ "in an appellate position."

Response: This regulation is a direct carryover from a currently applicable regulation at 20 CFR § 404.946(a). In our experience, it is rarely used in the Medicare context. We decided to retain it, however, to give the ALJ the authority to remedy clearly inconsistent outcomes that sometimes present themselves in a case before an ALJ. For example, an ALJ who has been asked to reverse a determination that the second week of skilled nursing facility services was not medically necessary may discover that the beneficiary did not have a 3-day qualifying inpatient hospital stay. Section 405.1032(a) allows the ALJ to take jurisdiction of an earlier, fully favorable determination with respect to the first week of care, which is also subject to the 3-day qualifying stay requirement, but only if: (1) That determination may be properly reopened under the reopening regulations; and (2) the ALJ gives proper notice to the parties that this issue will be addressed. Although we anticipate that this provision will be rarely invoked, we have included it in the regulation to address the type of situation described above.

Section 405.1032(c) discusses whether an ALJ can consider a claim that is not the subject of a hearing request. This paragraph was added to address CMS" concerns that ALJs not consider claims that have not been previously adjudicated. Section 405.1032(c) prohibits an ALJ from taking jurisdiction of a claim that has not been adjudicated at the lower appeals levels through the QIC level. It is important to note the distinction between new claims versus new issues for purposes of applying § 405.1032. A new issue is one that is raised for the first time at the ALJ level, that is relevant to the dates of service that are before the ALJ, but was not previously considered in the appeal. For example, if a claim was previously denied for a reason other than medical necessity and the appellant raises a medical necessity issue at the ALJ hearing level, the medical necessity issue is new, since it is relevant to the claim but not the original dispute in the appeal. A new claim, however, is a claim that has not completed the appeals process at the through the QIC level. A claim can only be combined with an appeal at the ALJ level if it has already been reconsidered by a QIC.

(3) Parties to an ALJ Hearing

In proposed § 405.1020(a), we stated that the ALJ must send the notice of hearing to "all parties and the QIC that issued the reconsideration determination." We received several comments concerning whether ALJs are always required to send notices of hearing to "all parties."

Comment: ALJs currently encounter significant difficulties in determining who receives the notice of hearing when the appeal concerns either a large number of initial claims filed by a single provider or supplier, or a postpayment audit involving statistical sampling and a resulting overpayment assessed against a provider or supplier. Although the beneficiaries who received the items or services technically may be parties to these appeals, in many instances they have not been involved in the proceedings below and, due to the application of the limitation of liability and overpayment provisions, may have no financial liability for the services at issue. Attempting to locate and send notices of hearing to these beneficiaries is extremely time-consuming and will hinder the ALJ's efforts to hold a hearing and issue a decision within the 90-day adjudication period.

Response: We have modified the notice of hearings requirements in § 405.1020(c) to clarify that an ALJ is not required to send a notice of hearing to a party who has not participated in the determinations below and whose liability status for the items or services in dispute has not been altered since the initial determination. We believe that this will ensure that all parties who have an interest in the appeal are given an opportunity to participate, while at the same time alleviating the ALJ hearing office's obligation to contact those individuals who have not pursued their appeals rights at the earlier levels, or have no financial interest in the outcome. However, the regulation does not prohibit the ALJ from notifying a party who has not previously participated in the appeal, if the ALJ's pre-hearing development suggests that the party's interests may be adversely affected by the outcome of the case.

h. Filing Requests for ALJ Hearing and MAC Review—Time and Place

Section 1869(b)(1)(D)(ii) of the Act provides that "[t]he Secretary shall establish in regulations time limits for the filing of a request for a hearing by the Secretary in accordance with provisions in sections 205 and 206." In addition, section 1869(d)(1)(A) of the Act provides that "[e]xcept as provided in subparagraph (B), an administrative

law judge shall conduct and conclude a hearing on a decision of a qualified independent contractor under subsection (c) and render a decision on such hearing by not later than the end of the 90-day period beginning on the date a request for hearing has been timely filed." Similarly, section 1869(d)(2)(A) of the Act provides that the MAC "shall conduct and conclude a review of [an ALJ decision] and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed."

Section 205(b) of the Act gives an appellant 60 days to request a hearing. The current regulations governing appeals of Medicare claims provide for appealing from the contractor's determination or decision to an ALJ and, thereafter, from the ALJ level to the MAC. In the proposed rule, we stated that we will continue to require parties to file their appeals to the ALJ level and the MAC within 60 days. We also stated that ALJs and the MAC will continue to follow most of the general principles currently found in 20 CFR § 404.933 and 42 CFR § 405.722 when they decide whether an appeal has been timely filed for purposes of establishing the appellant's right to appeal. These regulations provide that an appeal is considered filed on the day it is received by a Social Security office, CMS, including its contractors, an ALJ, or, in the case of a request for MAC review, the MAC. We stated in the proposed rule that we will continue to calculate the 60-day filing period based on the date the appeal is actually received by one of the above offices, as reflected in proposed § 405.1014(b). However, for purposes of calculating the 90-day adjudication period that governs ALJ and MAC actions, we stated that if a request for ALJ hearing was not filed directly with the ALJ hearing office or a request for MAC review was not filed directly with the MAC, the 90-day adjudication period would not begin until the appeal is received by the ALJ or MAC, as applicable. Finally, we indicated that in those requests for hearing or MAC review in which an appellant does not file an appeal within the 60-day filing period but contends that there is good cause for filing late, the 90-day adjudication period will begin with the date the good-cause explanation is received by the ALJ or MAC, as applicable, assuming that the ALJ or MAC determines that the explanation provides good cause for filing the appeal late.

Comment: We did not receive any adverse comments concerning starting the calculation of the 90-day adjudication period from the date when an adjudicator receives an appellant's good cause explanation for filing an appeal late. However, we received several comments objecting to tolling the 90-day adjudication period for appeals not filed directly with the ALJ hearing office or MAC until the appeal reaches the appropriate adjudicator. Commenters objected for essentially two reasons: (1) They felt that tolling the adjudication period was contrary to the Congress' direction that the appeals be completed within 90 days and (2) that beneficiaries and other appellants must not be penalized for delays caused by the government and its contractors. Suggested solutions included increased coordination between SSA and CMS local offices with the appeals entities and establishing deemed or presumed dates of receipt for appeals whose actual receipt is delayed because the component that initially received the appeal does not forward it timely to the adjudicator.

Response: As noted in the proposed rule, and discussed in detail above in both the contractor and QIC context, directing appellants to only one filing location will reduce confusion and eliminate potential delays in transmitting the appeal request. Similarly, in the case of ALJ hearings or MAC reviews, requiring appellants to file their appeals with a single appeals entity will be the simplest and most efficient way of eliminating the delays that concern the commenters. In two sections of the proposed rule, SSA was listed as a filing location. As mentioned previously, given the reduced role of SSA in the processing of Medicare appeals, we believe that an explicit regulatory reference to SSA field offices is no longer appropriate. Therefore, we have revised § 405.1014(b) and § 405.1106(a) to eliminate the references to SSA as an alternative filing location. We intend to instruct the QICs to include in their reconsideration notices the appropriate entity to whom a subsequent appeal must be directed. We will also continue our efforts to make forms for requesting an ALJ hearing and MAC review accessible and easy to use. In that regard, we note that a specific form for requesting MAC review with directions for filing under the current regulations is available on the Departmental Appeals Board's Web site at *http://www.hhs.gov/dab*.

Consistent with our managed care regulations, §§ 405.1106(a) and 405.1106(b) require that an appellant send a copy of the request for review (or escalation) to the other parties involved in the appeal. Although the MAC will not dismiss an appeal on the grounds that the appellant failed to satisfy this requirement, the adjudication deadline will be tolled if the appellant fails to copy the other parties. This is one of several provisions we will monitor for effectiveness, and we will assess the need for changes as we gain experience with the new process.

Comment: One commenter suggested that the ALJ be required to notify the appellant when the request for review is received, so that the appellant will know when the 90-day adjudication period begins.

Response: We agree with the commenter. ALJ hearing offices and the MAC routinely send acknowledgment notices to the appellant when they receive a request for hearing or MAC review. However, this interim final rule requires ALJ hearing requests to be filed with the entity specified in the notice of reconsideration. Therefore, the decision-making time frame begins on the date an appeal is timely filed with this entity. Accordingly, § 405.1014(b) has been modified to require ALJ hearing offices to send appellants a notice of the date of receipt of an appeal request only when a hearing office receives a request that was initially filed with an entity other than the one specified in the notice of reconsideration. Similarly, § 405.1016(a) now requires notice of the date of receipt to be sent only when a request for MAC review is filed with an entity other than the MAC or ALJ hearing office.

i. Adjudication Deadlines

Section 1869(d)(1)(A) of the Act provides that, unless the appellant waives the statutory adjudication deadline, the ALJ "shall conduct and conclude a hearing on a decision of a [QIC]" and issue a decision within 90 days from the date a request for hearing is timely filed. As we discussed in the proposed rule, we interpret this provision as requiring an ALJ to decide a case within 90 days only when the QIC has issued a final action in a case. Therefore, we proposed that when an appellant escalates an appeal from the QIC to the ALJ level, the proceedings before the ALJ will not be subject to the 90-day limit.

Comment: As noted in our discussion of escalation, we received several comments objecting to the above proposal. Some commenters stated that cases escalated from the QIC level to the ALJ level be subject to the 90-day limit, and others suggested an extended, but still limited, time frame.

Response: As indicated in our discussion above, this interim final rule requires that ALJs complete their action in cases escalated from the QIC level to the ALJ level within 180 days of the date of receipt of the escalation request.

We also proposed that the 90-day adjudication period be tolled when delays in submitting evidence or requests for postponement of a hearing by an appellant, rather than the ALJ's actions, extend the length of the proceedings. We received no specific objections to this proposal. Because we have now limited cases escalated from the QIC level to the ALJ level to a 180-day adjudication period, we have included in the final regulation text that an appellant's actions that delay the proceedings will similarly toll the 180-day adjudication deadline.

Comment: One commenter asked us to clarify the effect of the statutory provision that allows an appellant to waive the 90-day adjudication period. The commenter asked if this provision allows an appellant to, in essence, agree to an extension of the adjudication period for a limited period.

Response: We agree with the commenter that in some instances the appellant may benefit by agreeing to a limited extension of the adjudication period in order to give the ALJ sufficient time to obtain additional testimony or evidence, or otherwise consider the appeal and issue a decision. Section 405.1036(d), consistent with section 1869(d)(1)(B) of the Act, allows an appellant to waive the adjudication period. We have modified that section to provide that the waiver may be for a specific period of time agreed upon by the ALJ and the appellant.

13. Remand Authority (§ 405.1034)

In the proposed rule, we noted that the current regulations governing Medicare appeals do not contain clear guidance concerning if and when an ALJ can remand a case to a contractor for further proceedings. We proposed giving ALJs remand authority for three specific reasons: (1) When the ALJ decides that the QIC's dismissal of a request for reconsideration was improper; (2) when the record provided to an ALJ lacks the technical information needed to resolve the case, which only the contractor can provide; and (3) when an appellant submits new evidence to the ALJ without providing a good reason for not providing it at the QIC level.

Comment: We did not receive any comments concerning the ALJ's authority to remand when the ALJ decides that the QIC's dismissal of a request for reconsideration was improper. However, several commenters expressed concern that the mandatory remand provisions altered the ALJ's role as the trier of fact, as well as the de novo aspect of an ALJ hearing. Others contend that it will be unfair to restrict a party's right to submit new evidence not considered by the QIC, and at the same time allow CMS to submit evidence and position papers if it participates in a case. Many others reference specific situations in which they said the prohibition concerning the introduction of new evidence should not be applied, or, alternatively, in which good cause to introduce the evidence should be found.

Response: As noted earlier in this rule, the MMA amended several of BIPA's appeal provisions. Effective October 1, 2004, section 1869(b)(3) of the Act, as amended by section 933(a) of the MMA, requires that a provider of services or supplier not introduce evidence in any appeal that was not presented at the reconsideration conducted by the QIC, unless there is good cause that prevented the introduction of that evidence at or before the reconsideration.

This new statutory provision is more restrictive than the proposed rule, in which we proposed only to require that evidence specifically identified in the notice of redetermination be produced no later than the reconsideration level. In accordance with section 933(a) of the MMA, we have amended § 405.1028 and § 405.1122(c) to require providers and suppliers to submit all evidence at the reconsideration level unless there is good cause for not submitting it at, or before, that level. Similarly, in § 405.1028, we require beneficiaries who are represented by a provider or supplier to submit all evidence at the reconsideration level unless there is good cause for not submitting it at, or before, that level. Although the statute does not require application of this standard to beneficiaries who are represented by providers or suppliers, we think it is appropriate to extend the requirements of section 933(a) to these beneficiaries. Doing so will likely prevent a provider or supplier from subverting the requirement for full and early presentation of evidence simply by offering to represent a beneficiary, rather than appealing on its own behalf. In light of these changes, we have eliminated the portions of proposed § 405.1030 and § 405.1034 that would have required an ALJ to remand a case to the QIC when an appellant introduced new evidence at the ALJ level without good cause. Although an ALJ or the MAC may not rely on evidence submitted untimely in deciding the substantive issue(s) in an appeal, unless good cause is found for the late submission of evidence, § 405.1042(a)(2) ensures that the excluded evidence will become a part of the record, and that the ALJ or MAC will explain in its action why the evidence has been excluded.

Comment: Several commenters noted that, while the appellant's right to submit new evidence beyond the QIC level is restrained by the good cause standard, the regulations do not appear to place similar restrictions on CMS or its contractors if they decide to submit evidence at the hearing.

Response: We disagree with the commenters' position that it is unfair to prevent providers and suppliers from submitting new evidence at the ALJ level, while allowing CMS or its contractors to submit evidence at the ALJ level if the agency elects to join the appeal as a party. We have also considered these comments in light of the statutory change described above that impose a good cause standard on providers and suppliers for purposes of submitting evidence beyond the QIC level. CMS and its contractors are not permitted to participate in the appeals process prior to the ALJ level. Consequently, they are also prohibited from submitting evidence in either the redetermination or the reconsideration. Therefore, if CMS elects to join an appeal as a party, the agency should be afforded an opportunity to present evidence and the ALJ level is the earliest opportunity for this to take place. We anticipate that there are several scenarios in which an ALJ will need to consider whether a provider or supplier appellant's request to introduce new evidence at the ALJ level must be granted for good cause.

While it is not possible to delineate in a regulation all of the situations that can constitute good cause, we note that the type of new evidence that may be introduced at various levels of appeal will also be affected by the number of issues that are considered during the course of an appeal. For example, if a QIC disagrees with a contractor's denial of a claim on technical grounds, it may still determine that the claim is not payable because the service was not medically reasonable and necessary. Since the issue of medical necessity may not have been addressed until the QIC's determination, the ALJ will need to take that into account when determining whether the appellant has good cause to produce additional evidence on the medical necessity issue at the ALJ level. Similarly, in instances in which CMS introduces evidence at the ALJ level that was not part of the

record below, the ALJ should consider whether the introduction of this evidence constitutes good cause for granting an appellant's request to introduce new evidence.

Comment: One commenter objects to the provision that allows an ALJ to remand to the QIC when the record provided to the ALJ lacks technical information that is material to resolving the case, and only the contractor can provide the information. The commenter suggests that the ALJ retain the appeal and ask the contractor to forward the information to the ALJ.

Response: We anticipate that most appeal files forwarded to the ALJ will have all of the documents necessary to decide the case. In the rare instance in which the file lacks necessary technical information, we believe that the most effective way of completing the record is to return the case, via remand, to the contractor. However, § 405.1034 will give an ALJ the option of either remanding the case to the contractor, or asking the contractor to forward the missing information to the ALJ hearing office. In the event that we move to an electronic file system, we will consider revising this provision further.

14. When an ALJ Can Consolidate a Hearing (§ 405.1044)

[If you choose to comment on issues in this section, please include the caption "ALJ—Consolidation of Hearing" at the beginning of your comments.]

We have continued the longstanding practice of allowing ALJs to consolidate requests for hearing where appropriate. We added in the proposed rule, however, a provision requiring an ALJ to notify CMS of the intent to consolidate hearings because we believe that the consolidation of hearings may affect CMS' decision on whether to participate or invoke party status.

Comment: We received one comment on this provision. The commenter recommends that a beneficiary have the right to object to a request for consolidation of the beneficiary's appeal with those of another party (for example, a provider or supplier appealing numerous appeals on the same issue). The commenter's concern is that consolidation of the appeal will eliminate the 90-day deadline for resolution of the case. The commenter also states that consolidation will complicate the hearing and make it more difficult for the beneficiary to assert rights in the appeal.

Response: We expect the situation described by the commenter to occur only rarely. In our experience, providers and suppliers make requests for consolidation of hearings in cases involving identical coverage and payment issues for the same item or service provided to multiple beneficiaries. In the majority of these cases, the liability of individual beneficiaries has been waived or, if not, the beneficiary has not filed an appeal or otherwise participated in the determinations below, and has not filed a separate request for ALJ hearing. However, if the beneficiary and the provider or supplier, as applicable, both file a request for hearing in response to the same QIC reconsideration, the provider or supplier may not, in essence, waive the beneficiary's right to an ALJ action within 90 days because it wants to consolidate that determination with other similar appeals. Beneficiaries who do not waive the 90-day adjudication period in order to participate in the consolidated proceedings must be mindful, however, that their case will be decided without the benefit of any of the testimony that can be given at the consolidated hearing, and that their decision may be revised if the evidence considered and resulting outcome of the consolidated hearing provides a basis for reopening the beneficiary's case.

15. When an ALJ Can Dismiss a Request for a Hearing (§ 405.1052)

[If you choose to comment on issues in this section, please include the caption "When an ALJ Can Dismiss a Request for a Hearing" at the beginning of your comments.]

We note that CMS' pre-BIPA regulations did not address this issue; rather, ALJs followed the regulations at 20 CFR § 404.957. Those regulations were designed to resolve appeals filed by applicants for Social Security retirement and disability benefits. Therefore we proposed new regulations that address the specific procedural issues that arise in Medicare claims appeals. We described an ALJ's authority to dismiss a request for hearing on several grounds, including: The death of the beneficiary when there is no substitute party with a remaining financial interest; dismissals in response to a request for withdrawal; dismissals based on a previous determination or decision about the appellant's rights on the same facts and on the same issue or issues, and dismissals based on abandonment. We received one comment concerning dismissals related to the survival of an appeal following the death of the beneficiary, and one concerning when, if ever, an ALJ may vacate a dismissal.

Comment: We received a general comment concerning whether ALJs can be given the authority to vacate their own dismissal orders.

Response: SSA's regulations include a provision allowing ALJs to vacate their own dismissals. However, in practice, this provision has not been an effective remedy in Medicare appeals because the claims folder is no longer in the ALJ hearing office and is unavailable to the ALJ by the time the request to vacate the order is received in the ALJ hearing office. Moreover, resolutions of these requests have been delayed or complicated when appellants have simultaneously asked the ALJ to vacate the dismissal order and asked the MAC to review the dismissal. In light of these problems, we believe that the better practice is to provide only for an appeal of the dismissal order to the MAC.

Comment: We proposed that either the ALJ or the MAC could dismiss a request for hearing or review, as applicable, when a beneficiary dies before an appeal is filed, or during the pendency of the appeal. We did not receive any comments concerning the ALJ's right to dismiss the request for hearing, but did receive a comment concerning a MAC's dismissal on the same grounds. The commenter states that the MAC must hold a hearing at the request of the beneficiary's estate on the issue of whether there is any remaining financial liability of the estate that establishes the estate as a substitute party that can continue the appeal.

Response: In our experience, it is not necessary to hold a hearing at either the ALJ or MAC level to resolve whether the beneficiary's estate has a right to a hearing or MAC review. The issue in these circumstances is whether there remains an interested, substitute party who has a remaining financial interest in the outcome of the appeal. As indicated in the proposed rule, this remaining financial interest can be established if the beneficiary either paid for the service (and, thus, the beneficiary's surviving spouse or estate is seeking reimbursement on behalf of the beneficiary) or the beneficiary's spouse or estate continues to be potentially financially liable to pay for the service. Conversely, if the beneficiary's liability for the service was waived and that determination was not used as a basis to establish the beneficiary's liability for subsequent services, the beneficiary's spouse or estate has no remaining financial interest in the appeal. Neither the statute nor existing regulations require a hearing before an appeal may be dismissed on the above issue, and, in our experience, a determination of the estate's remaining financial liability, if any, can be established without a

hearing. We wish to note that when a beneficiary dies and the appeal is subsequently dismissed, a party, including the beneficiary's estate, may ask the MAC to vacate the dismissal under § 405.1108(b). Examples of situations in which a dismissal should be vacated include when there is the possibility of Medicaid liability or when there is a possibility the State (which pays Medicaid funds) will attempt recovery of its payment from the estate.

We note, however, that section 939 of the MMA now provides that, if a beneficiary dies and there is no substitute party available to appeal a determination, the provider or supplier who furnished the item or service can pursue the appeal. We have amended § 405.1052(a)(5) to reflect this change. However, because a beneficiary's estate may have an interest in having Medicare cover a service so that a State (which pays Medicaid funds) will not attempt to recover its Medicaid payment from the estate, adjudicators may only dismiss requests involving dually eligible beneficiaries pursuant to the requirements set out in § 405.1052.

16. Content of ALJ's Decision (§ 405.1046)

[If you choose to comment on issues in this section, please include the caption "Content of ALJ's Decision" at the beginning of your comments.]

Section 405.1046 of the proposed rule sets forth general rules regarding the ALJ's decision notice. We received no comments on these provisions. Subsequently, section 933(c)(3) of the MMA amended section 1869(d) of the Act to provide that an ALJ decision must be written in a manner calculated to be understood by the beneficiary and must include:

- The specific reasons for the decision (including, to the extent appropriate, a summary of the clinical or scientific evidence used in making the decision);
- The procedures for obtaining additional information concerning the decision; and
- Notification of the right to appeal the decision and instructions on how to initiate such an appeal.

1. These provisions have now been incorporated in § 405.1046(b) of this interim final rule. The new provisions are basically verbatim restatements of the statute and are completely compatible with, although more detailed than, the proposed provisions.

2. In addition to changes needed to implement section 933(c)(3) of the MMA, we have added paragraph (c) to § 405.1046 to clarify CMS' long-standing position that ALJ decisions are not final for purposes of determining the actual amount of payment due. ALJ decisions involving underpayments often indicate that Medicare must make payment for a service, but do not calculate a specific underpayment amount to be made. These determinations are not final, because the contractor must still calculate the underpayment amount by determining the principal amount to be paid. In addition, if the ALJ makes a finding concerning payment when the amount of payment was not an issue before the ALJ, the contractor may independently determine the payment amount. Therefore, the date of the final determination for purposes of determining when interest charges on underpayments begin accruing is the date that the contractor completes the calculation and makes the written determination of the principal amount that Medicare owes.

17. Appeals Involving Overpayments (§ 405.1064)

[If you choose to comment on issues in this section, please include the caption "Appeals Involving Overpayments" at the beginning of your comments.]

A decision that is based on only a portion of a statistical sample does not accurately reflect the entire record. Therefore, we have added § 405.1064 to set forth a general rule regarding ALJ decisions that are based on statistical samples. The effect of this technical change is that when an appeal from the QIC involves an overpayment issue and the QIC relies on a statistical sample in reaching a decision, the ALJ must base his or her decision on a review of all claims in the same statistical sample.

18. Review by the MAC and Judicial Review (§ 405.1100 Through § 405.1140)

[If you choose to comment on issues in this section, please include the caption "Review by the MAC and Judicial Review" at the beginning of your comments.]

a. Introduction

The component of the Departmental Appeals Board (DAB) that decides cases brought under section 521 of BIPA is called the Medicare Appeals Council (MAC). Prior to this interim final rule, the MAC considered requests for review of Medicare cases under the procedures used by SSA's Appeals Council. *See* 20 CFR §§ 404.966 through 404.985. In the proposed rule, we proposed that some of the regulations governing the SSA's Appeals Council be modified to meet the particular needs of the Medicare process and proposed adding other regulations to effectuate the BIPA provisions governing MAC review.

b. MAC Review of an ALJ's Action/De Novo Review

Under the regulations governing the pre-BIPA process, the MAC could deny or dismiss a request for review, or it could grant the request for review and either issue a decision or remand the case to an ALJ. The MAC could also review an ALJ's action in order to dismiss a request for hearing for any reason for which it could have been dismissed by the ALJ. The MAC also had the authority under the pre-BIPA process to review an ALJ's action on its own motion, provided that it took review of the case within 60 days after the date of the hearing decision or dismissal. In the proposed rule, we described the factors the MAC considered under the pre-BIPA regulations in deciding whether to grant review. We also noted that if the MAC denied review of an ALJ's decision under those regulations, the ALJ's action, not the denial of review, was the final decision of the Secretary and was reviewable in Federal district court on a substantial evidence standard.

BIPA establishes a new standard for MAC review of an ALJ's action. Section 1869(d)(2)(A) of the Act directs the MAC to conduct its review of an ALJ decision and make a decision or remand the case to the ALJ within 90 days of a request for review. Section 1869(d)(2)(B) of the Act specifies that the MAC reviews the case *de novo*. In addition, section 1869(d)(3)(A) of the Act allows parties to request a review by the MAC if within 90 days of timely filing a request for an ALJ hearing, the ALJ has not issued a decision, "notwithstanding any requirements for a hearing for purposes of the party's right to such a review."

We proposed under § 405.1100 that when a party requests a MAC review, the MAC reviews the ALJ's decision *de novo*. The party does not have the right to a hearing before the MAC, and the MAC considers all evidence in the administrative record. If a case requires additional evidence or proceedings at the ALJ level, the MAC remands the case to the ALJ for further action. Otherwise, the MAC communicates its final action on the case by issuing a final decision or order that adopts, modifies, or reverses the ALJ's action, as appropriate. We also proposed other changes to the MAC's current procedures to accommodate the statute's changes to the MAC's standard of review, as well as the adjudication deadlines. (Some of the changes concerning time and place of filing a review and other changes that affect both the ALJ and MAC process are

discussed earlier in this preamble.) Because an ALJ's decision is not final and binding on all parties if the MAC reverses the ALJ's decision, we have amended § 405.1048 to make that point clear.

Consistent with our managed care regulations, §§ 405.1106(a) and 405.1106(b) require that an appellant must send a copy of the request for MAC review or escalation to the MAC and to the other parties involved in the appeal. Although the MAC will not dismiss an appeal on the grounds that the appellant failed to satisfy this requirement, the deadline will be tolled if the appellant fails to copy the other parties.

Comment: Most of the comments we received concerning MAC review pertained to the MAC's procedures when a case is escalated from the ALJ level to the MAC. However, one commenter expressed the concern that the MAC's *de novo* review standard would diminish an ALJ's authority to make findings of fact.

Response: Section 1869(d)(2)(B) of the Act requires the MAC to conduct any review of an ALJ's decision under a *de novo* review standard. Therefore, when the MAC reviews an ALJ's decision, the MAC will not apply a substantial evidence standard when it considers an ALJ's findings of fact. However, an ALJ's findings and conclusions on factual issues will still carry weight, particularly with respect to the credibility of witnesses, and by no means do the BIPA changes diminish an ALJ's authority to make findings of fact.

As we indicated in the proposed rule, the MAC must carefully consider all evidence in the record in conducting its review. It must then adopt, modify, or reverse the ALJ's decision, or remand the case to an ALJ for further proceedings (the MAC can also dismiss a request for review). Note that under § 405.1112, an appellant's request for a review must identify the parts of the ALJ decision with which the appellant disagrees and explain why the ALJ's findings and conclusions are wrong. The MAC will limit its review to those exceptions, unless the appellant is an unrepresented beneficiary. Thus, the MAC will review an ALJ's findings of fact or conclusion only when specifically challenged by an appellant. Under those circumstances, or in the case of an unrepresented beneficiary appellant, the *de novo* review standard will apply. Note that the MAC can remand the case to an ALJ if the MAC determines that additional evidence is needed or additional action by the ALJ is required.

c. Escalation of an Appeal From the ALJ Level to the MAC

Section 1869(d)(3)(A) of the Act, as amended by section 521 of BIPA, provides that if an ALJ does not issue a decision within the 90-day adjudication period, "the party requesting the hearing may request a review by [the MAC], notwithstanding any requirements for a hearing for purposes of the [appellant's] right to such a review." We originally proposed that cases escalated to the MAC from the ALJ level under this provision would not be subject to the 90-day adjudication deadline. As discussed earlier in this preamble, we have decided to require that the MAC complete its action in an escalated case within 180 days of the receipt of the request for escalation.

We also indicated in the proposed rule that we interpret section 1869(d)(3)(A) of the Act to mean that only the person or entity that requests the ALJ hearing can escalate the appeal to the MAC if the ALJ does not meet the 90-day adjudication deadline. For example, where CMS has entered a case as a party, it may not seek escalation. We did not receive any comments concerning this proposal. We also stated that we believed that the statute does not require the MAC to hold a hearing when a case is escalated from the ALJ to MAC level.

Comment: We received several comments that the MAC be required to hold a hearing when a case is escalated from the ALJ level. Some commenters note that proposed § 405.1108(d)(2) allows the MAC to hold a hearing.

Response: As we noted in the proposed rule, the statute describes different procedures and standards for adjudication or review for the various steps of appeal. Just as some appellants in the pre-BIPA process chose different processes at the carrier hearing level (in-person hearing, telephone hearing, or on-the-record decision) and made similar choices at the ALJ level, appellants who consider escalating their cases will have to determine how important it is in their case to receive the type of process provided at a particular level. As we explained in the proposed rule, the statute does not require that the MAC hold a hearing if a case is escalated to it; rather, the statute allows escalation "notwithstanding any requirements for a hearing." Moreover, § 405.1108(d)(2) does not establish an appellant's right to a hearing before the MAC; rather, it gives the MAC the option to hold a hearing when the MAC concludes that it is necessary. Therefore, although an appellant who escalates a case to the MAC can request that the MAC hold a hearing, the MAC has the authority to deny the request and decide the case on the written record.

We also explained that when the MAC receives a case escalated from the ALJ level, the MAC might issue a decision, dismiss either the request for hearing or request for review on procedural grounds, or, if the administrative record is insufficient to take any of the above actions, remand the case to the ALJ for specific development and a decision.

Comment: Some commenters state that it is inappropriate for the MAC to remand a case to an ALJ that has been escalated to the MAC because the ALJ has not decided the case within the 90-day period. Instead, the MAC must correct any deficiencies in the record itself.

Response: We do not anticipate that the MAC will routinely remand an escalated case to the ALJ. However, we need to retain this option for those rare occasions in which the MAC cannot resolve the case at its level, or when the request for escalation and the other remedies requested by the appellant in the request for review are mutually exclusive. For example, where an ALJ fails to issue a decision after a hearing that the appellant does not believe was a fair hearing, the appellant might escalate at the end of the 90-day adjudication period for the purpose of requesting a hearing and decision by a different ALJ. Here, if the MAC concludes that the appellant did not receive a fair hearing before the first ALJ and determines that the appropriate remedy is a hearing before a different ALJ, then the MAC can remand that case accordingly.

C. Miscellaneous Comments

Comment: We received a number of questions about the prioritization of appeals once the new BIPA appeals process is implemented. In particular, commenters are concerned that at the post-redetermination levels of appeal, requests filed on or after the effective date of the BIPA changes will receive priority because of the new adjudication deadlines and the possibility of escalation. Commenters request that we clarify how adjudicators will be expected to prioritize appeal requests. They recommended that CMS require that appeal requests be adjudicated in the order in which they are received. In a related comment, we were asked to clarify what impact, if any, implementation of the new appeals process will have on appeals that are already in progress.

Response: As discussed in section I–E of this preamble, we are fully cognizant of these important issues and have taken them into consideration in developing an implementation approach for these new requirements. In general, we agree with commenters that adjudicators can be expected to continue to carry out appeals in the order in which appeal requests are received. Thus, CMS intends to work closely with the FIs and carriers to ensure that all appeal requests are completed on a timely basis. Similarly, CMS, SSA, and HHS are working together to reduce the backlog of cases at the ALJ and MAC levels, and thus, minimize this problem.

Comment: In the current appeals process, contractors are required to effectuate appeal decisions within 30 days. A commenter asked what effectuation time frame(s) FIs and carriers will be required to adhere to in the new appeals process.

Response: The current appeal regulations do not require carriers or fiscal intermediaries to effectuate ALJ or MAC decisions within a specific time frame. The effectuation time frames that our contractors follow in the current appeals process are based on manual requirements. Neither BIPA nor MMA impose any statutory requirements for effectuation of appeals decisions. Nonetheless, it is our intention to maintain the current manual requirements for effectuation of ALJ and MAC decisions in the new appeals process. The relevant manual provisions can be found in the Internet-only Manual (IOM)(Medicare Claims Processing Manual (Pub. 100–4) at Chapter 29 Sections 60.20.2, 60.22, and 60.24. In conjunction with implementation of the new appeals process, an additional section will be added to the IOM detailing the effectuation time frames for QIC decisions.

Comment: One commenter asks whether the changes implemented by BIPA also apply to the Medicare Cost Program.

Response: The changes to appeal procedures that are required under section 521 of BIPA, and Title IX, Subtitle D, of the MMA, apply only to claim determinations with respect to Part A and Part B of Medicare. However, section 1876(c)(5) of the Act and § 417.600 of the Medicare cost plan regulations establish that cost plan enrollees have a right to an ALJ hearing and a subsequent right to MAC and judicial review. Thus, the new ALJ and MAC regulations will generally apply to cost plans. We intend to address this issue in further detail in either a CMS Ruling or future rulemaking.

Comment: Under the proposed rule, CMS has the option of joining certain appeals at the ALJ level. A commenter recommends that if CMS elects to join an appeal, the agency must be required to hire an attorney to represent it.

Response: In the current claim appeals process, appellants and other parties retain almost complete discretion to elect or not to elect an appointed representative. With few exceptions, parties can choose any person to act as their appointed representative. In the new appeals process, as in the old, we believe that all decisions with respect to the selection of an appointed representative should be left up to the party, regardless of whether the party is a beneficiary or CMS. Accordingly, the Appointed Representative provisions found in section 405.910 of the interim final rule maintain our current policy of giving parties almost complete control over the selection of an appointed representative. As a party to an appeal, CMS enjoys the same rights and privileges as any other party, including control over its selection of an appointed representative.

Comment: One commenter asks us to clarify what, if any, continuing education will be available to QICs and ALJs.

Response: The new Administrative QIC (AdQIC) will have primary responsibility for fulfilling the educational and training needs of the QICs.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comments, we are not able to acknowledge or respond to them individually. We will consider all comments concerning the provisions of the interim final rule that we receive by the date and time specified in the **DATES** section of this preamble, and respond to those comments in the preamble to the final rule.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

The PRA exempts most of the information collection activities referenced in this Interim Final Rule with Comment. In particular, 5 CFR 1320.4 excludes collection activities during the conduct of administrative actions such as redeterminations, reconsiderations, and/or appeals. Specifically, these actions are taken after the initial determination or a denial of payment. There is, however, one requirement contained in this rule that is subject to the PRA because the burden is imposed prior to an administrative action or denial of payment. This requirement is discussed below.

Section 405.910 Appointed Representatives

In summary, section 405.910 states an individual or entity may appoint a representative to act on their behalf in exercising their rights to an initial determination or appeal. This appointment of representation must be in writing and must include all of the required elements specified in this section.

The burden associated with this requirement is the time and effort of the individual or entity to prepare an appointment of representation containing all of the required information of this section. In an effort to reduce some of the burden associated with this requirement, we have developed a standardized format that the individual/entity may opt to use.

We estimate that approximately 27,277 individuals and entities will elect to appoint a representative to act on their behalf each year. Because we have developed the optional standardized form, we estimate that it should only take approximately 15 minutes to supply the required information to comply with the requirements of this section. Therefore, we estimate the total burden to be 6,819 hours on an annual basis.

If you wish to view the proposed standardized notices and the supporting documentation, you can download a copy from the CMS Web site at *http://www.cms.hhs.gov/regulations/pra/*.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Dawn Willinghan, CMS–4064–IFC Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer Comments submitted to OMB may also be e-mailed to the following address: e-mail: *Christopher_Martin@omb.eop.gov* or faxed to OMB at (202) 395–6974.

V. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Analysis" at the beginning of your comments.]

A. Introduction

We have examined the impact of this interim final rule with comment under the criteria of Executive Order 12866 (September 1993, Regulatory Planning and Review), section 1102(b) of the Social Security Act, the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Although we do not expect this interim final rule to have a substantial financial impact on beneficiaries, providers, or suppliers, we anticipate that Federal costs to implement this rule may exceed the $100 million threshold. Therefore, this is a major rule and in compliance with Executive Order 12866, we have prepared the RIA below. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

The RFA requires agencies, in issuing certain rules, to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all providers and suppliers affected by this regulation are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for a rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act. As discussed in further detail below, we are uncertain how many small entities will be affected by this rule. The purpose of this interim final rule is to improve the efficiency of the claims review and appeals process, and to the extent that these changes shorten the appeals process, these regulations should reduce the associated burden on small entities. Similarly, the impact on small rural hospitals is likely to be negligible or slightly positive. Therefore, we are certifying that the interim final rule will not have a significant impact on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that would include any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This rule will not have this effect on State, local, or tribal governments, or on the private sector.

B. Scope of the Changes

We did not receive any comments regarding the impact analysis provided in the proposed rule. Therefore, this analysis largely repeats the proposed rule impact analysis and estimates. This interim final rule adopts most of the proposed provisions and adds changes required under the MMA. The impact of any changes is discussed below.

As discussed in detail above in section II of this preamble, this interim final rule establishes new regulations concerning appeals procedures for Medicare claims determinations, consistent with section 1869 of the Act as amended by section 521 of BIPA 2000 and sections 931, 932, 933, 935, 937, 939, and 940 of the MMA.

Among the significant changes required by the BIPA and MMA amendments are:

- Establishing a uniform process for handling Medicare Part A and Part B appeals, including the introduction of a new level of appeal for Part A claims.
- Revising the time frames for filing a request for a Part A and Part B appeal.
- Requiring appeals notices issued at the redetermination, reconsideration, and ALJ levels to include specific information.
- Imposing a 60-day time frame for redeterminations made by fiscal intermediaries and carriers.
- Requiring the establishment of a new appeals entity, the qualified independent contractor (QIC), to conduct "reconsiderations" of contractors' initial determinations including redeterminations, and allowing appellants to escalate the case to an ALJ hearing, if reconsiderations are not completed within 60 days.
- Requiring providers and suppliers to present all evidence for an appeal no later than the QIC reconsideration level, unless the appellant demonstrates good cause as to why that evidence was not provided previously.
- Establishing uniform amount in controversy thresholds for ALJ hearings and judicial review that will be adjusted annually by the medical care component of the Consumer Price Index for all urban consumers.
- Establishing a 90-day time limit for conducting ALJ and DAB appeals and allowing appellants to escalate a case to the next level of appeal if ALJs or the MAC do not meet their deadlines.
- Establishing a requirement for "de novo" review when the MAC reviews an ALJ decision made after a hearing.

This interim final rule does not establish new rules, or alter existing rules, with respect to the substantive standards for determining whether a Medicare claim is payable. Claims that enter the administrative appeals process represent an extremely small portion of the total number of claims that Medicare processes each year. In FY 2003, for

example, Medicare contractors processed 1.05 billion claims; of these only about 5.7 million were appealed. Thus, the number of Medicare claims that enter the administrative appeals system represents only about 0.5 percent of the total number of claims filed with Medicare. Moreover, the 5.7 million figure represents the total number of claims appealed, not the number of appellants. From our experience, the vast majority of appeal requests are filed by a relatively limited group of appellants. Therefore, the number of providers, physicians and other suppliers, as well as beneficiaries who enter the appeals process is far fewer than the 5.7 million claims that are appealed. Given the small percentage of claims and appellants involved in the administrative appeals process, we believe that this interim final rule will have little or no effect on most Medicare providers and suppliers. The changes set forth are even less likely to affect beneficiaries, whose appeals are estimated to constitute no more than 3 to 5 percent of total appeals. As discussed in detail below, however, for those providers, suppliers, and beneficiaries who do file appeals of Medicare claim determinations, the effects of this interim final rule should be positive.

C. Anticipated Effects on Providers, Physicians and Other Suppliers, and Beneficiaries

We expect that the changes set forth in this interim final rule will produce substantial improvements in the consistency and efficiency of the claims appeal process. For the most part, the anticipated positive impact of the interim final rule on providers, physicians and other suppliers will be similar to the anticipated effects on beneficiary appellants, although again the impact on the provider and supplier communities would be more pronounced due to the much greater volume of provider and supplier appeals. We include a brief discussion of the anticipated impact of major changes below.

In general, we do not anticipate that the introduction of these new appeals procedures will have a substantive impact on the final results of claims appeals; that is, there is no reason to believe that the use of QICs, or other changes required by BIPA and the MMA, will result in any change in the extent to which appeals eventually result in favorable decisions for providers, suppliers, or beneficiaries. Thus, we do not anticipate that these changes will have a quantifiable impact on Medicare claims payments. From an administrative perspective, however, the introduction of better notice requirements, new independent review entities, and mandatory physician review of medical necessity issues should increase appellants' confidence in the Medicare appeals process. Thus, we believe that the implementation of requirements that ensure appellants of both the fairness of the decision-making process and the accuracy and consistency of the decisions reached can eventually lead to measurable reductions in the need for the elevation of appeals to the slower, more costly levels of the appeals system (for example, ALJ hearings and MAC or Federal court review).

In the short term, it will not be surprising if there is an initial spike in requests for reconsiderations by QICs given the reduced time frame for these second level appeals, the availability of new appeal entities, and the introduction of physician review panels. Similarly, it is foreseeable that the number of requests for ALJ hearings or MAC reviews may increase given the establishment of relatively short decision-making time frames for these entities.

Most of the major changes set forth in this interim final rule (for example, as the new time frames for appeals decisions) are mandated by the statutes and thus, are not subject to the Secretary's discretion. To the extent that we have exercised discretion (for example, in establishing procedures for conducting appeals), we have attempted to balance the need for accurate, expeditious appeals decisions with our responsibilities to implement these changes in a cost-effective manner.

A discussion of the anticipated impacts of key provisions follows.

1. Decision Making Time Frames and Escalation

Perhaps the most significant changes set forth are the reductions in mandatory time frames for issuing decisions on appeals. In general, this means faster receipt of decisions and, for favorable decisions, faster payment. For example, under the interim final rule, the time frame for a reconsideration (formally called a carrier hearing) has been reduced from 120 days to 60 days. If the decision is favorable (that is, the appeal results in a reversal of an initial determination that a claim could not be paid), effectuation of the favorable decision will be initiated as soon as a decision is reached. Given the reduced decision-making time frames, payments will be received substantially sooner than under the current system. These benefits to appellants will extend to all levels of the Medicare administrative appeals process.

In addition to the new time frames for making decisions, the interim final rule will allow appellants the option of escalating an appeal to an ALJ if the QIC fails to make a decision timely. Escalation is also available at the appellants' option from the ALJ level to the MAC if an ALJ fails to issue a hearing decision on a QIC decision within 90 days of a request for an appeal of a QIC reconsideration (or similarly from the MAC to Federal court). Clearly, these options will be a positive change for appellants, who have greater control of their appeals and a viable recourse during the appeals process if, during one stage of the appeals process, their appeal is not decided timely.

Overall, these changes will reduce the amount of time that it takes for a claim to make its way through the administrative appeals process. In the past, it generally took 3 to 5 years for appealed claims to reach resolution at the MAC level. We anticipate that a claim will now take about 18 months to make its way through the entire administrative appeals process.

2. Transfer of ALJ Function

After the proposed rule was published in the **Federal Register**, a significant development occurred involving the transfer of the ALJ function. Section 931 of the MMA requires the responsibility for the functions of ALJs for hearing appeals under title XVIII of the Act (and related provisions on title XI of the Act) to be transferred from the Commissioner of SSA to the Secretary of the DHHS. For the most part, organizational responsibility for this function should not have a material impact on appellants. To the extent that there is an impact, it should be positive since ALJs will now be able to focus solely on Medicare issues instead of both SSA and Medicare issues. Note that although this rule reflects the transfer of the ALJ function from SSA to DHHS, the rule does not implement this change.

3. Review of Claims by a Panel of Health Care Professionals

Another important change implemented through this interim final rule is the requirement that a panel of physicians or other qualified health care professionals conduct QIC reconsiderations when the initial determination being appealed involves a medical necessity issue. BIPA mandates that when an initial determination involves a finding on whether an item or service is reasonable and necessary for the diagnosis or treatment of an

illness or injury, a QIC's reconsideration must be based on clinical experience and medical, technical, and scientific evidence to the extent applicable. MMA further provides that if a claim is for treatment, items, or services furnished by a physician, the reviewing professional must also be a physician. We believe that this change will give appellants more confidence that a fair decision has been reached, potentially reducing their need to pursue subsequent appeals. Thus, the introduction of routine involvement of physicians and other health care professionals into the appeals process should produce administrative finality at an earlier level of the process and benefit both appellants and the Medicare program.

4. Decision Letters and Documentation Requirements

An important aspect of the proposed rule concerns the content of the notices sent to parties when a contractor upholds its initial determination. These requirements include a written summary of the rationale for the redetermination decision and the identification of any specific missing documentation that contributed to the decision to deny the claim in question. Since publication of the proposed rule, section 933(c) of the MMA amended sections 1869(a), 1869(c), and 1869(d) of the Act and established statutory notice requirements that are very similar to those we proposed. Those statutory requirements have been incorporated into this interim final rule. We believe that these policies will provide appellants with the information they need to build their case early in the appeals process. We believe the impact of these requirements will be to produce more accurate decisions at the QIC reconsideration level, based on all the appropriate medical information, rather than appeals often needing to be raised to an ALJ before needed documentation is produced. This will give beneficiaries, providers, and suppliers more detail about why their claim was denied and allow them to fashion their appeal accordingly.

In addition, section 1869(b)(3) of the Act, as amended by section 933(a)(1) of the MMA, now specifies that providers and suppliers may not introduce evidence in any appeal that was not presented at the reconsideration conducted by the QIC. As a matter of policy, we also have extended this requirement to beneficiaries represented by providers and suppliers. This will ensure that providers and suppliers do not attempt to circumvent this evidence requirement by offering to represent beneficiaries. If the information is not submitted to the QIC, but instead is presented later in the appeals process, the evidence will not be considered unless the appellant demonstrates good cause why the information was not submitted to the QIC. We believe the end result of these provisions will be that appeals are resolved at the earliest possible administrative level, which is a positive result for all appellants.

5. Appeal Rights

In the past, providers could appeal in their own right only when the item or service was not covered because it constituted custodial care, was not reasonable and necessary, or in certain other limited situations when the determinations involved a finding with respect to the limitation of liability provision under section 1879 of the Act. In order to appeal in other circumstances, providers must have acted as representatives of beneficiaries.

In the interim final rule, we permit participating providers to appeal to the same extent as beneficiaries, or suppliers who take assignment. Also, consistent with section 1870(h) of the Act, as amended by section 939(a) of the MMA, we permit a provider or supplier to appeal a claim denial where that provider or supplier has rendered items or services to a beneficiary who subsequently dies and there is no other party available to appeal the denial. We believe these changes will have several positive impacts on appellants. For example, they should eliminate any confusion providers may have in determining whether they have standing to appeal an initial determination, and they remove the burden for the provider of obtaining an appointment of representative from a beneficiary. Thus, this interim final rule expands both provider and supplier appeal rights.

D. Effects on the Medicare Program

In the final analysis, the primary financial impact of implementing these changes falls upon the government agencies responsible for conducting appeals; that is, CMS and DHHS. Deciding appeals within shorter timeframes and establishing new independent review entities to conduct these appeals entail significant new costs, as does the development of an appeals-specific data system to track the results of these appeals. By establishing shorter decisionmaking timeframes and improved procedures in the Medicare appeals system, BIPA and the MMA created additional opportunities and incentives for providers, suppliers, and beneficiaries to request appeals. Also, the statute no longer provides for any minimum amount in controversy (AIC) for appeals below the ALJ level, and lowers the AIC from $500 to $100 (plus an annual increase based on the CPI) for Part B claim determinations that are appealed to an ALJ. The AIC for Part A claims remains at $100 (plus an annual increase based on the CPI)..

Thus, although we anticipate that the impact of these changes will be positive for the provider, physician, supplier, and beneficiary communities, implementing these procedures has generated substantial costs to the Medicare program. CMS' FY 2004 operating plan included $10 million for QIC implementation start-up costs and $6 million for the Medicare Appeals System (MAS), which will be used to track appeals electronically. In addition, CMS plans to spend $6 million from the FY 2004–2005 Medicare Modernization Act appropriation for MAS. Higher spending is likely in FY 2006, as more of the appeals workload is transferred over to the QICs, not to mention the additional costs to implement necessary changes at the ALJ and MAC appeals levels.

E. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent interim final and final rules) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule does not have a substantial effect on State or local governments.

VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a document take effect. However, section 553(b) of the Administrative Procedure Act provides for waiver of this procedure, if an agency for good cause finds that the notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and the reasons for it into the notice issued.

Subsequent to the publication of the proposed rule on November 15, 2002, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108–173) was enacted on December 8, 2003. Title IX of the MMA includes a number of essentially nondiscretionary provisions that directly affect the Medicare claims appeals process. As discussed below, we find good cause to incorporate these

requirements into this interim final rule, rather than to issue a notice of proposed rulemaking to address statutory changes. Due to the close relationship between the provisions of the rule that address new MMA requirements and the policies that were included in the November 15, 2002 proposed rule, we are soliciting comments on all provisions contained in this interim final rule and, as required under section 902 of the MMA, will publish a subsequent final rule addressing any comments received in response to this interim final rule not later than 3 years after the publication date of this rule. The BIPA section 521 provisions have previously been subject to comment in the proposed rule of November 15, 2002. The comments received in response to that proposed rule are described in this interim final rule, and the policies included in this interim final rule reflect those comments.

As a rule, the MMA appeals provisions are straightforward and self-explanatory and do not involve significant agency discretion in how they should be implemented. For example, section 940 of the MMA establishes new decisionmaking timeframes for both redeterminations and reconsiderations, and it would be unnecessary and contrary to the public interest not to implement these deadlines as soon as possible. Similarly, section 939 of the MMA establishes new appeal rights for providers when a beneficiary dies and there is no other party available to appeal a determination; not implementing this provision as soon as practicable would again be contrary to the public interest.

Not only would proposed rulemaking be unnecessary and contrary to the public interest, it would also be impracticable. The BIPA provisions that were set forth in our proposed rule are in many cases inextricably linked with the subsequent MMA provisions, and it would be virtually impossible to finalize the proposed rule without incorporating the MMA provisions. Moreover, the MMA legislation mandated provisions that were nearly identical to those set forth in the proposed rule, such as the requirements concerning the full and early presentation of evidence under section 933(a) of the MMA and the new notice requirements for Medicare appeals under 933(c) of the MMA. Even absent the MMA provisions, the requirements set forth in this interim final rule would have constituted logical outgrowths of the proposed rule, and it would be both impracticable and illogical not to incorporate these requirements into this regulation.

Thus, we believe there is good cause to include the appeals provisions of the MMA along with the appeals provisions of BIPA (which were previously addressed in the proposed rule) in this interim final rule. Publishing these provisions in an interim final rule will give the public ample opportunity to submit comments. Note that given the close linkage between many of the proposed requirements and those set forth under the MMA, we believe it is appropriate to consider comments on all aspects of this rule, including those that have previously been subject to notice and comment. Publication of this interim final rule will serve the public interest by ensuring that Medicare beneficiaries, providers, and suppliers have access to the improved Medicare appeals system as expeditiously as possible, consistent with congressional intent.

List of Subjects

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart B—Confidentiality and Disclosure

■ 1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

■ 2. Amend § 401.108 by revising paragraph (c) to read as follows:

§ 401.108 CMS rulings.

* * * * *

(c) CMS Rulings are published under the authority of the Administrator, CMS. They are binding on all CMS components, on all HHS components that adjudicate matters under the jurisdiction of CMS, and on the Social Security Administration to the extent that components of the Social Security Administration adjudicate matters pertaining to Medicare Part A and Medicare Part B under the jurisdiction of CMS.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 3. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a) 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a) 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and Sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 4. Add a new subpart I, § 405.900 through § 405.1140 to read as follows:

Subpart I—Determinations, Redeterminations, Reconsiderations, and Appeals Under Original Medicare (Parts A and B)

Sec.

Subpart I—Determinations, Redeterminations, Reconsiderations, and Appeals Under Original Medicare (Part A and Part B)

§ 405.900 Basis and scope.

(a) *Statutory basis.* This subpart is based on the provisions of sections 1869 (a) through (e) and (g) of the Act.

(b) *Scope.* This subpart establishes the requirements for appeals of initial determinations for benefits under Part A or Part B of Medicare, including the following:

(1) The initial determination of whether an individual is entitled to benefits under Part A or Part B. (Regulations governing reconsiderations of these initial determinations are at 20 CFR, part 404, subpart J).

(2) The initial determination of the amount of benefits available to an individual under Part A or Part B.

(3) Any other initial determination relating to a claim for benefits under Part A or Part B, including an initial determination made by a quality improvement organization under section 1154(a)(2) of the Act or by an entity under contract with the Secretary (other than a contract under section 1852 of the Act) to administer provisions of titles XVIII or XI of the Act.

§ 405.902 Definitions.

For the purposes of this subpart, the term—

ALJ means an Administrative Law Judge of the Department of Health and Human Services.

Appellant means the beneficiary, assignee or other person or entity that has filed and pursued an appeal concerning a particular initial determination. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Appointed representative means an individual appointed by a party to represent the party in a Medicare claim or claim appeal.

Assignee means:

(1) A supplier that furnishes items or services to a beneficiary and has accepted a valid assignment of a claim or

(2) A provider or supplier that furnishes items or services to a beneficiary, who is not already a party, and has accepted a valid assignment of the right to appeal a claim executed by the beneficiary.

Assignment of a claim means the transfer by a beneficiary of his or her claim for payment to the supplier in return for the latter's promise not to charge more for his or her services than what the carrier finds to be the Medicare-approved amount, as provided in § 424.55 and § 424.56 of this chapter.

Assignment of appeal rights means the transfer by a beneficiary of his or her right to appeal under this subpart to a provider or supplier who is not already a party, as provided in section 1869(b)(1)(C) of the Act.

Assignor means a beneficiary whose provider of services or supplier has taken assignment of a claim or an appeal of a claim.

Authorized representative means an individual authorized under State or other applicable law to act on behalf of a beneficiary or other party involved in the appeal. The authorized representative will have all of the rights and responsibilities of a beneficiary or party, as applicable, throughout the appeals process.

Beneficiary means an individual who is enrolled to receive benefits under Medicare Part A or Part B.

Carrier means an organization that has entered into a contract with the Secretary in accordance to section 1842 of the Act and is authorized to make determinations for Part B of title XVIII of the Act.

Clean claim means a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under title XVIII within the time periods specified in sections 1816(c) and 1842(c) of the Act.

Family member means for purposes of the QIC reconsideration panel under § 405.968 the following persons as they relate to the physician or healthcare provider.

(1) The spouse (other than a spouse who is legally separated from the physician or health care professional under a decree of divorce or separate maintenance);

(2) Children (including stepchildren and legally adopted children);

(3) Grandchildren;

(4) Parents; and

(5) Grandparents.

Fiscal Intermediary means an organization that has entered into a contract with CMS in accordance with section 1816 of the Act and is authorized to make determinations and payments for Part A of title XVIII of the Act, and Part B provider services as specified in § 421.5(c) of this chapter.

MAC stands for the Medicare Appeals Council within the Departmental Appeals Board of the U.S. Department of Health and Human Services.

Party means an individual or entity listed in § 405.906 that has standing to appeal an initial determination and/or a subsequent administrative appeal determination.

Provider means a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or hospice that has in effect an agreement to participate in Medicare, or clinic, rehabilitation agency, or public health agency that has in effect a similar agreement, but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center that has in effect a similar agreement but only to furnish partial hospitalization services.

Qualified Independent Contractor (QIC) means an entity which contracts with the Secretary in accordance with section 1869 of the Act to perform reconsiderations under § 405.960 through § 405.978.

Quality Improvement Organization (QIO) means an entity that contracts with the Secretary in accordance with sections 1152 and 1153 of the Act and 42 CFR subchapter F, to perform the functions described in section 1154 of the Act and 42 CFR subchapter F, including expedited determinations as described in § 405.1200 through § 405.1208.

Reliable evidence means evidence that is relevant, credible, and material.

Remand means to vacate a lower level appeal decision, or a portion of the decision, and return the case, or a portion of the case, to that level for a new decision.

Similar fault means to obtain, retain, convert, seek, or receive Medicare funds to which a person knows or should reasonably be expected to know that he or she or another for whose benefit Medicare funds are obtained, retained, converted, sought, or received is not legally entitled. This includes, but is not limited to, a failure to demonstrate that he or she filed a proper claim as defined in part 411 of this chapter.

Supplier means, unless the context otherwise requires, a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under Medicare.

Vacate means to set aside a previous action.

§ 405.904 Medicare initial determinations, redeterminations and appeals: General description.

(a) *General overview.* (1) *Entitlement appeals.* The SSA makes an initial determination on an application for Medicare benefits and/or entitlement of an individual to receive Medicare benefits. A beneficiary who is dissatisfied with the initial determination may request, and SSA will perform, a reconsideration in accordance with 20 CFR part 404, subpart J if the requirements for obtaining a reconsideration are met. Following the reconsideration, the beneficiary may request a hearing before an Administrative Law Judge (ALJ) under this subpart (42 CFR part 405, subpart I). If the beneficiary obtains a hearing before an ALJ and is dissatisfied with the decision of the ALJ, he or she may request the Medicare Appeals Council (MAC) to review the case. Following the action of the MAC, the beneficiary may be entitled to file suit in Federal district court.

(2) *Claim appeals.* The Medicare contractor makes an initial determination when a claim for Medicare benefits under Part A or Part B is submitted. A beneficiary who is dissatisfied with the initial determination may request that the contractor perform a redetermination of the claim if the requirements for obtaining a redetermination are met. Following the contractor's redetermination, the beneficiary may request, and the Qualified Independent Contractor (QIC) will perform, a reconsideration of the claim if the requirements for obtaining a reconsideration are met. Following the reconsideration, the beneficiary may request, and the ALJ will conduct a hearing if the amount remaining in controversy and other requirements for an ALJ hearing are met. If the beneficiary is dissatisfied with the decision of the ALJ, he or she may request the MAC to review the case. If the MAC reviews the case and issues a decision, and the beneficiary is dissatisfied with the decision, the beneficiary may file suit in Federal district court if the amount remaining in controversy and the other requirements for judicial review are met.

(b) *Non-beneficiary appellants.* In general, the procedures described in paragraph (a) of this section are also available to parties other than beneficiaries either directly or through a representative acting on a party's behalf, consistent with the requirements of this subpart I. A provider generally has the right to judicial review only as provided under section 1879(d) of the Act; that is, when a determination involves a finding that services are not covered because—

(1) They were custodial care (see § 411.15(g) of this chapter); they were not reasonable and necessary (see § 411.15(k) of this chapter); they did not qualify as covered home health services because the beneficiary was not confined to the home or did not need skilled nursing care on an intermittent basis (see § 409.42(a) and (c)(1) of this chapter); or they were hospice services provided to a non-terminally ill individual (see § 418.22 of this chapter); and

(2) Either the provider or the beneficiary, or both, knew or could reasonably be expected to know that those services were not covered under Medicare.

§ 405.906 Parties to the initial determinations, redeterminations, reconsiderations, hearings and reviews.

(a) *Parties to the initial determination.* The parties to the initial determination are the following individuals and entities:

(1) A beneficiary who files a claim for payment under Medicare Part A or Part B or has had a claim for payment filed on his or her behalf, or in the case of a deceased beneficiary, when there is no estate, any person obligated to make or entitled to receive payment in accordance with part 424, subpart E of this chapter. Payment by a third party payer does not entitle that entity to party status.

(2) A supplier who has accepted assignment for items or services furnished to a beneficiary that are at issue in the claim.

(3) A provider of services who files a claim for items or services furnished to a beneficiary.

(b) *Parties to the redetermination, reconsideration, hearing and MAC.* The parties to the redetermination, reconsideration, hearing, and MAC review are—

(1) The parties to the initial determination in accordance with paragraph (a) of this section, except under paragraph (a)(1) of this section where a beneficiary has assigned appeal rights under § 405.912;

(2) A State agency in accordance with § 405.908;

(3) A provider or supplier that has accepted an assignment of appeal rights from the beneficiary according to § 405.912;

(4) A non-participating physician not billing on an assigned basis who, in accordance with section 1842(l) of the Act, may be liable to refund monies collected for services furnished to the beneficiary because those services were denied on the basis of section 1862(a)(1) of the Act; and

(5) A non-participating supplier not billing on an assigned basis who, in accordance with sections 1834(a)(18) and 1834(j)(4) of the Act, may be liable to refund monies collected for items furnished to the beneficiary.

(c) *Appeals by providers and suppliers when there is no other party available.* If a provider or supplier is not already a party to the proceeding in accordance with paragraphs (a) and (b) of this section, a provider of services or supplier may appeal an initial determination relating to services it rendered to a beneficiary who subsequently dies if there is no other party available to appeal the determination.

§ 405.908 Medicaid State agencies.

When a beneficiary is enrolled to receive benefits under both Medicare and Medicaid, the Medicaid State agency may file a request for an appeal with respect to a claim for items or services furnished to a dually eligible beneficiary only for services for which the Medicaid State agency has made payment, or for which it may be liable. A Medicaid State agency is considered a party only when it files a timely redetermination request with respect to a claim for items or services furnished to a beneficiary in accordance with 42 CFR parts 940 through 958. If a State agency files a request for redetermination, it may retain party status at the QIC, ALJ, MAC, and judicial review levels.

§ 405.910 Appointed representatives.

(a) *Scope of representation.* An appointed representative may act on behalf of an individual or entity in exercising his or her right to an initial determination or appeal. Appointed representatives do not have party status and may take action only on behalf of the individual or entity that they represent.

(b) *Persons not qualified.* A party may not name as an appointed representative, an individual who is disqualified, suspended, or otherwise prohibited by law from acting as a representative in any proceedings before DHHS, or in entitlement appeals, before SSA.

(c) *Completing a valid appointment.* For purposes of this subpart, an appointment of representation must:

(1) Be in writing and signed and dated by both the party and individual agreeing to be the representative;

(2) Provide a statement appointing the representative to act on behalf of the party, and in the case of a beneficiary, authorizing the adjudicator to release identifiable health information to the appointed representative.

(3) Include a written explanation of the purpose and scope of the representation;

(4) Contain both the party's and appointed representative's name, phone number, and address;

(5) Identify the beneficiary's Medicare health insurance claim number;

(6) Include the appointed representative's professional status or relationship to the party;

(7) Be filed with the entity processing the party's initial determination or appeal.

(d) *Curing a defective appointment of representative.*

(1) If any one of the seven elements named in paragraph (c) of this section is missing from the appointment, the adjudicator should contact the party and provide a description of the missing documentation or information.

(2) Unless the defect is cured, the prospective appointed representative lacks the authority to act on behalf of the party, and is not entitled to obtain or receive any information related to the appeal, including the appeal decision.

(e) *Duration of appointment.* (1) Unless revoked, an appointment is considered valid for 1 year from the date that the Appointment of Representative (AOR) form or other conforming written instrument contains the signatures of both the party and the appointed representative.

(2) To initiate an appeal within the 1-year time frame, the representative must file a copy of the AOR form, or other conforming written instrument, with the appeal request. Unless revoked, the representation is valid for the duration of an individual's appeal of an initial determination.

(3) For an initial determination of a Medicare Secondary Payer recovery claim, an appointment signed in connection with the party's efforts to make a claim for third party payment is valid from the date that appointment is signed for the duration of any subsequent appeal, unless the appointment is specifically revoked.

(f) *Appointed representative fees.* (1) *General rule.* An appointed representative for a beneficiary who wishes to charge a fee for services rendered in connection with an appeal before the Secretary must obtain approval of the fee from the Secretary. Services rendered below the ALJ level are not considered proceedings before the Secretary.

(2) *No fees or costs against trust funds.* No award of attorney or any other representative's fees or any costs in connection with an appeal may be made against the Medicare trust funds.

(3) *Special rules for providers and suppliers.* A provider or supplier that furnished the items or services to a beneficiary that are the subject of the appeal may represent that beneficiary in an appeal under this subpart, but the provider or supplier may not charge the beneficiary any fee associated with the representation. If a provider or supplier furnishes services or items to a beneficiary, the provider or supplier may not represent the beneficiary on the issues described in section 1879(a)(2) of the Act, unless the provider or supplier waives the right to payment from the beneficiary for the services or items involved in the appeal.

(4) *Special rules for purposes of third party payment.* The Secretary does not review fee arrangements made by a beneficiary for purposes of making a claim for third party payment (as defined in 42 CFR 411.21) even though the representation may ultimately include representation for a Medicare Secondary Payer recovery claim.

(5) *Reasonableness of representative fees.* In determining the reasonableness of a representative's fee, the Secretary will not apply the test specified in sections 206(a)(2) and (a)(3) of the Act.

(g) *Responsibilities of an appointed representative.* (1) An appointed representative has an affirmative duty to—

(i) Inform the party of the scope and responsibilities of the representation;

(ii) Inform the party of the status of the appeal and the results of actions taken on behalf of the party, including, but not limited to, notification of appeal determinations, decisions, and further appeal rights;

(iii) Disclose to a beneficiary any financial risk and liability of a non-assigned claim that the beneficiary may have;

(iv) Not act contrary to the interest of the party; and

(v) Comply with all laws and CMS regulations, CMS Rulings, and instructions.

(2) An appeal request filed by a provider or supplier described in paragraph (f)(3) of this section must also include a statement signed by the provider or supplier stating that no financial liability is imposed on the beneficiary in connection with that representation. If applicable, the appeal request must also include a signed statement that the provider or supplier waives the right to payment from the beneficiary for services or items regarding issues described in section 1879(a)(2) of the Act.

(h) *Authority of an appointed representative.* An appointed representative may, on behalf of the party—

(1) Obtain appeals information about the claim to the same extent as the party;

(2) Submit evidence;

(3) Make statements about facts and law; and

(4) Make any request, or give, or receive, any notice about the appeal proceedings.

(i) *Notice or request to an appointed representative.*

(1) *Initial determinations.* When a contractor takes an action or issues an initial determination, it sends the action or notice to the party.

(2) *Appeals.* When a contractor, QIC, ALJ, or the MAC takes an action or issues a redetermination, reconsideration, or appeal decision, in connection with an initial determination, it sends notice of the action to the appointed representative.

(3) The contractor, QIC, ALJ or MAC sends any requests for information or evidence regarding a claim that is appealed to the appointed representative. The contractor sends any requests for information or evidence regarding an initial determination to the party.

(4) For initial determinations and appeals involving Medicare Secondary Payer recovery claims, the adjudicator sends notices and requests to both the beneficiary and the appointed representative.

(j) *Effect of notice or request to an appointed representative.* A notice or request sent to the appointed representative has the same force and effect as if was sent to the party.

(k) *Information available to the appointed representative.* An appointed representative may obtain any and all appeals information applicable to the claim at issue that is available to the party.

(l) *Delegation of appointment by appointed representative.* An appointed representative may not designate another individual to act as the appointed representative of the party unless—

(1) The appointed representative provides written notice to the party of the appointed representative's intent to delegate to another individual. The notice must include:

(i) The name of the designee; and

(ii) The designee's acceptance to be obligated and comply with the requirements of representation under this subpart.

(2) The party accepts the designation as evidenced by a written statement signed by the party. This signed statement is not required when the appointed representative and designee are attorneys in the same law firm or organization.

(m) *Revoking the appointment of representative.* (1) A party may revoke an appointment of representative without cause at any time.

(2) *Revocation.* Revocation is not effective until the adjudicator receives a signed, written statement from the party.

(3) *Death of the party.* (i) The death of a party terminates the authority of the appointed representative, except as specified in paragraph (m)(3)(ii) of this section.

(ii) A party's death does not terminate an appeal that is in progress if another individual or entity may be entitled to receive or obligated to make payment for the items or services that are the subject of the appeal. The appointment of representative remains in effect for the duration of the appeal except for MSP recovery claims.

§ 405.912 Assignment of appeal rights.

(a) *Who may be an assignee.* Only a provider, or supplier that—

(1) Is not a party to the initial determination as defined in § 405.906; and

(2) Furnished an item or service to the beneficiary may seek assignment of appeal rights from the beneficiary for that item or service.

(b) *Who may not be an assignee.* An individual or entity who is not a provider or supplier may not be an assignee. A provider or supplier that furnishes an item or service to a beneficiary may not seek assignment for that item or service when considered a party to the initial determination as defined in § 405.906.

(c) *Requirements for a valid assignment of appeal right.* The assignment of appeal rights must—

(1) Be executed using a CMS standard form;

(2) Be in writing and signed by both the beneficiary assigning his or her appeal rights and by the assignee;

(3) Indicate the item or service for which the assignment of appeal rights is authorized;

(4) Contain a waiver of the assignee's right to collect payment from the assignor for the specific item or service that are the subject of the appeal except as set forth in paragraph (d)(2) of this section; and

(5) Be submitted at the same time the request for redetermination or other appeal is filed.

(d) *Waiver of right to collect payment.* (1) Except as specified in paragraph (d)(2) of this section, the assignee must waive the right to collect payment for the item or service for which the assignment of appeal rights is made. If the assignment is revoked under paragraph (g)(2) or (g)(3) of this section, the waiver of the right to collect payment nevertheless remains valid. A waiver of the right to collect payment remains in effect regardless of the outcome of the appeal decision.

(2) The assignee is not prohibited from recovering payment associated with coinsurance or deductibles or when an advance beneficiary notice is properly executed.

(e) *Duration of a valid assignment of appeal rights.* Unless revoked, the assignment of appeal rights is valid for all administrative and judicial review associated with the item or service as indicated on the standard CMS form, even in the event of the death of the assignor.

(f) *Rights of the assignee.* When a valid assignment of appeal rights is executed, the assignor transfers all appeal rights involving the particular item or service to the assignee. These include, but are not limited to—

(1) Obtaining information about the claim to the same extent as the assignor;

(2) Submitting evidence;

(3) Making statements about facts or law; and

(4) Making any request, or giving, or receiving any notice about appeal proceedings.

(g) *Revocation of assignment.* When an assignment of appeal rights is

revoked, the rights to appeal revert to the assignee. An assignment of appeal rights may be revoked in any of the following ways:

(1) *In writing by the assignor.* The revocation of assignment must be delivered to the adjudicator and the assignor, and is effective on the date of receipt by the adjudicator.

(2) By abandonment if the assignee does not file an appeal of an unfavorable decision.

(3) By act or omission by the assignee that is determined by an adjudicator to be contrary to the financial interests of the assignor.

(h) *Responsibilities of the assignee.* Once the assignee files an appeal, the assignee becomes a party to the appeal. The assignee must meet all requirements for appeals that apply to any other party.

Initial Determinations

§ 405.920 Initial determinations.

After a claim is filed with the appropriate contractor in the manner and form described in subpart C of part 424 of this chapter, the contractor must—

(a) Determine if the items and services furnished are covered or otherwise reimbursable under title XVIII of the Act;

(b) Determine any amounts payable and make payment accordingly; and

(c) Notify the parties to the initial determination of the determination in accordance with § 405.921.

§ 405.921 Notice of initial determination.

(a) *Notice of initial determination sent to the beneficiary.* (1) The notice must be written in a manner calculated to be understood by the beneficiary, and sent to the last known address of the beneficiary;

(2) *Content of the notice.* The notice of initial determination must contain—

(i) The reasons for the determination, including whether a local medical review policy, a local coverage determination, or national coverage determination was applied;

(ii) The procedures for obtaining additional information concerning the contractor's determination, such as a specific provision of the policy, manual, law or regulation used in making the determination;

(iii) Information on the right to a redetermination if the beneficiary is dissatisfied with the outcome of the initial determination and instructions on how to request a redetermination; and

(iv) Any other requirements specified by CMS.

(b) *Notice of initial determination sent to providers and suppliers.*

(1) An electronic or paper remittance advice (RA) notice is the notice of initial determination sent to providers and suppliers that accept assignment. The electronic RA must comply with the format and content requirements of the standard adopted for national use by covered entities under the Health Insurance Portability and Accountability Act (HIPAA) and related CMS manual instructions. When a paper RA is mailed, it must comply with CMS manual instructions that parallel the HIPAA data content and coding requirements.

(2) The notice of initial determination must contain:

(i) The basis for any full or partial denial determination of services or items on the claim;

(ii) Information on the right to a redetermination if the provider or supplier is dissatisfied with the outcome of the initial determination;

(iii) All applicable claim adjustment reason and remark codes to explain the determination;

(iv) The source of the RA and who may be contacted if the provider or supplier requires further information;

(v) All content requirements of the standard adopted for national use by covered entities under HIPAA; and

(vi) Any other requirements specified by CMS.

§ 405.922 Time frame for processing initial determinations.

The contractor issues initial determinations on clean claims within 30 days of receipt if they are submitted by or on behalf of the beneficiary who received the items and/or services; otherwise, interest must be paid at the rate specified at 31 U.S.C. 3902(a) for the period beginning on the day after the required payment date and ending on the date payment is made.

§ 405.924 Actions that are initial determinations.

(a) *Applications and entitlement of individuals.* SSA makes initial determinations and processes reconsiderations with respect to an individual on the following:

(1) A determination with respect to entitlement to hospital insurance or supplementary medical insurance under Medicare.

(2) A disallowance of an individual's application for entitlement to hospital or supplementary medical insurance, if the individual fails to submit evidence requested by SSA to support the application. (SSA specifies in the initial determination the conditions of entitlement that the applicant failed to establish by not submitting the requested evidence).

(3) A denial of a request for withdrawal of an application for hospital or supplementary medical insurance, or a denial of a request for cancellation of a request for withdrawal.

(4) A determination as to whether an individual, previously determined as entitled to hospital or supplementary medical insurance, is no longer entitled to those benefits, including a determination based on nonpayment of premiums.

(b) *Claims made by or on behalf of beneficiaries.* The Medicare contractor makes initial determinations regarding claims for benefits under Medicare Part A and Part B. A finding that a request for payment or other submission does not meet the requirements for a Medicare claim as defined in § 424.32 of this chapter, is not considered an initial determination. An initial determination for purposes of this subpart includes, but is not limited to, determinations with respect to:

(1) If the items and/or services furnished are covered under title XVIII;

(2) In the case of determinations on the basis of section 1879(b) or (c) of the Act, if the beneficiary, or supplier who accepts assignment under § 424.55 of this chapter knew, or could reasonably have expected to know at the time the items or services were furnished, that the items or services were not covered;

(3) In the case of determinations on the basis of section 1842(l)(1) of the Act, if the beneficiary or physician knew, or could reasonably have expected to know at the time the services were furnished, that the services were not covered;

(4) Whether the deductible is met;

(5) The computation of the coinsurance amount;

(6) The number of days used for inpatient hospital, psychiatric hospital, or post-hospital extended care;

(7) The number of home health visits used;

(8) Periods of hospice care used;

(9) Requirements for certification and plan of treatment for physician services, durable medical equipment, therapies, inpatient hospitalization, skilled nursing care, home health, hospice, and partial hospitalization services;

(10) The beginning and ending of a spell of illness, including a determination made under the presumptions established under § 409.60(c)(2) of this chapter, and as specified in § 409.60(c)(4) of this chapter;

(11) The medical necessity of services, or the reasonableness or appropriateness of placement of an individual at an

acute level of patient care made by the Quality Improvement Organization (QIO) on behalf of the contractor in accordance with § 476.86(c)(1) of this chapter;

(12) Any other issues having a present or potential effect on the amount of benefits to be paid under Part A or Part B of Medicare, including a determination as to whether there was an underpayment of benefits paid under Part A or Part B, and if so, the amount thereof;

(13) If a waiver of adjustment or recovery under sections 1870(b) and (c) of the Act is appropriate:

(i) When an overpayment of hospital insurance benefits or supplementary medical insurance benefits (including a payment under section 1814(e) of the Act) was made for an individual; or

(ii) For a Medicare Secondary Payer recovery claim against a beneficiary or against a provider or supplier.

(14) If a particular claim is not payable by Medicare based upon the application of the Medicare Secondary Payer provisions of section 1862(b) of the Act.

(15) Under the Medicare Secondary Payer provisions of sections 1862(b) of the Act that Medicare has a recovery claim against a provider, supplier, or beneficiary for services or items that were already paid by the Medicare program, except when the Medicare Secondary Payer recovery claim against the provider or supplier is based upon failure to file a proper claim as defined in part 411 of this chapter because this action is a reopening.

(c) *Determinations by QIOs.* An initial determination for purposes of this subpart also includes a determination made by a QIO that:

(1) A provider can terminate services provided to an individual when a physician certified that failure to continue the provision of those services is likely to place the individual's health at significant risk; or

(2) A provider can discharge an individual from the provider of services.

§ 405.926 Actions that are not initial determinations.

Actions that are not initial determinations and are not appealable under this subpart include, but are not limited to—

(a) Any determination for which CMS has sole responsibility, for example—

(1) If an entity meets the conditions for participation in the program;

(2) If an independent laboratory meets the conditions for coverage of services;

(b) The coinsurance amounts prescribed by regulation for outpatient services under the prospective payment system;

(c) Any issue regarding the computation of the payment amount of program reimbursement of general applicability for which CMS or a carrier has sole responsibility under Part B such as the establishment of a fee schedule set forth in part 414 of this chapter, or an inherent reasonableness adjustment pursuant to § 405.502(g), and any issue regarding the cost report settlement process under Part A;

(d) Whether an individual's appeal meets the qualifications for expedited access to judicial review provided in § 405.990;

(e) Any determination regarding whether a Medicare overpayment claim must be compromised, or collection action terminated or suspended under the Federal Claims Collection Act of 1966, as amended;

(f) Determinations regarding the transfer or discharge of residents of skilled nursing facilities in accordance with § 483.12 of this chapter;

(g) Determinations regarding the readmission screening and annual resident review processes required by subparts C and E of part 483 of this chapter;

(h) Determinations for a waiver of Medicare Secondary Payer recovery under section 1862(b) of the Act;

(i) Determinations for a waiver of interest;

(j) Determinations for a finding regarding the general applicability of the Medicare Secondary Payer provisions (as opposed to the application in a particular case);

(k) Determinations under the Medicare Secondary Payer provisions of section 1862(b) of the Act that Medicare has a recovery against an entity that was or is required or responsible (directly, as an insurer or self-insurer, as a third party administrator, as an employer that sponsors or contributes to a group health plan or a large group health plan, or otherwise,) to make payment for services or items that were already reimbursed by the Medicare program;

(l) A contractor's, QIC's, ALJ's, or MAC's determination or decision to reopen or not to reopen an initial determination, redetermination, reconsideration, hearing decision, or review decision;

(m) Determinations that CMS or its contractors may participate in or act as parties in an ALJ hearing or MAC review;

(n) Determinations that a provider or supplier failed to submit a claim or failed to submit a timely claim despite being requested to do so by the beneficiary or the beneficiary's subrogee;

(o) Determinations with respect to whether an entity qualifies for an exception to the electronic claims submission requirement under part 424 of this chapter;

(p) Determinations by the Secretary of sustained or high levels of payment errors in accordance with section 1893(f)(3)(A) of the Act;

(q) A contractor's prior determination related to coverage of physicians' services;

(r) Requests for anticipated payment under the home health prospective payment system under § 409.43(c)(ii)(2) of this chapter; and

(s) Claim submissions on forms or formats that are incomplete, invalid, or do not meet the requirements for a Medicare claim and returned or rejected to the provider or supplier.

§ 405.927 Initial determinations subject to the reopenings process.

Minor errors or omissions in an initial determination must be corrected only through the contractor's reopenings process under § 405.980(a)(3).

§ 405.928 Effect of the initial determination.

(a) An initial determination described in § 405.924(a) is binding unless it is revised or reconsidered in accordance with 20 CFR 404.907, or revised as a result of a reopening in accordance with 20 CFR 404.988.

(b) An initial determination described in § 405.924(b) is binding upon all parties to the initial determination unless—

(1) A redetermination is completed in accordance with § 405.940 through § 405.958; or

(2) The initial determination is revised as a result of a reopening in accordance with § 405.980.

(c) An initial determination listed in § 405.924(b) where a party submits a timely, valid request for redetermination under § 405.942 through § 405.944 must be processed as a redetermination under § 405.948 through § 405.958 unless the initial determination involves a clerical error or other minor error or omission.

Redeterminations

§ 405.940 Right to a redetermination.

A person or entity that may be a party to a redetermination in accordance with § 405.906(b) and that is dissatisfied with an initial determination may request a redetermination by a contractor in accordance with § 405.940 through § 405.958, regardless of the amount in controversy.

§ 405.942 Time frame for filing a request for a redetermination.

(a) *Time frame for filing a request.* Except as provided in paragraph (b) of this section, any request for redetermination must be filed within 120 calendar days from the date a party receives the notice of the initial determination.

(1) For purposes of this section, the date of receipt of the initial determination will be presumed to be 5 days after the date of the notice of initial determination, unless there is evidence to the contrary.

(2) The request is considered as filed on the date it is received by the contractor.

(b) *Extending the time frame for filing a request. General rule.* If the 120-day period in which to file a request for a redetermination has expired and a party shows good cause, the contractor may extend the time frame for filing a request for redetermination.

(1) *How to request an extension.* A party may file a request for an extension of time for filing a request for a redetermination with the contractor. The party should include any evidence supporting the request for extension. The request for redetermination extension must—

(i) Be in writing;

(ii) State why the request for redetermination was not filed within the required time frame; and

(iii) Meet the requirements of § 405.944.

(2) *How the contractor determines if good cause exists.* In determining if a party has good cause for missing a deadline to request a redetermination, the contractor considers—

(i) The circumstances that kept the party from making the request on time;

(ii) If the contractor's action(s) misled the party; and

(iii) If the party had or has any physical, mental, educational, or linguistic limitations, including any lack of facility with the English language, that prevented the party from filing a timely request or from understanding or knowing about the need to file a timely request.

(3) *Examples of good cause.* Examples of circumstances when good cause may be found to exist include, but are not limited to, the following situations:

(i) The party was prevented by serious illness from contacting the contractor in person, in writing, or through a friend, relative, or other person; or

(ii) The party had a death or serious illness in his or her immediate family; or

(iii) Important records of the party were destroyed or damaged by fire or other accidental cause; or

(iv) The contractor gave the party incorrect or incomplete information about when and how to request a redetermination; or

(v) The party did not receive notice of the determination or decision; or

(vi) The party sent the request to a Government agency in good faith within the time limit, and the request did not reach the appropriate contractor until after the time period to file a request expired.

§ 405.944 Place and method of filing a request for a redetermination.

(a) *Filing location.* The request for redetermination must be filed with the contractor indicated on the notice of initial determination.

(b) *Content of redetermination request.* The request for redetermination must be in writing and should be made on a standard CMS form. A written request that is not made on a standard CMS form is accepted if it contains the same required elements as follows:

(1) The beneficiary's name;

(2) The Medicare health insurance claim number;

(3) Specific service(s) and/or item(s) for which the redetermination is being requested and the specific date(s) of the service;

(4) The name and signature of the party or the representative of the party.

(c) *Requests for redetermination by more than one party.* If more than one party timely files a request for redetermination on the same claim before a redetermination is made on the first timely filed request, the contractor must consolidate the separate requests into one proceeding and issue one redetermination.

§ 405.946 Evidence to be submitted with the redetermination request.

(a) *Evidence submitted with the request.* When filing the request for redetermination, a party must explain why it disagrees with the contractor's determination and should include any evidence that the party believes should be considered by the contractor in making its redetermination.

(b) *Evidence submitted after the request.* When a party submits additional evidence after filing the request for redetermination, the contractor's 60-day decision-making time frame is automatically extended for 14 calendar days for each submission.

§ 405.948 Conduct of a redetermination.

A redetermination consists of an independent review of an initial determination. In conducting a redetermination, the contractor reviews the evidence and findings upon which the initial determination was based, and any additional evidence the parties submit or the contractor obtains on its own. An individual who was not involved in making the initial determination must make a redetermination. The contractor may raise and develop new issues that are relevant to the claims in the particular case.

§ 405.950 Time frame for making a redetermination.

(a) *General rule.* The contractor mails, or otherwise transmits, written notice of the redetermination or dismissal to the parties to the redetermination at their last known addresses within 60 calendar days of the date the contractor receives a timely filed request for redetermination.

(b) *Exceptions.* (1) If a contractor grants an appellant's request for an extension of the 120-day filing deadline made in accordance with § 405.942(b), the 60-day decision-making time frame begins on the date the contractor receives the late-filed request for redetermination, or when the request for an extension is granted, whichever is later.

(2) If a contractor receives from multiple parties timely requests for redetermination of a claim determination, consistent with § 405.944(c), the contractor must issue a redetermination or dismissal within 60 days of the latest filed request.

(3) If a party submits additional evidence after the request for redetermination is filed, the contractor's 60-day decision-making time frame is extended for 14 calendar days for each submission, consistent with § 405.946(b).

§ 405.952 Withdrawal or dismissal of a request for a redetermination.

(a) *Withdrawing a request.* A party that files a request for redetermination may withdraw its request by filing a written and signed request for withdrawal. The request for withdrawal must contain a clear statement that the appellant is withdrawing the request for a redetermination and does not intend to proceed further with the appeal. The request must be received in the contractor's mailroom before a redetermination is issued. The appeal will proceed with respect to any other parties that have filed a timely request for redetermination.

(b) *Dismissing a request.* A contractor dismisses a redetermination request, either entirely or as to any stated issue, under any of the following circumstances:

(1) When the person or entity requesting a redetermination is not a proper party under § 405.906(b) or does not otherwise have a right to a redetermination under section 1869(a) of the Act;

(2) When the contractor determines the party failed to make out a valid request for redetermination that substantially complies with § 405.944;

(3) When the party fails to file the redetermination request within the proper filing time frame in accordance with § 405.942;

(4) When a beneficiary or the beneficiary's representative files a request for redetermination, but the beneficiary dies while the request is pending, and all of the following criteria apply:

(i) The beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the contractor considers if the surviving spouse or estate remains liable for the services for which payment was denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of payment for services at issue;

(ii) No other individual or entity with a financial interest in the case wishes to pursue the appeal; and

(iii) No other party filed a valid and timely redetermination request under § 405.942 and § 405.944;

(5) When a party filing the redetermination request submits a timely written request for withdrawal with the contractor; or

(6) When the contractor has not issued an initial determination on the claim or the matter for which a redetermination is sought.

(c) *Notice of dismissal.* A contractor mails or otherwise transmits a written notice of the dismissal of the redetermination request to the parties at their last known addresses. The notice states that there is a right to request that the contractor vacate the dismissal action.

(d) *Vacating a dismissal.* If good and sufficient cause is established, a contractor may vacate its dismissal of a request for redetermination within 6 months from the date of the notice of dismissal.

(e) *Effect of dismissal.* The dismissal of a request for redetermination is final and binding, unless it is modified or reversed by a QIC under § 405.974(b) or vacated under paragraph (d) of this section.

§ 405.954 Redetermination.

Upon the basis of the evidence of record, the contractor adjudicates the claim(s), and renders a redetermination affirming or reversing, in whole or in part, the initial determination in question.

§ 405.956 Notice of a redetermination.

(a) *Notification to parties.* (1) *General rule.* Written notice of a redetermination affirming, in whole or in part, the initial determination must be mailed or otherwise transmitted to all parties at their last known addresses in accordance with the time frames established in § 405.950. Written notice of a redetermination fully reversing the initial determination must be mailed or otherwise transmitted to the appellant in accordance with the time frames established in § 405.950. If the redetermination results in issuance of supplemental payment to a provider or supplier, the Medicare contractor must also issue an electronic or paper RA notice to the provider or supplier.

(2) *Overpayment cases involving multiple beneficiaries who have no liability.* In an overpayment case involving multiple beneficiaries who have no liability, the contractor may issue a written notice only to the appellant.

(b) *Content of the notice for affirmations, in whole or in part.* For decisions that are affirmations, in whole or in part, of the initial determination, the redetermination must be written in a manner calculated to be understood by a beneficiary, and contain—

(1) A clear statement indicating the extent to which the redetermination is favorable or unfavorable;

(2) A summary of the facts, including, as appropriate, a summary of the clinical or scientific evidence used in making the redetermination;

(3) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case;

(4) A summary of the rationale for the redetermination in clear, understandable language;

(5) Notification to the parties of their right to a reconsideration and a description of the procedures that a party must follow in order to request a reconsideration, including the time frame within which a reconsideration must be requested;

(6) A statement of any specific missing documentation that must be submitted with a request for a reconsideration, if applicable;

(7) A statement that all evidence the appellant wishes to introduce during the claim appeals process should be submitted with the request for a reconsideration;

(8) Notification that evidence not submitted to the QIC as indicated in paragraph (b)(6) of this section, is not considered at an ALJ hearing or further appeal, unless the appellant demonstrates good cause as to why that evidence was not provided previously; and

(9) The procedures for obtaining additional information concerning the redetermination, such as specific provisions of the policy, manual, or regulation used in making the redetermination.

(10) Any other requirements specified by CMS.

(c) *Content of the notice for a full reversal.* For decisions that are full reversals of the initial determination, the redetermination must be in writing and contain—

(1) A clear statement indicating that the redetermination is wholly favorable;

(2) Any other requirements specified by CMS.

(d) *Exception for beneficiary appeal requests.* (1) The notice must inform beneficiary appellants that the requirements of paragraph (b)(8) of this section are not applicable for purposes of beneficiary appeals.

(2) This exception does not apply for appeal requests from beneficiaries who are represented by providers or suppliers.

§ 405.958 Effect of a redetermination.

In accordance with section 1869 (a)(3)(D) of the Act, once a redetermination is issued, it becomes part of the initial determination. The redetermination is final and binding upon all parties unless—

(a) A reconsideration is completed in accordance with § 405.960 through § 405.978; or

(b) The redetermination is revised as a result of a reopening in accordance with § 405.980.

Reconsideration

§ 405.960 Right to a reconsideration.

A person or entity that is a party to a redetermination made by a contractor as described under § 405.940 through § 405.958, and is dissatisfied with that determination, may request a reconsideration by a QIC in accordance with § 405.962 through § 405.966, regardless of the amount in controversy.

§ 405.962 Timeframe for filing a request for a reconsideration.

(a) *Timeframe for filing a request.* Except as provided in paragraph (b) of this section, any request for a reconsideration must be filed within 180 calendar days from the date the

party receives the notice of the redetermination.

(1) For purposes of this section, the date of receipt of the redetermination will be presumed to be 5 days after the date of the notice of redetermination, unless there is evidence to the contrary.

(2) For purposes of meeting the 180-day filing deadline, the request is considered as filed on the date it is received by the QIC.

(b) *Extending the time for filing a request.* (1) *General rule.* A QIC may extend the 180-day timeframe for filing a request for reconsideration for good cause.

(2) *How to request an extension.* A party to the redetermination must file its request for an extension of the time for filing the reconsideration request with its request for reconsideration. A party should include evidence to support the request for extension. The request for reconsideration and request for extension must—

(i) Be in writing;

(ii) State why the request for reconsideration was not filed within the required timeframe; and

(iii) Meet the requirements of § 405.964.

(3) *How the QIC determines whether good cause exists.* In determining whether a party has good cause for missing a deadline to request reconsideration, the QIC applies the good cause provisions contained in § 405.942(b)(2) and (b)(3).

§ 405.964 Place and method of filing a request for a reconsideration.

(a) *Filing location.* The request for reconsideration must be filed with the QIC indicated on the notice of redetermination.

(b) *Content of reconsideration request.* The request for reconsideration must be in writing and should be made on a standard CMS form. A written request that is not made on a standard CMS form is accepted if it contains the same required elements, as follows:

(1) The beneficiary's name;

(2) Medicare health insurance claim number;

(3) Specific service(s) and item(s) for which the reconsideration is requested and the specific date(s) of service;

(4) The name and signature of the party or the representative of the party; and

(5) The name of the contractor that made the redetermination.

(c) *Requests for reconsideration by more than one party.* If more than one party timely files a request for reconsideration on the same claim before a reconsideration is made on the first timely filed request, the QIC must consolidate the separate requests into one proceeding and issue one reconsideration.

§ 405.966 Evidence to be submitted with the reconsideration request.

(a) *Evidence submitted with the request.* When filing a request for reconsideration, a party should present evidence and allegations of fact or law related to the issue in dispute and explain why it disagrees with the initial determination, including the redetermination.

(1) This evidence must include any missing documentation identified in the notice of redetermination, consistent with § 405.956(b)(6).

(2) Absent good cause, failure to submit all evidence, including documentation requested in the notice of redetermination prior to the issuance of the notice of reconsideration precludes subsequent consideration of that evidence.

(b) *Evidence submitted after the request.* Each time a party submits additional evidence after filing the request for reconsideration, the QIC's 60-day decisionmaking timeframe is automatically extended by up to 14 calendar days for each submission. This extension does not apply to timely submissions of documentation specifically requested by a QIC, unless the documentation was originally requested in the notice of redetermination.

(c) *Exception for beneficiaries and State Medicaid Agencies that file reconsideration requests.* (1) Beneficiaries and State Medicaid Agencies that file requests for reconsideration are not required to comply with the requirements of paragraph (a) of this section. However, the automatic 14-day extension described in paragraph (b) of this section applies to each evidence submission made after the request for reconsideration is filed.

(2) Beneficiaries who are represented by providers or suppliers must comply with the requirements of paragraph (a) of this section.

§ 405.968 Conduct of a reconsideration.

(a) *General rules.* (1) A reconsideration consists of an independent, on-the-record review of an initial determination, including the redetermination and all issues related to payment of the claim. In conducting a reconsideration, the QIC reviews the evidence and findings upon which the initial determination, including the redetermination, was based, and any additional evidence the parties submit or that the QIC obtains on its own. If the initial determination involves a finding on whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A) of the Act), a QIC's reconsideration must involve consideration by a panel of physicians or other appropriate health care professionals, and be based on clinical experience, the patient's medical records, and medical, technical, and scientific evidence of record to the extent applicable.

(b) *Authority of the QIC.* (1) National coverage determinations (NCDs), CMS Rulings, and applicable laws and regulations are binding on the QIC.

(2) QICs are not bound by LCDs, LMRPs, or CMS program guidance, such as program memoranda and manual instructions, but give substantial deference to these policies if they are applicable to a particular case. A QIC may decline to follow a policy, if the QIC determines, either at a party's request or at its own discretion, that the policy does not apply to the facts of the particular case.

(3) If a QIC declines to follow a policy in a particular case, the QIC's reconsideration explains the reasons why the policy was not followed.

(4) A QIC's decision to decline to follow a policy under this section applies only to the specific claim being reconsidered and does not have precedential effect.

(5) A QIC may raise and develop new issues that are relevant to the claims in a particular case provided that the contractor rendered a redetermination with respect to the claims.

(c) *Qualifications of the QIC's panel members.* (1) Members of a QIC's panel who conduct reconsiderations must have sufficient medical, legal, and other expertise, including knowledge of the Medicare program.

(2) When a redetermination is made with respect to whether an item or service is reasonable and necessary (section 1862(a)(1)(A) of the Act), the QIC designates a panel of physicians or other appropriate health care professionals to consider the facts and circumstances of the redetermination.

(3) Where a claim pertains to the furnishing of treatment by a physician, or the provision of items or services by a physician, a reviewing professional must be a physician.

(d) *Disqualification of a QIC panel member.* No physician or health care professional employed by or otherwise working for a QIC may review determinations regarding—

(1) Health care services furnished to a patient if that physician or health care

professional was directly responsible for furnishing those services; or

(2) Health care services provided in or by an institution, organization, or agency, if that physician or health care professional or any member of the physician's family or health care professional's family has, directly or indirectly, a significant financial interest in that institution, organization. or agency (see the term family member as defined in § 405.902).

§ 405.970 Timeframe for making a reconsideration.

(a) *General rule.* Within 60 calendar days of the date the QIC receives a timely filed request for reconsideration or any additional time provided by paragraph (b) of this section, the QIC mails, or otherwise transmits to the parties at their last known addresses, written notice of—

(1) The reconsideration;

(2) Its inability to complete its review within 60 days in accordance with paragraphs (c) through (e) of this section; or

(3) Dismissal.

(b) *Exceptions.* (1) If a QIC grants an appellant's request for an extension of the 180-day filing deadline made in accordance with § 405.962(b), the QIC's 60-day decision-making timeframe begins on the date the QIC receives the late filed request for reconsideration, or when the request for an extension that meets the requirements of § 405.962(b) is granted, whichever is later.

(2) If a QIC receives timely requests for reconsideration from multiple parties, consistent with § 405.964(c), the QIC must issue a reconsideration, notice that it cannot complete its review, or dismissal within 60 days for each submission of the latest filed request.

(3) Each time a party submits additional evidence after the request for reconsideration is filed, the QIC's 60-day decisionmaking timeframe is extended by up to 14 days for each submission, consistent with § 405.966(b).

(c) *Responsibilities of the QIC.* Within 60 days of receiving a request for a reconsideration, or any additional time provided for under paragraph (b) of this section, a QIC must take one of the following actions:

(1) Notify all parties of its reconsideration, consistent with § 405.976.

(2) Notify the appellant that it cannot complete the reconsideration by the deadline specified in paragraph (b) of this section and offer the appellant the opportunity to escalate the appeal to an ALJ. The QIC continues to process the reconsideration unless it receives a written request from the appellant to escalate the case to an ALJ after the adjudication period has expired.

(3) Notify all parties that it has dismissed the request for reconsideration consistent with § 405.972.

(d) *Responsibilities of the appellant.* If an appellant wishes to exercise the option of escalating the case to an ALJ, the appellant must notify the QIC in writing.

(e) *Actions following appellant's notice.* (1) If the appellant fails to notify the QIC, or notifies the QIC that the appellant does not choose to escalate the case, the QIC completes its reconsideration and notifies the appellant of its action consistent with § 405.972 or § 405.976.

(2) If the appellant notifies the QIC that the appellant wishes to escalate the case, the QIC must take one of the following actions within 5 days of receipt of the notice or 5 days from the end of the applicable adjudication period under paragraph (a) or (b) of this section:

(i) Complete its reconsideration and notify all parties of its decision consistent with § 405.972 or § 405.976.

(ii) Acknowledge the escalation notice in writing and forward the case file to the ALJ hearing office.

§ 405.972 Withdrawal or dismissal of a request for a reconsideration.

(a) *Withdrawing a request.* An appellant that files a request for reconsideration may withdraw its request by filing a written and signed request for withdrawal. The request for withdrawal must—

(1) Contain a clear statement that the appellant is withdrawing the request for reconsideration and does not intend to proceed further with the appeal.

(2) Be received in the QIC's mailroom before the reconsideration is issued.

(b) *Dismissing a request.* A QIC dismisses a reconsideration request, either entirely or as to any stated issue, under any of the following circumstances:

(1) When the person or entity requesting reconsideration is not a proper party under § 405.906(b) or does not otherwise have a right to a reconsideration under section 1869(b) of the Act;

(2) When the QIC determines that the party failed to make out a valid request for reconsideration that substantially complies with § 405.964(a) and (b);

(3) When the party fails to file the reconsideration request in accordance with the timeframes established in § 405.962;

(4) When a beneficiary or the beneficiary's representative files a request for reconsideration, but the beneficiary dies while the request is pending, and all of the following criteria apply:

(i) The beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the QIC considers if the surviving spouse or estate remains liable for the services for which payment was denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of payment for services at issue;

(ii) No other individual or entity with a financial interest in the case wishes to pursue the appeal; and

(iii) No other party to the redetermination filed a valid and timely request for reconsideration under § 405.962 and § 405.964.

(5) When a party filing for the reconsideration submits a written request of withdrawal to the QIC and satisfies the criteria set forth in paragraph (a) of this section before the reconsideration has been issued; or

(6) When the contractor has not issued a redetermination on the initial determination for which a reconsideration is sought.

(c) *Notice of dismissal.* A QIC mails or otherwise transmits written notice of the dismissal of the reconsideration request to the parties at their last known addresses. The notice states that there is a right to request that the contractor vacate the dismissal action. The appeal will proceed with respect to any other parties that have filed a timely request for reconsideration.

(d) *Vacating a dismissal.* If good and sufficient cause is established, a QIC may vacate its dismissal of a request for reconsideration within 6 months of the date of the notice of dismissal.

(e) *Effect of dismissal.* The dismissal of a request for reconsideration is final and binding, unless it is modified or reversed by an ALJ under § 405.1004 or vacated under paragraph (d) of this section.

§ 405.974 Reconsideration.

(a) *Reconsideration of a contractor determination.* Except as provided in § 405.972, upon the basis of the evidence of record, the QIC must issue a reconsideration affirming or reversing, in whole or in part, the initial determination, including the redetermination, in question.

(b) *Reconsideration of contractor's dismissal of a redetermination request.* (1) A party to a contractor's dismissal of a request for redetermination has a right to have the dismissal reviewed by a QIC, if the party files a written request for

review of the dismissal with the QIC within 60 days after receipt of the contractor's notice of dismissal.

(2) If the QIC determines that the contractor's dismissal was in error, it vacates the dismissal and remands the case to the contractor for a redetermination.

(3) A QIC's reconsideration of a contractor's dismissal of a redetermination request is final and not subject to any further review.

§ 405.976 Notice of a reconsideration.

(a) *Notification to parties.* (1) *General rules.* (i) Written notice of the reconsideration must be mailed or otherwise transmitted to all parties at their last known addresses, in accordance with the timeframes established in § 405.970(a) or (b).

(ii) The notice must be written in a manner reasonably calculated to be understood by a beneficiary.

(iii) The QIC must promptly notify the entity responsible for payment of claims under Part A or Part B of its reconsideration. If the reconsideration results in issuance of supplemental payment to a provider or supplier, the Medicare contractor must also issue an electronic or paper RA notice to the provider or supplier.

(2) *Overpayment cases involving multiple beneficiaries who have no liability.* In an overpayment case involving multiple beneficiaries who have no liability, the QIC may issue a written notice only to the appellant.

(b) *Content of the notice.* The reconsideration must be in writing and contain—

(1) A clear statement indicating whether the reconsideration is favorable or unfavorable;

(2) A summary of the facts, including as appropriate, a summary of the clinical or scientific evidence used in making the reconsideration;

(3) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies, apply to the facts of the case, including, where applicable, the rationale for declining to follow an LCD, LMRP, or CMS program guidance;

(4) In the case of a determination on whether an item or service is reasonable or necessary under section 1862(a)(1)(A) of the Act, an explanation of the medical and scientific rationale for the decision;

(5) A summary of the rationale for the reconsideration.

(i) If the notice of redetermination indicated that specific documentation should be submitted with the reconsideration request, and the documentation was not submitted with the request for reconsideration, the summary must indicate how the missing documentation affected the reconsideration; and

(ii) The summary must also specify that, consistent with § 405.956(b)(8) and § 405.966(b), all evidence, including evidence requested in the notice of redetermination, that is not submitted prior to the issuance of the reconsideration will not be considered at an ALJ level, or made part of the administrative record, unless the appellant demonstrates good cause as to why the evidence was not provided prior to the issuance of the QIC's reconsideration. This requirement does not apply to beneficiaries, unless the beneficiary is represented by a provider or supplier or to State Medicaid Agencies;

(6) Information concerning to the parties' right to an ALJ hearing, including the applicable amount in controversy requirement and aggregation provisions;

(7) A statement of whether the amount in controversy needed for an ALJ hearing is met when the reconsideration is partially or fully unfavorable;

(8) A description of the procedures that a party must follow in order to obtain an ALJ hearing of an expedited reconsideration, including the time frame under which a request for an ALJ hearing must be filed;

(9) If appropriate, advice as to the requirements for use of the expedited access to judicial review process set forth in § 405.990;

(10) The procedures for obtaining additional information concerning the reconsideration, such as specific provisions of the policy, manual, or regulation used in making the reconsideration; and

(11) Any other requirements specified by CMS.

§ 405.978 Effect of a reconsideration.

A reconsideration is final and binding on all parties, unless—

(a) An ALJ decision is issued in accordance to a request for an ALJ hearing made in accordance with § 405.1014;

(b) A review entity issues a decision in accordance to a request for expedited access to judicial review under § 405.990; or

(c) The reconsideration is revised as a result of a reopening in accordance with § 405.980.

Reopenings

§ 405.980 Reopenings of initial determinations, redeterminations, and reconsiderations, hearings and reviews.

(a) *General rules.* (1) A reopening is a remedial action taken to change a final determination or decision that resulted in either an overpayment or underpayment, even though the determination or decision was correct based on the evidence of record. That action may be taken by—

(i) A contractor to revise the initial determination or redetermination;

(ii) A QIC to revise the reconsideration;

(iii) An ALJ to revise the hearing decision; or

(iv) The MAC to revise the hearing or review decision.

(2) If a contractor issues a denial of a claim because it did not receive requested documentation during medical review and the party subsequently requests a redetermination, the contractor must process the request as a reopening.

(3) Notwithstanding paragraph (a)(4) of this section, a contractor must process clerical errors (which includes mirror errors and omissions) as reopenings, instead of redeterminations as specified in § 405.940. If the contractor receives a request for reopening and disagrees that the issue is a clerical error, the contractor must dismiss the reopening request and advise the party of any appeal rights, provided the timeframe to request an appeal on the original denial has not expired. For purposes of this section, clerical error includes human and mechanical errors on the part of the party or the contractor such as—

(i) Mathematical or computational mistakes;

(ii) Inaccurate data entry; or

(iii) Denials of claims as duplicates.

(4) When a party has filed a valid request for an appeal of an initial determination, redetermination, reconsideration, hearing, or MAC review, no adjudicator has jurisdiction to reopen a claim at issue until all appeal rights are exhausted. Once the appeal rights have been exhausted, the contractor, QIC, ALJ, or MAC may reopen as set forth in this section.

(5) The contractor's, QIC's, ALJ's, or MAC's decision on whether to reopen is final and not subject to appeal.

(6) A Medicare secondary payer demand to recover a conditional payment, based upon a provider's or supplier's failure to demonstrate that it filed a proper claim with a plan, program, or insurer, as defined in § 411.21 of this chapter, because this action is a reopening.

(b) *Time frames and requirements for reopening initial determinations and redeterminations initiated by a contractor.* A contractor may reopen and revise its initial determination or redetermination on its own motion—

(1) Within 1 year from the date of the initial determination or redetermination for any reason.

(2) Within 4 years from the date of the initial determination or redetermination for good cause as defined in § 405.986.

(3) At any time if there exists reliable evidence as defined in § 405.902 that the initial determination was procured by fraud or similar fault as defined in § 405.902.

(4) At anytime if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based.

(5) At any time to effectuate a decision issued under the coverage appeals process.

(c) *Time frame and requirements for reopening initial determinations and redeterminations requested by a party.* (1) A party may request that a contractor reopen its initial determination or redetermination within 1 year from the date of the initial determination or redetermination for any reason.

(2) A party may request that a contractor reopen its initial determination or redetermination within 4 years from the date of the initial determination or redetermination for good cause in accordance with § 405.986.

(3) A party may request that a contractor reopen its initial determination at any time if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based. Third party payer error does not constitute clerical error. *See* § 405.986(c).

(d) *Time frame and requirements for reopening reconsiderations, hearing decisions and reviews initiated by a QIC, ALJ, or the MAC.* (1) A QIC may reopen its reconsideration on its own motion within 180 days from the date of the reconsideration for good cause in accordance with § 405.986. If the QIC's reconsideration was procured by fraud or similar fault, then the QIC may reopen at any time.

(2) An ALJ may reopen its hearing decision on its own motion within 180 days from the date of the decision for good cause in accordance with § 405.986. If the ALJ's decision was procured by fraud or similar fault, then the ALJ may reopen at any time.

(3) The MAC may reopen its review decision on its own motion within 180 days from the date of the review decision for good cause in accordance with § 405.986. If the MAC's decision was procured by fraud or similar fault, then the MAC may reopen at any time.

(e) *Time frames and requirements for reopening reconsiderations, hearing decisions, and reviews requested by a party.* (1) A party to a reconsideration may request that a QIC reopen its reconsideration within 180 days from the date of the reconsideration for good cause in accordance with § 405.986.

(2) A party to a hearing may request that an ALJ reopen his or her decision within 180 days from the date of the hearing decision for good cause in accordance with § 405.986.

(3) A party to a review may request that the MAC reopen its decision within 180 days from the date of the review decision for good cause in accordance with § 405.986.

§ 405.982 Notice of a revised determination or decision.

(a) *When adjudicators initiate reopenings.* When any determination or decision is reopened and revised as provided in § 405.980, the contractor, QIC, ALJ, or the MAC must mail its revised determination or decision to the parties to that determination or decision at their last known address. In the case of a full or partial reversal resulting in issuance of a payment to a provider or supplier, a revised electronic or paper remittance advice notice must be issued by the Medicare contractor. An adverse revised determination or decision must state the rationale and basis for the reopening and revision and any right to appeal.

(b) *Reopenings initiated at the request of a party.* The contractor, QIC, ALJ, or the MAC must mail its revised determination or decision to the parties to that determination or decision at their last known address. In the case of a full or partial reversal resulting in issuance of a payment to a provider or supplier, a revised electronic or paper remittance advice notice must be issued by the Medicare contractor. An adverse revised determination or decision must state the rationale and basis for the reopening and revision and any right to appeal.

§ 405.984 Effect of a revised determination or decision.

(a) *Initial determinations.* The revision of an initial determination is binding upon all parties unless a party files a written request for a redetermination that is accepted and processed in accordance with § 405.940 through § 405.958.

(b) *Redeterminations.* The revision of a redetermination is binding upon all parties unless a party files a written request for a QIC reconsideration that is accepted and processed in accordance with § 405.960 through § 405.978.

(c) *Reconsiderations.* The revision of a reconsideration is binding upon all parties unless a party files a written request for an ALJ hearing that is accepted and processed in accordance with § 405.1000 through § 405.1064.

(d) *ALJ Hearing decisions.* The revision of a hearing decision is binding upon all parties unless a party files a written request for a MAC review that is accepted and processed in accordance with § 405.1100 through § 405.1130.

(e) *MAC review.* The revision of a MAC review is binding upon all parties unless a party files a civil action in which a Federal district court accepts jurisdiction and issues a decision.

(f) *Appeal of only the portion of the determination or decision revised by the reopening.* Only the portion of the initial determination, redetermination, reconsideration, or hearing decision revised by the reopening may be subsequently appealed.

(g) *Effect of a revised determination or decision.* A revised determination or decision is binding unless it is appealed or otherwise reopened.

§ 405.986 Good cause for reopening.

(a) *Establishing good cause.* Good cause may be established when—

(1) There is new and material evidence that—

(i) Was not available or known at the time of the determination or decision; and

(ii) May result in a different conclusion; or

(2) The evidence that was considered in making the determination or decision clearly shows on its face that an obvious error was made at the time of the determination or decision.

(b) *Change in substantive law or interpretative policy.* A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, or a change in legal interpretation or policy by SSA in a regulation, SSA ruling, or SSA general instruction in entitlement appeals, whether made in response to judicial precedent or otherwise, is not a basis for reopening a determination or hearing decision under this section. This provision does not preclude contractors from conducting reopenings to effectuate coverage decisions issued under the authority granted by section 1869(f) of the Act.

(c) *Third party payer error.* A request to reopen a claim based upon a third

party payer's error in making a primary payment determination when Medicare processed the claim in accordance with the information in its system of records or on the claim form does not constitute good cause for reopening..

(d) *MSP recovery claim.* A determination under the Medicare Secondary Payer provisions of Section 1862(b) of the Act that Medicare has an MSP recovery claim for services or items that were already reimbursed by the Medicare program is not a reopening.

Expedited Access to Judicial Review

§ 405.990 Expedited access to judicial review.

(a) *Process for expedited access to judicial review.* (1) For purposes of this section, a "review entity" means an entity of up to three reviewers who are ALJs or members of the Departmental Appeals Board (DAB), as determined by the Secretary.

(2) In order to obtain expedited access to judicial review (EAJR), a review entity must certify that the Medicare Appeals Council (MAC) does not have the authority to decide the question of law or regulation relevant to the matters in dispute and that there is no material issue of fact in dispute.

(3) A party may make a request for EAJR only once with respect to a question of law or regulation for a specific matter in dispute in an appeal.

(b) *Conditions for making the expedited appeals request.* (1) A party may request EAJR in place of an ALJ hearing or MAC review if the following conditions are met:

(i) A QIC has made a reconsideration determination and the party has filed a request for—

(A) an ALJ hearing in accordance with § 405.1002 and a final decision of the ALJ has been issued;

(B) MAC review in accordance with § 405.1102 and a final decision of the MAC has not been issued; or

(ii) The appeal has been escalated from the QIC to the ALJ level after the period described in § 405.970(a) and § 405.970(b) has expired, and the QIC does not issue a final action within the time frame described in § 405.970(e).

(2) The requestor is a party, as defined in paragraph (e) of this section.

(3) The amount remaining in controversy meets the requirements of § 405.1006(b) or (c).

(4) If there is more than one party to the reconsideration, hearing, or MAC review, each party concurs, in writing, with the request for the EAJR.

(5) There are no material issues of fact in dispute.

(c) *Content of the request for EAJR.* The request for EAJR must—

(1) Allege that there are no material issues of fact in dispute and identify the facts that the requestor considers material and that are not disputed; and

(2) Assert that the only factor precluding a decision favorable to the requestor is—

(i) A statutory provision that is unconstitutional, or a provision of a regulation or national coverage determination and specify the statutory provision that the requestor considers unconstitutional or the provision of a regulation or a national coverage determination that the requestor considers invalid, or

(ii) A CMS Ruling that the requester considers invalid;

(3) Include a copy of any QIC reconsideration and of any ALJ hearing decision that the requester has received;

(4) If any QIC reconsideration or ALJ hearing decision was based on facts that the requestor is disputing, state why the requestor considers those facts to be immaterial; and

(5) If any QIC reconsideration or ALJ hearing decision was based on a provision of a law, regulation, national coverage determination or CMS Ruling in addition to the one the requestor considers unconstitutional or invalid, a statement as to why further administrative review of how that provision applies to the facts is not necessary.

(d) *Place and time for an EAJR request.* (1) *Method and place for filing request.* The requestor may include an EAJR request in his or her request for an ALJ hearing or MAC review, or, if an appeal is already pending with an ALJ or the MAC, file a written EAJR request with the ALJ hearing office or MAC where the appeal is being considered. The ALJ hearing office or MAC forwards the request to the review entity within 5 calendar days of receipt.

(2) *Time of filing request.* The party may file a request for the EAJR—

(i) If the party has requested a hearing, at any time before receipt of the notice of the ALJ's decision; or

(ii) If the party has requested MAC review, at any time before receipt of notice of the MAC's decision.

(e) *Parties to the EAJR.* The parties to the EAJR are the persons or entities who were parties to the QIC's reconsideration determination and, if applicable, to the ALJ hearing.

(f) *Determination on EAJR request.* (1) The review entity described in paragraph (a) of this section will determine whether the request for EAJR meets all of the requirements of paragraphs (b), (c), and (d) of this section.

(2) Within 60 days after the date the review entity receives a request and accompanying documents and materials meeting the conditions in paragraphs (b), (c), and (d) of this section, the review entity will issue either a certification in accordance to paragraph (g) of this section or a denial of the request.

(3) A determination by the review entity either certifying that the requirements for EAJR are met pursuant to paragraph (g) of this section or denying the request is final and not subject to review by the Secretary.

(4) If the review entity fails to make a determination within the time frame specified in paragraph (f)(2) of this section, then the requestor may bring a civil action in Federal district court within 60 days of the end of the time frame.

(g) *Certification by the review entity.* If a party meets the requirements for the EAJR, the review entity certifies in writing that—

(1) The material facts involved in the claim are not in dispute;

(2) Except as indicated in paragraph (g)(3) of this section, the Secretary's interpretation of the law is not in dispute;

(3) The sole issue(s) in dispute is the constitutionality of a statutory provision, or the validity of a provision of a regulation, CMS Ruling, or national coverage determination;

(4) But for the provision challenged, the requestor would receive a favorable decision on the ultimate issue (such as whether a claim should be paid); and

(5) The certification by the review entity is the Secretary's final action for purposes of seeking expedited judicial review.

(h) *Effect of certification by the review entity.* If an EAJR request results in a certification described in paragraph (g) of this section—

(1) The party that requested the EAJR is considered to have waived any right to completion of the remaining steps of the administrative appeals process regarding the matter certified.

(2) The requestor has 60 days, beginning on the date of the review entity's certification within which to bring a civil action in Federal district court.

(3) The requestor must satisfy the requirements for venue under section 1869(b)(2)(C)(iii) of the Act, as well as the requirements for filing a civil action in a Federal district court under § 405.1136(a) and § 405.1136(c) through § 405.1136(f).

(i) *Rejection of EAJR.* (1) If a request for EAJR request does not meet all the conditions set out in paragraphs (b), (c) and (d) of this section, or if the review entity does not certify a request for EAJR, the review entity advises in writing all parties that the request has been denied, and returns the request to the ALJ hearing office or the MAC, which will treat it as a request for hearing or for MAC review, as appropriate.

(2) Whenever a review entity forwards a rejected EAJR request to an ALJ hearing office or the MAC, the appeal is considered timely filed and the 90-day decision making time frame begins on the day the request is received by the hearing office or the MAC.

(j) *Interest on any amounts in controversy.* (1) If a provider or supplier is granted judicial review in accordance with this section, the amount in controversy, if any, is subject to annual interest beginning on the first day of the first month beginning after the 60-day period as determined in accordance with paragraphs (f)(4) or (h)(2) of this section, as applicable.

(2) The interest is awarded by the reviewing court and payable to a prevailing party.

(3) The rate of interest is equal to the rate of interest applicable to obligations issued for purchase by the Federal Supplementary Medical Insurance Trust Fund for the month in which the civil action authorized under this subpart is commenced.

(4) No interest awarded in accordance with this paragraph shall be income or cost for purposes of determining reimbursement due to providers or suppliers under Medicare.

ALJ Hearings

§ 405.1000 Hearing before an ALJ: General rule.

(a) If a party is dissatisfied with a QIC's reconsideration or if the adjudication period specified in § 405.970 for the QIC to complete its reconsideration has elapsed, the party may request a hearing.

(b) A hearing may be conducted in-person, by video-teleconference (VTC), or by telephone. At the hearing, the parties may submit evidence (subject to the restrictions in § 405.1018 and § 405.1028), examine the evidence used in making the determination under review, and present and/or question witnesses.

(c) In some circumstances, a representative of CMS or its contractor, including the QIC, QIO, fiscal intermediary or carrier, may participate in or join the hearing as a party. (*see* § 405.1010 and § 405.1012).

(d) The ALJ issues a decision based on the hearing record.

(e) If all parties to the hearing waive their right to appear at the hearing in person or by telephone or video-teleconference, the ALJ may make a decision based on the evidence that is in the file and any new evidence that is submitted for consideration.

(f) The ALJ may require the parties to participate in a hearing if it is necessary to decide the case. If the ALJ determines that it is necessary to obtain testimony from a non-party, he or she may hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In that event, however, the ALJ will give the parties the opportunity to appear when the testimony is given, but may hold the hearing even if none of the parties decide to appear.

(g) An ALJ may also issue a decision on the record on his or her own initiative if the evidence in the hearing record supports a fully favorable finding.

§ 405.1002 Right to an ALJ hearing.

(a) A party to a QIC reconsideration may request a hearing before an ALJ if—

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the QIC's reconsideration; and

(2) The party meets the amount in controversy requirements of § 405.1006.

(b) A party who files a timely appeal before a QIC and whose appeal continues to be pending before a QIC at the end of the period described in § 405.970 has a right to a hearing before an ALJ if—

(1) The party files a written request with the QIC to escalate the appeal to the ALJ level after the period described in § 405.970(a) and (b) has expired and the party files the request in accordance with § 405.970(d);

(2) The QIC does not issue a final action within 5 days of receiving the request for escalation in accordance with § 405.970(e)(2); and

(3) The party has an amount remaining in controversy specified in § 405.1006.

§ 405.1004 Right to ALJ review of QIC notice of dismissal.

(a) A party to a QIC's dismissal of a request for reconsideration has a right to have the dismissal reviewed by an ALJ if—

(1) The party files a written request for an ALJ review within 60 days after receipt of the notice of the QIC's dismissal; and

(2) The party meets the amount in controversy requirements of § 405.1006.

(b) If the ALJ determines that the QIC's dismissal was in error, he or she vacates the dismissal and remands the case to the QIC for a reconsideration.

(c) An ALJ's decision regarding a QIC's dismissal of a reconsideration request is final and not subject to further review.

§ 405.1006 Amount in controversy required to request an ALJ hearing and judicial review.

(a) *Definitions.* For the purposes of aggregating claims to meet the amount in controversy requirement for an ALJ hearing or judicial review:

(1) "Common issues of law and fact" means the claims sought to be aggregated are denied, or payment is reduced, for similar reasons and arise from a similar fact pattern material to the reason the claims are denied or payment is reduced.

(2) "Delivery of similar or related services" means like or coordinated services or items provided to one or more beneficiaries.

(b) *ALJ review.* To be entitled to a hearing before an ALJ, the party must meet the amount in controversy requirements of this section.

(1) For ALJ hearing requests, the required amount remaining in controversy must be $100 increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as measured from July 2003 to the July preceding the current year involved.

(2) If the figure in paragraph (b)(1) of this section is not a multiple of $10, then it is rounded to the nearest multiple of $10. The Secretary will publish changes to the amount in controversy requirement in the **Federal Register** when necessary.

(c) *Judicial review.* To be entitled to judicial review, a party must meet the amount in controversy requirements of this subpart at the time it requests judicial review.

(1) For review requests, the required amount remaining in controversy must be $1,000 or more, adjusted as specified in paragraphs (b)(1) and (b)(2) of this section.

(2) [Reserved]

(d) *Calculating the amount remaining in controversy.* (1) The amount remaining in controversy is computed as the actual amount charged the individual for the items and services in question, reduced by—

(i) Any Medicare payments already made or awarded for the items or services; and

(ii) Any deductible and coinsurance amounts applicable in the particular case.

(2) Notwithstanding paragraph (d)(1) of this section, when payment is made

for items or services under section 1879 of the Act or § 411.400 of this chapter, or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that the beneficiary would have been charged for the items or services in question if those expenses were not paid under § 411.400 of this chapter or if that liability was not limited under § 411.402 of this chapter, reduced by any deductible and coinsurance amounts applicable in the particular case.

(e) *Aggregating claims to meet the amount in controversy—*

(1) *Appealing QIC reconsiderations to the ALJ level.* Either an individual appellant or multiple appellants may aggregate two or more claims to meet the amount in controversy for an ALJ hearing if—

(i) The claims were previously reconsidered by a QIC;

(ii) The request for ALJ hearing lists all of the claims to be aggregated and is filed within 60 days after receipt of all of the reconsiderations being appealed; and

(iii) The ALJ determines that the claims that a single appellant seeks to aggregate involve the delivery of similar or related services, or the claims that multiple appellants seek to aggregate involve common issues of law and fact. Part A and Part B claims may be combined to meet the amount in controversy requirements.

(2) *Aggregating claims that are escalated from the QIC level to the ALJ level.* Either an individual appellant or multiple appellants may aggregate two or more claims to meet the amount in controversy for an ALJ hearing if—

(i) The claims were pending before the QIC in conjunction with the same request for reconsideration;

(ii) The appellant(s) requests aggregation of the claims to the ALJ level in the same request for escalation; and

(iii) The ALJ determines that the claims that a single appellant seeks to aggregate involve the delivery of similar or related services, or the claims that multiple appellants seek to aggregate involve common issues of law and fact. Part A and Part B claims may be combined to meet the amount in controversy requirements.

(f) *Content of request for aggregation.* When an appellant(s) seeks to aggregate claims in a request for an ALJ hearing, the appellant(s) must—

(1) Specify all of the claims the appellant(s) seeks to aggregate; and

(2) State why the appellant(s) believes that the claims involve common issues of law and fact or delivery of similar or related services.

§ 405.1008 Parties to an ALJ hearing.

(a) *Who may request a hearing.* Any party to the QIC's reconsideration may request a hearing before an ALJ. However, only the appellant (that is, the party that filed and maintained the request for reconsideration by a QIC) may request that the appeal be escalated to the ALJ level if the QIC does not complete its action within the time frame described in § 405.970.

(b) *Who are parties to the ALJ hearing.* The party who filed the request for hearing and all other parties to the reconsideration are parties to the ALJ hearing. In addition, a representative of CMS or its contractor may be a party under the circumstances described in § 405.1012.

§ 405.1010 When CMS or its contractors may participate in an ALJ hearing.

(a) An ALJ may request, but may not require, CMS and/or one or more of its contractors, to participate in any proceedings before the ALJ, including the oral hearing, if any. CMS and/or one or more of its contractors, including a QIC, may also elect to participate in the hearing process.

(b) If CMS or one or more of its contractors elects to participate, it advises the ALJ, the appellant, and all other parties identified in the notice of hearing of its intent to participate no later than 10 days after receiving the notice of hearing.

(c) Participation may include filing position papers or providing testimony to clarify factual or policy issues in a case, but it does not include calling witnesses or cross-examining the witnesses of a party to the hearing.

(d) When CMS or its contractor participates in an ALJ hearing, the agency or its contractor may not be called as a witness during the hearing.

(e) CMS or its contractor must submit any position papers within the time frame designated by the ALJ.

(f) The ALJ cannot draw any adverse inferences if CMS or a contractor decides not to participate in any proceedings before an ALJ, including the hearing.

§ 405.1012 When CMS or its contractors may be a party to a hearing.

(a) CMS and/or one or more of its contractors, including a QIC, may be a party to an ALJ hearing unless the request for hearing is filed by an unrepresented beneficiary.

(b) CMS and/or the contractor(s) advises the ALJ, appellant, and all other parties identified in the notice of hearing that it intends to participate as a party no later than 10 days after receiving the notice of hearing.

(c) When CMS or one or more of its contractors participate in a hearing as a party, it may file position papers, provide testimony to clarify factual or policy issues, call witnesses or cross-examine the witnesses of other parties. CMS or its contractor(s) will submit any position papers within the time frame specified by the ALJ. CMS or its contractor(s), when acting as parties, may also submit additional evidence to the ALJ within the time frame designated by the ALJ.

(d) The ALJ may not require CMS or a contractor to enter a case as a party or draw any adverse inferences if CMS or a contractor decides not to enter as a party.

§ 405.1014 Request for an ALJ hearing.

(a) *Content of the request.* The request for an ALJ hearing must be made in writing. The request must include all of the following—

(1) The name, address, and Medicare health insurance claim number of the beneficiary whose claim is being appealed.

(2) The name and address of the appellant, when the appellant is not the beneficiary.

(3) The name and address of the designated representatives if any.

(4) The document control number assigned to the appeal by the QIC, if any.

(5) The dates of service.

(6) The reasons the appellant disagrees with the QIC's reconsideration or other determination being appealed.

(7) A statement of any additional evidence to be submitted and the date it will be submitted.

(b) *When and where to file.* The request for an ALJ hearing after a QIC reconsideration must be filed—

(1) Within 60 days from the date the party receives notice of the QIC's reconsideration;

(2) With the entity specified in the QIC's reconsideration. The appellant must also send a copy of the request for hearing to the other parties. Failure to do so will toll the ALJ's 90-day adjudication deadline until all parties to the QIC reconsideration receive notice of the requested ALJ hearing. If the request for hearing is timely filed with an entity other than the entity specified in the QIC's reconsideration, the deadline specified in § 405.1016 for deciding the appeal begins on the date the entity specified in the QIC's reconsideration receives the request for hearing. If the request for hearing is filed with an entity, other than the

entity specified in the QIC's reconsideration, the ALJ hearing office must notify the appellant of the date of receipt of the request and the commencement of the 90-day adjudication time frame.

(c) *Extension of time to request a hearing.* (1) If the request for hearing is not filed within 60 calendar days of receipt of the QIC's reconsideration, an appellant may request an extension for good cause (*See* §§ 405.942(b)(2) and 405.942(b)(3)).

(2) Any request for an extension of time must be in writing, give the reasons why the request for a hearing was not filed within the stated time period, and must be filed with the entity specified in the notice of reconsideration.

(3) If the ALJ finds there is good cause for missing the deadline, the time period for filing the hearing request will be extended. To determine whether good cause for late filing exists, the ALJ uses the standards set forth in § 405.942(b)(2) and § 405.942(b)(3).

(4) If a request for hearing is not timely filed, the adjudication period in § 405.1016 begins the date the ALJ hearing office grants the request to extend the filing deadline.

§ 405.1016 Time frames for deciding an appeal before an ALJ.

(a) When a request for an ALJ hearing is filed after a QIC has issued a reconsideration, the ALJ must issue a decision, dismissal order, or remand to the QIC, as appropriate, no later than the end of the 90-day period beginning on the date the request for hearing is received by the entity specified in the QIC's notice of reconsideration, unless the 90-day period has been extended as provided in this subpart.

(b) The adjudication period specified in paragraph (a) of this section begins on the date that a timely filed request for hearing is received by the entity specified in the QIC's reconsideration, or, if it is not timely filed, the date that the ALJ hearing office grants any extension to the filing deadline.

(c) When an appeal is escalated to the ALJ level because the QIC has not issued a reconsideration determination within the period specified in § 405.970, the ALJ must issue a decision, dismissal order, or remand to the QIC, as appropriate, no later than the end of the 180-day period beginning on the date that the request for escalation is received by the ALJ hearing office, unless the 180-day period is extended as provided in this subpart.

(d) When CMS is a party to an ALJ hearing and a party requests discovery under § 405.1037 against another party to the hearing, the adjudication periods discussed in paragraph (a) and (c) of this section is tolled.

§ 405.1018 Submitting evidence before the ALJ hearing.

(a) Except as provided in this section, parties must submit all written evidence they wish to have considered at the hearing with the request for hearing (or within 10 days of receiving the notice of hearing).

(b) If a party submits written evidence later than 10 days after receiving the notice of hearing, the period between the time the evidence was required to have been submitted and the time it is received is not counted toward the adjudication deadline specified in § 405.1016.

(c) Any evidence submitted by a provider, supplier, or beneficiary represented by a provider or supplier that is not submitted prior to the issuance of the QIC's reconsideration determination must be accompanied by a statement explaining why the evidence is not previously submitted to the QIC, or a prior decision-maker (see § 405.1028).

(d) The requirements of this section do not apply to oral testimony given at a hearing, or to evidence submitted by an unrepresented beneficiary.

§ 405.1020 Time and place for a hearing before an ALJ.

(a) *General.* The ALJ sets the time and place for the hearing, and may change the time and place, if necessary.

(b) *Determining how appearances are made.* The ALJ will direct that the appearance of an individual be conducted by videoteleconferencing (VTC) if the ALJ finds that VTC technology is available to conduct the appearance. The ALJ may also offer to conduct a hearing by telephone if the request for hearing or administrative record suggests that a telephone hearing may be more convenient for one or more of the parties. The ALJ, with the concurrence of the Managing Field Office ALJ, may determine that an in-person hearing should be conducted if—

(1) VTC technology is not available; or

(2) Special or extraordinary circumstances exist.

(c) *Notice of hearing.* (1) The ALJ will send a notice of hearing to all parties that filed an appeal or otherwise participated in any of the determinations in paragraphs (c) through (i) of this section, any party who was found liable for the services at issue subsequent to the initial determination, the contractor that issued the initial determination, and the QIC that issued the reconsideration, advising them of the proposed time and place of the hearing.

(2) The notice of hearing will require all parties to the ALJ hearing (and any potential participant from CMS or its contractor who wishes to attend the hearing) to reply to the notice by:

(i) Acknowledging whether they plan to attend the hearing at the time and place proposed in the notice of hearing; or

(ii) Objecting to the proposed time and/or place of the hearing.

(d) *A party's right to waive a hearing.* A party may also waive the right to a hearing and request that the ALJ issue a decision based on the written evidence in the record. As provided in § 405.1000, the ALJ may require the parties to attend a hearing if it is necessary to decide the case. If the ALJ determines that it is necessary to obtain testimony from a non-party, he or she may still hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In those cases, the ALJ will give the parties the opportunity to appear when the testimony is given but may hold the hearing even if none of the parties decide to appear.

(e) *A party's objection to time and place of hearing.* (1) If a party objects to the time and place of the hearing, the party must notify the ALJ at the earliest possible opportunity before the time set for the hearing.

(2) The party must state the reason for the objection and state the time and place he or she wants the hearing to be held.

(3) The request must be in writing.

(4) The ALJ may change the time or place of the hearing if the party has good cause. (Section 405.1052(a)(2) provides the procedures the ALJ follows when a party does not respond to a notice of hearing and fails to appear at the time and place of the hearing.)

(f) *Good cause for changing the time or place.* The ALJ can find good cause for changing the time or place of the scheduled hearing and reschedule the hearing if the information available to the ALJ supports the party's contention that—

(1) The party or his or her representative is unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing; or

(3) Good cause exists as set forth in paragraph (g) of this section.

(g) *Good cause in other circumstances.* (1) In determining whether good cause exists in circumstances other than those set forth in paragraph (f) of this section, the ALJ

considers the party's reason for requesting the change, the facts supporting the request, and the impact of the proposed change on the efficient administration of the hearing process.

(2) Factors evaluated to determine the impact of the change include, but are not limited to, the effect on processing other scheduled hearings, potential delays in rescheduling the hearing, and whether any prior changes were granted the party.

(3) Examples of other circumstances a party might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) The party has attempted to obtain a representative but needs additional time.

(ii) The party's representative was appointed within 10 days of the scheduled hearing and needs additional time to prepare for the hearing.

(iii) The party's representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing.

(iv) A witness who will testify to facts material to a party's case is unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained.

(v) Transportation is not readily available for a party to travel to the hearing.

(vi) The party is unrepresented, and is unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that he or she has.

(h) *Effect of rescheduling hearing.* If a hearing is postponed at the request of the appellant for any of the above reasons, the time between the originally scheduled hearing date and the new hearing date is not counted toward the adjudication deadline specified in § 405.1016.

(i) *A party request for an in-person hearing.* (1) If a party objects to a VTC hearing or to the ALJ's offer to conduct a hearing by telephone, the party must notify the ALJ at the earliest possible opportunity before the time set for the hearing and request an in-person hearing.

(2) The party must state the reason for the objection and state the time or place he or she wants the hearing to be held.

(3) The request must be in writing.

(4) A request for an in-person hearing shall constitute a waiver of the 90-day time frame specified in § 405.1016.

(5) The ALJ may grant the request, with the concurrence of the Managing Field Office ALJ, upon a finding of good cause and will reschedule the hearing for a time and place when the party may appear in person before the ALJ.

§ 405.1022 Notice of a hearing before an ALJ.

(a) *Issuing the notice.* After the ALJ sets the time and place of the hearing, notice of the hearing will be mailed to the parties and other potential participants, as provided in § 405.1020(c) at their last known addresses, or given by personal service, unless the parties have indicated in writing that they do not wish to receive this notice. The notice is mailed or served at least 20 days before the hearing.

(b) *Notice information.* (1) The notice of hearing contains a statement of the specific issues to be decided and will inform the parties that they may designate a person to represent them during the proceedings.

(2) The notice must include an explanation of the procedures for requesting a change in the time or place of the hearing, a reminder that, if the appellant fails to appear at the scheduled hearing without good cause, the ALJ may dismiss the hearing request, and other information about the scheduling and conduct of the hearing.

(3) The appellant will also be told if his or her appearance or that of any other party or witness is scheduled by VTC, telephone, or in person. If the ALJ has scheduled the appellant or other party to appear at the hearing by VTC, the notice of hearing will advise that the scheduled place for the hearing is a VTC site and explain what it means to appear at the hearing by VTC.

(4) The notice advises the appellant or other parties that if they object to appearing by VTC or telephone, and wish instead to have their hearing at a time and place where they may appear in person before the ALJ, they must follow the procedures set forth at § 405.1020(i) for notifying the ALJ of their objections and for requesting an in-person hearing.

(c) *Acknowledging the notice of hearing.* (1) If the appellant, any other party to the reconsideration, or their representative does not acknowledge receipt of the notice of hearing, the ALJ hearing office attempts to contact the party for an explanation.

(2) If the party states that he or she did not receive the notice of hearing, an amended notice is sent to him or her by certified mail or e-mail, if available. (See § 405.1052 for the procedures the ALJ follows in deciding if the time or place of a scheduled hearing will be changed if a party does not respond to the notice of hearing).

§ 405.1024 Objections to the issues.

(a) If a party objects to the issues described in the notice of hearing, he or she must notify the ALJ in writing at the earliest possible opportunity before the time set for the hearing, and no later than 5 days before the hearing.

(b) The party must state the reasons for his or her objections and send a copy of the objections to all other parties to the appeal.

(c) The ALJ makes a decision on the objections either in writing or at the hearing.

§ 405.1026 Disqualification of the ALJ.

(a) An ALJ cannot conduct a hearing if he or she is prejudiced or partial to any party or has any interest in the matter pending for decision.

(b) If a party objects to the ALJ who will conduct the hearing, the party must notify the ALJ within 10 calendar days of the date of the notice of hearing. The ALJ considers the party's objections and decides whether to proceed with the hearing or withdraw.

(c) If the ALJ withdraws, another ALJ will be appointed to conduct the hearing. If the ALJ does not withdraw, the party may, after the ALJ has issued an action in the case, present his or her objections to the MAC in accordance with § 405.1100 *et seq.* The MAC will then consider whether the hearing decision should be revised or a new hearing held before another ALJ. If the case is escalated to the MAC after a hearing is held but before the ALJ issues a decision, the MAC considers the reasons the party objected to the ALJ during its review of the case and, if the MAC deems it necessary, may remand the case to another ALJ for a hearing and decision.

§ 405.1028 Prehearing case review of evidence submitted to the ALJ by the appellant.

(a) *Examination of any new evidence.* After a hearing is requested but before it is held, the ALJ will examine any new evidence submitted with the request for hearing (or within 10 days of receiving the notice of hearing) as specified in § 405.1018, by a provider, supplier, or beneficiary represented by a provider or supplier to determine whether the provider, supplier, or beneficiary represented by a provider or supplier had good cause for submitting the evidence for the first time at the ALJ level.

(b) *Determining if good cause exists.* An ALJ finds good cause, for example, when the new evidence is material to an issue addressed in the QIC's reconsideration and that issue was not

identified as a material issue prior to the QIC's reconsideration.

(c) *If good cause does not exist.* If the ALJ determines that there was not good cause for submitting the evidence for the first time at the ALJ level, the ALJ must exclude the evidence from the proceeding and may not consider it in reaching a decision.

(d) *Notification to all parties.* As soon as possible, but no later than the start of the hearing, the ALJ must notify all parties that the evidence is excluded from the hearing.

§ 405.1030 ALJ hearing procedures.

(a) *General rule.* A hearing is open to the parties and to other persons the ALJ considers necessary and proper.

(b) *At the hearing.* At the hearing, the ALJ fully examines the issues, questions the parties and other witnesses, and may accept documents that are material to the issues consistent with § 405.1018 and § 405.1028.

(c) *Missing evidence.* The ALJ may also stop the hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at the hearing. If the missing evidence is in the possession of the appellant, and the appellant is a provider, supplier, or a beneficiary represented by a provider or supplier, the ALJ must determine if the appellant had good cause for not producing the evidence earlier.

(d) *Good cause exists.* If good cause exists, the ALJ considers the evidence in deciding the case and the adjudication period specified in § 405.1016 is tolled from the date of the hearing to the date the evidence is submitted.

(e) *Good cause does not exist.* If the ALJ determines that there was not good cause for not submitting the evidence sooner, the evidence is excluded.

(f) *Reopen the hearing.* The ALJ may also reopen the hearing at any time before he or she mails a notice of the decision in order to receive new and material evidence pursuant to § 405.986. The ALJ may decide when the evidence is presented and when the issues are discussed.

§ 405.1032 Issues before an ALJ.

(a) *General rule.* The issues before the ALJ include all the issues brought out in the initial determination, redetermination, or reconsideration that were not decided entirely in a party's favor. (For purposes of this provision, the term "party" does not include a representative of CMS or one of its contractors that may be participating in the hearing.) However, if evidence presented before the hearing causes the ALJ to question a favorable portion of the determination, he or she notifies the parties before the hearing and may consider it an issue at the hearing.

(b) *New issues*—(1) *General.* The ALJ may consider a new issue at the hearing if he or she notifies all of the parties about the new issue any time before the start of the hearing. The new issue may include issues resulting from the participation of CMS at the ALJ level of adjudication and from any evidence and position papers submitted by CMS for the first time to the ALJ. The ALJ or any party may raise a new issue; however, the ALJ may only consider a new issue if its resolution—

(i) Could have a material impact on the claim or claims that are the subject of the request for hearing; and

(ii) Is permissible under the rules governing reopening of determinations and decisions (see § 405.980).

(2) [Reserved]

(c) *Adding claims to a pending appeal.* An ALJ cannot add any claim, including one that is related to an issue that is appropriately before an ALJ, to a pending appeal unless it has been adjudicated at the lower appeals levels and all parties are notified of the new issue(s) before the start of the hearing.

§ 405.1034 When an ALJ may remand a case to the QIC.

(a) *General.* If an ALJ believes that the written record is missing information that is essential to resolving the issues on appeal and that information can be provided only by CMS or its contractors, then the ALJ may either:

(1) Remand the case to the QIC that issued the reconsideration or

(2) Retain jurisdiction of the case and request that the contractor forward the missing information to the appropriate hearing office.

(b) *ALJ remands a case to a QIC.* Consistent with § 405.1004 (b), the ALJ will remand a case to the appropriate QIC if the ALJ determines that a QIC's dismissal of a request for reconsideration was in error.

(c) *Relationship to local and national coverage determination appeals process.* (1) The ALJ remands an appeal to the QIC that made the reconsideration if the appellant is entitled to relief pursuant to 42 CFR 426.460(b)(1), 426.488(b), or 426.560(b)(1).

(2) Unless the appellant is entitled to relief pursuant to 42 CFR 426.460(b)(1), 426.488(b), or 426.560(b)(1), the ALJ applies the LCD or NCD in place on the date the item or service was provided.

§ 405.1036 Description of an ALJ hearing process.

(a) *The right to appear and present evidence.* (1) Any party to a hearing has the right to appear before the ALJ to present evidence and to state his or her position. A party may appear by video-teleconferencing (VTC), telephone, or in person as determined under § 405.1020.

(2) A party may also make his or her appearance by means of a representative, who may make the appearance by VTC, telephone, or in person, as determined under § 405.1020.

(3) Witness testimony may be given and CMS participation may also be accomplished by VTC, telephone, or in person, as determined under § 405.1020.

(b) *Waiver of the right to appear.* (1) A party may send the ALJ a written statement indicating that he or she does not wish to appear at the hearing.

(2) The appellant may subsequently withdraw his or her waiver at any time before the notice of the hearing decision is issued; however, by withdrawing the waiver the appellant agrees to an extension of the adjudication period as specified in § 405.1016 that may be necessary to schedule and hold the hearing.

(3) Other parties may withdraw their waiver up to the date of the scheduled hearing, if any. Even if all of the parties waive their right to appear at a hearing, the ALJ may require them to attend an oral hearing if he or she believes that a personal appearance and testimony by the appellant or any other party is necessary to decide the case.

(c) *Presenting written statements and oral arguments.* A party or a person designated to act as a party's representative may appear before the ALJ to state the party's case, to present a written summary of the case, or to enter written statements about the facts and law material to the case in the record. A copy of any written statements must be provided to the other parties to a hearing, if any, at the same time they are submitted to the ALJ.

(d) *Waiver of adjudication period.* At any time during the hearing process, the appellant may waive the adjudication deadline specified in § 405.1016 for issuing a hearing decision. The waiver may be for a specific period of time agreed upon by the ALJ and the appellant.

(e) *What evidence is admissible at a hearing.* The ALJ may receive evidence at the hearing even though the evidence is not admissible in court under the rules of evidence used by the court.

(f) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, an ALJ may, on his or her own initiative or at the request of a party, issue subpoenas for the appearance and testimony of witnesses and for a party to make books, records, correspondence, papers, or

other documents that are material to an issue at the hearing available for inspection and copying.

(2) A party's written request for a subpoena must—

(i) Give the names of the witnesses or documents to be produced;

(ii) Describe the address or location of the witnesses or documents with sufficient detail to find them;

(iii) State the important facts that the witness or document is expected to prove; and

(iv) Indicate why these facts cannot be proven without issuing a subpoena.

(3) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for the issuance of a subpoena with the requirements set out in paragraph (f)(2) of this section with the ALJ within 10 calendar days of receipt of the notice of hearing.

(4) Where a party has requested a subpoena, a subpoena will be issued only where a party—

(i) Has sought discovery;

(ii) Has filed a motion to compel;

(iii) Has had that motion granted by the ALJ; and

(iv) Nevertheless, has not received the requested discovery.

(5) Reviewability of subpoena rulings—

(i) *General rule.* An ALJ ruling on a subpoena request is not subject to immediate review by the MAC. The ruling may be reviewed solely during the course of the MAC's review specified in § 405.1102, § 405.1104, or § 405.1110, as applicable. *Exception.* To the extent a subpoena compels disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before an ALJ, the MAC may review immediately the subpoena or that portion of the subpoena as applicable.

(ii) Where CMS objects to a discovery ruling, the MAC must take review and the discovery ruling at issue is automatically stayed pending the MAC's order.

(iii) Upon notice to the ALJ that a party or non-party, as applicable, intends to seek MAC review of the subpoena, the ALJ must stay all proceedings affected by the subpoena.

(iv) The ALJ determines the length of the stay under the circumstances of a given case, but in no event is the stay less than 15 days beginning after the day on which the ALJ received notice of the party or non-party's intent to seek MAC review.

(v) If the MAC grants a request for review of the subpoena, the subpoena or portion of the subpoena, as applicable, is stayed until the MAC issues a written decision that affirms, reverses, or modifies the ALJ's action on the subpoena.

(vi) If the MAC does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the ALJ's action stands.

(6) Enforcement. (i) If the ALJ determines, whether on his or her own motion or at the request of a party, that a party or non-party subject to a subpoena issued under this section has refused to comply with the subpoena, the ALJ may request the Secretary to seek enforcement of the subpoena in accordance with section 205(e) of the Act, 42 U.S.C. 405(e).

(ii) Any enforcement request by an ALJ must consist of a written notice to the Secretary describing in detail the ALJ's findings of noncompliance and his or her specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the party or nonparty subject to the subpoena.

(iii) The ALJ must promptly mail a copy of the notice and related documents to the party subject to the subpoena, and to any other party and affected non-party to the appeal.

(g) *Witnesses at a hearing.* Witnesses may appear at a hearing. They testify under oath or affirmation, unless the ALJ finds an important reason to excuse them from taking an oath or affirmation. The ALJ may ask the witnesses any questions relevant to the issues and allows the parties or their designated representatives to do so.

§ 405.1037 Discovery.

(a) *General rules.* (1) Discovery is permissible only when CMS elects to participate in an ALJ hearing as a party.

(2) The ALJ may permit discovery of a matter that is relevant to the specific subject matter of the ALJ hearing, provided the matter is not privileged or otherwise protected from disclosure and the ALJ determines that the discovery request is not unreasonable, unduly burdensome or expensive, or otherwise inappropriate.

(3) Any discovery initiated by a party must comply with all requirements and limitations of this section, along with any further requirements or limitations ordered by the ALJ.

(b) *Limitations on discovery.* Any discovery before the ALJ is limited.

(1) A party may request of another party the reasonable production of documents for inspection and copying.

(2) A party may not take the deposition, upon oral or written examination, of another party unless the proposed deponent agrees to the deposition or the ALJ finds that the proposed deposition is necessary and appropriate in order to secure the deponent's testimony for an ALJ hearing.

(3) A party may not request admissions or send interrogatories or take any other form of discovery not permitted under this section.

(c) *Time limits.* (1) A party's discovery request is timely if the date of receipt of a request by another party is no later than the date specified by the ALJ hearing.

(2) A party may not conduct discovery any later than the date specified by the ALJ.

(3) Before ruling on a request to extend the time for requesting discovery or for conducting discovery, the ALJ must give the other parties to the appeal a reasonable period to respond to the extension request.

(4) The ALJ may extend the time in which to request discovery or conduct discovery only if the requesting party establishes that it was not dilatory or otherwise at fault in not meeting the original discovery deadline.

(5) If the ALJ grants the extension request, it must impose a new discovery deadline and, if necessary, reschedule the hearing date so that all discoveries end no later than 45 days before the hearing.

(d) *Motions to compel or for protective order.* (1) Each party is required to make a good faith effort to resolve or narrow any discovery dispute.

(2) A party may submit to the ALJ a motion to compel discovery that is permitted under this section or any ALJ order, and a party may submit a motion for a protective order regarding any discovery request to the ALJ.

(3) Any motion to compel or for protective order must include a self-sworn declaration describing the movant's efforts to resolve or narrow the discovery dispute. The declaration must also be included with any response to a motion to compel or for protective order.

(4) The ALJ must decide any motion in accordance with this section and any prior discovery ruling in the appeal.

(5) The ALJ must issue and mail to each party a discovery ruling that grants or denies the motion to compel or for protective order in whole or in part; if applicable, the discovery ruling must specifically identify any part of the disputed discovery request upheld and any part rejected, and impose any limits on discovery the ALJ finds necessary and appropriate.

(e) *Reviewability of discovery and disclosure rulings—*

(1) *General rule.* An ALJ discovery ruling, or an ALJ disclosure ruling such as one issued at a hearing is not subject to immediate review by the MAC. The ruling may be reviewed solely during the course of the MAC's review specified in § 405.1100, § 405.1102, § 405.1104, or § 405.1110, as applicable.

(2) *Exception.* To the extent a ruling authorizes discovery or disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the ALJ, the MAC may review that portion of the discovery or disclosure ruling immediately.

(i) Where CMS objects to a discovery ruling, the MAC must take review and the discovery ruling at issue is automatically stayed pending the MAC's order.

(ii) Upon notice to the ALJ that a party intends to seek MAC review of the ruling, the ALJ must stay all proceedings affected by the ruling.

(iii) The ALJ determines the length of the stay under the circumstances of a given case, but in no event must the length of the stay be less than 15 days beginning after the day on which the ALJ received notice of the party or non-party's intent to seek MAC review.

(iv) Where CMS requests the MAC to take review of a discovery ruling or where the MAC grants a request for review made by a party other than CMS of a ruling, the ruling is stayed until the time the MAC issues a written decision that affirms, reverses, modifies, or remands the ALJ's ruling.

(v) With respect to a request from a party, other than CMS, for review of a discovery ruling, if the MAC does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the ruling stands.

(f) *Adjudication time frames.* If a party requests discovery from another party to the ALJ hearing, the ALJ adjudication time frame specified in § 405.1016 is tolled until the discovery dispute is resolved.

§ 405.1038 Deciding a case without a hearing before an ALJ.

(a) *Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of appellant(s) on every issue, the ALJ may issue a hearing decision without giving the parties prior notice and without holding a hearing. The notice of the decision informs the parties that they have the right to a hearing and a right to examine the evidence on which the decision is based.

(b) *Parties do not wish to appear.* (1) The ALJ may decide a case on the record and not conduct a hearing if—

(i) All the parties indicate in writing that they do not wish to appear before the ALJ at a hearing, including a hearing conducted by telephone or videoconferencing, if available; or

(ii) The appellant lives outside the United States and does not inform the ALJ that he or she wants to appear, and there are no other parties who wish to appear.

(2) When a hearing is not held, the decision of the ALJ must refer to the evidence in the record on which the decision was based.

§ 405.1040 Prehearing and posthearing conferences.

(a) The ALJ may decide on his or her own, or at the request of any party to the hearing, to hold a prehearing or posthearing conference to facilitate the hearing or the hearing decision.

(b) The ALJ informs the parties of the time, place, and purpose of the conference at least 7 calendar days before the conference date, unless a party indicates in writing that it does not wish to receive a written notice of the conference.

(c) At the conference, the ALJ may consider matters in addition to those stated in the notice of hearing, if the parties consent in writing. A record of the conference is made.

(d) The ALJ issues an order stating all agreements and actions resulting from the conference. If the parties do not object, the agreements and actions become part of the hearing record and are binding on all parties.

§ 405.1042 The administrative record.

(a) *Creating the record.* (1) The ALJ makes a complete record of the evidence, including the hearing proceedings, if any.

(2) The record will include marked as exhibits, the documents used in making the decision under review, including, but not limited to, claims, medical records, written statements, certificates, reports, affidavits, and any other evidence the ALJ admits. In the record, the ALJ must also discuss any evidence excluded under § 405.1028 and include a justification for excluding the evidence.

(3) The appellant may review the record at the hearing, or, if a hearing is not held, at any time before the ALJ's notice of decision is issued.

(4) If a request for review is filed or the case is escalated to the MAC, the complete record, including any recording of the hearing, is forwarded to the MAC.

(5) A typed transcription of the hearing is prepared if a party seeks judicial review of the case in a Federal district court within the stated time period and all other jurisdictional criteria are met, unless, upon the Secretary's motion prior to the filing of an answer, the court remands the case.

(b) *Requesting and receiving copies of the record.*

(1) A party may request and receive a copy of all or part of the record, including the exhibits list, documentary evidence, and a copy of the tape of the oral proceedings. The party may be asked to pay the costs of providing these items.

(2) If a party requests all or part of the record from the ALJ and an opportunity to comment on the record, the time beginning with the ALJ's receipt of the request through the expiration of the time granted for the party's response does not count toward the 90-day adjudication deadline.

§ 405.1044 Consolidated hearing before an ALJ.

(a) A consolidated hearing may be held if one or more of the issues to be considered at the hearing are the same issues that are involved in another request for hearing or hearings pending before the same ALJ.

(b) It is within the discretion of the ALJ to grant or deny an appellant's request for consolidation. In considering an appellant's request, the ALJ may consider factors such as whether the claims at issue may be more efficiently decided if the requests for hearing are combined. In considering the appellant's request for consolidation, the ALJ must take into account the adjudication deadlines for each case and may require an appellant to waive the adjudication deadline associated with one or more cases if consolidation otherwise prevents the ALJ from deciding all of the appeals at issue within their respective deadlines.

(c) The ALJ may also propose on his or her own motion to consolidate two or more cases in one hearing for administrative efficiency, but may not require an appellant to waive the adjudication deadline for any of the consolidated cases.

(d) Before consolidating a hearing, the ALJ must notify CMS of his or her intention to do so, and CMS may then elect to participate in the consolidated hearing, as a party, by sending written notice to the ALJ within 10 days after receipt of the ALJ's notice of the consolidation.

(e) If the ALJ decides to hold a consolidated hearing, he or she may make either a consolidated decision and

record or a separate decision and record on each claim. The ALJ ensures that any evidence that is common to all claims and material to the common issue to be decided is included in the consolidated record or each individual record, as applicable.

§ 405.1046 Notice of an ALJ decision.

(a) *General rule.* Unless the ALJ dismisses the hearing, the ALJ will issue a written decision that gives the findings of fact, conclusions of law, and the reasons for the decision. The decision must be based on evidence offered at the hearing or otherwise admitted into the record. The ALJ mails a copy of the decision to all the parties at their last known address, to the QIC that issued the reconsideration determination, and to the contractor that issued the initial determination. For overpayment cases involving multiple beneficiaries, where there is no beneficiary liability, the ALJ may choose to send written notice only to the appellant. In the event a payment will be made to a provider or supplier in conjunction with this ALJ decision, the contractor must also issue a revised electronic or paper remittance advice to that provider or supplier.

(b) *Content of the notice.* The decision must be written in a manner calculated to be understood by a beneficiary and must include—

(1) The specific reasons for the determination, including, to the extent appropriate, a summary of any clinical or scientific evidence used in making the determination;

(2) The procedures for obtaining additional information concerning the decision; and

(3) Notification of the right to appeal the decision to the MAC, including instructions on how to initiate an appeal under this section.

(c) *Limitation on decision.* When the amount of payment for an item or service is an issue before the ALJ, the ALJ may make a finding as to the amount of payment due. If the ALJ makes a finding concerning payment when the amount of payment was not an issue before the ALJ, the contractor may independently determine the payment amount. In either of the aforementioned situations, an ALJ's decision is not final for purposes of determining the amount of payment due. The amount of payment determined by the contractor in effectuating the ALJ's decision is a new initial determination under § 405.924.

(d) *Timing of decision.* The ALJ issues a decision by the end of the 90-day period beginning on the date when the request for hearing is received in the ALJ hearing office, unless the 90-day period is extended as provided in § 405.1016.

(e) *Recommended decision.* An ALJ issues a recommended decision if he or she is directed to do so in the MAC's remand order. An ALJ may not issue a recommended decision on his or her own motion. The ALJ mails a copy of the recommended decision to all the parties at their last known address.

§ 405.1048 The effect of an ALJ's decision.

The decision of the ALJ is binding on all parties to the hearing unless—

(a) A party to the hearing requests a review of the decision by the MAC within the stated time period or the MAC reviews the decision issued by an ALJ under the procedures set forth in § 405.1110, and the MAC either issues a final action or the appeal is escalated to Federal district court under the provisions at § 405.1132 and the Federal district court issues a decision.

(b) The decision is reopened and revised by an ALJ or the MAC under the procedures explained in § 405.980;

(c) The expedited access to judicial review process at § 405.990 is used;

(d) The ALJ's decision is a recommended decision directed to the MAC and the MAC issues a decision; or

(e) In a case remanded by a Federal district court, the MAC assumes jurisdiction under the procedures in § 405.1138 and the MAC issues a decision.

§ 405.1050 Removal of a hearing request from an ALJ to the MAC.

If a request for hearing is pending before an ALJ, the MAC may assume responsibility for holding a hearing by requesting that the ALJ send the hearing request to it. If the MAC holds a hearing, it conducts the hearing according to the rules for hearings before an ALJ. Notice is mailed to all parties at their last known address informing them that the MAC has assumed responsibility for the case.

§ 405.1052 Dismissal of a request for a hearing before an ALJ.

Dismissal of a request for a hearing is in accordance with the following:

(a) An ALJ dismisses a request for a hearing under any of the following conditions:

(1) At any time before notice of the hearing decision is mailed, if only one party requested the hearing and that party asks to withdraw the request. This request may be submitted in writing to the ALJ or made orally at the hearing. The request for withdrawal must include a clear statement that the appellant is withdrawing the request for hearing and does not intend to further proceed with the appeal. If an attorney, or other legal professional on behalf of a beneficiary or other appellant files the request for withdrawal, the ALJ may presume that the representative has advised the appellant of the consequences of the withdrawal and dismissal.

(2) Neither the party that requested the hearing nor the party's representative appears at the time and place set for the hearing, if—

(i) The party was notified before the time set for the hearing that the request for hearing might be dismissed without further notice for failure to appear;

(ii) The party did not appear at the time and place of hearing and does not contact the ALJ hearing office within 10 days and provide good cause for not appearing; or

(iii) The ALJ sends a notice to the party asking why the party did not appear; and the party does not respond to the ALJ's notice within 10 days or does not provide good cause for the failure to appear.

(iv) In determining whether good cause exists under this paragraph (a)(2), the ALJ considers any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language), that the party may have.

(3) The person or entity requesting a hearing has no right to it under § 405.1002.

(4) The party did not request a hearing within the stated time period and the ALJ has not found good cause for extending the deadline, as provided in § 405.1014(d).

(5) The beneficiary whose claim is being appealed died while the request for hearing is pending and all of the following criteria apply:

(i) The request for hearing was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ considers if the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of the services at issue.

(ii) No other individuals or entities that have a financial interest in the case wish to pursue an appeal under § 405.1002.

(iii) No other individual or entity filed a valid and timely request for an ALJ hearing in accordance to § 405.1020.

(6) The ALJ dismisses a hearing request entirely or refuses to consider

any one or more of the issues because a QIC, an ALJ or the MAC has made a previous determination or decision under this subpart about the appellant's rights on the same facts and on the same issue(s) or claim(s), and this previous determination or decision has become final by either administrative or judicial action.

(7) The appellant abandons the request for hearing. An ALJ may conclude that an appellant has abandoned a request for hearing when the ALJ hearing office attempts to schedule a hearing and is unable to contact the appellant after making reasonable efforts to do so.

(b) *Notice of dismissal.* The ALJ mails a written notice of the dismissal of the hearing request to all parties at their last known address. The notice states that there is a right to request that the MAC vacate the dismissal action.

§ 405.1054 Effect of dismissal of a request for a hearing before an ALJ.

The dismissal of a request for a hearing is binding, unless it is vacated by the MAC under § 405.1108(b).

Applicability of Medicare Coverage Policies

§ 405.1060 Applicability of national coverage determinations (NCDs).

(a) *General rule.* (1) An NCD is a determination by the Secretary of whether a particular item or service is covered nationally under Medicare.

(2) An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under Medicare or a determination of the amount of payment made for a particular item or service.

(3) NCDs are made under section 1862(a)(1) of the Act as well as under other applicable provisions of the Act.

(4) An NCD is binding on all Medicare contractors, including QIOs, QICs, Medicare Advantage Organizations, Prescription Drug Plans and their sponsors, HMOs, CMPs, HCPPs, ALJs and the MAC.

(b) *Review by an ALJ.* (1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD was applied correctly to the claim.

(c) *Review by the MAC.* (1) The MAC may not disregard, set aside, or otherwise review an NCD for purposes of a section 1869 claim appeal, except that the DAB may review NCDs as provided under part 426 of this title.

(2) The MAC may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD was applied correctly to the claim.

§ 405.1062 Applicability of local coverage determinations and other policies not binding on the ALJ and MAC.

(a) ALJs and the MAC are not bound by LCDs, LMRPs, or CMS program guidance, such as program memoranda and manual instructions, but will give substantial deference to these policies if they are applicable to a particular case.

(b) If an ALJ or MAC declines to follow a policy in a particular case, the ALJ or MAC decision must explain the reasons why the policy was not followed. An ALJ or MAC decision to disregard such policy applies only to the specific claim being considered and does not have precedential effect.

(c) An ALJ or MAC may not set aside or review the validity of an LMRP or LCD for purposes of a claim appeal. An ALJ or the DAB may review or set aside an LCD (or any part of an LMRP that constitutes an LCD) in accordance with part 426 of this title.

§ 405.1063 Applicability of CMS Rulings.

CMS Rulings are published under the authority of the Administrator, CMS. Consistent with § 401.108 of this chapter, rulings are binding on all CMS components, on all HHS components that adjudicate matters under the jurisdiction of CMS, and on the Social Security Administration to the extent that components of the Social Security Administration adjudicate matters under the jurisdiction of CMS.

§ 405.1064 ALJ decisions involving statistical samples.

When an appeal from the QIC involves an overpayment issue and the QIC used a statistical sample in reaching its reconsideration, the ALJ must base his or her decision on a review of the entire statistical sample used by the QIC.

Medicare Appeals Council Review

§ 405.1100 Medicare Appeals Council review: General.

(a) The appellant or any other party to the hearing may request that the MAC review an ALJ's decision or dismissal.

(b) Under circumstances set forth in § 405.1104 and 405.1108, the appellant may request that a case be escalated to the MAC for a decision even if the ALJ has not issued a decision or dismissal in his or her case.

(c) When the MAC reviews an ALJ's decision, it undertakes a de novo review. The MAC issues a final action or remands a case to the ALJ within 90 days of receipt of the appellant's request for review, unless the 90-day period is extended as provided in this subpart.

(d) When deciding an appeal that was escalated from the ALJ level to the MAC, the MAC will issue a final action or remand the case to the ALJ within 180 days of receipt of the appellant's request for escalation, unless the 180-day period is extended as provided in this subpart.

§ 405.1102 Request for MAC review when ALJ issues decision or dismissal.

(a) A party to the ALJ hearing may request a MAC review if the party files a written request for a MAC review within 60 days after receipt of the ALJ's decision or dismissal. A party requesting a review may ask that the time for filing a request for MAC review be extended if—

(1) The request for an extension of time is in writing;

(2) It is filed with the MAC; and

(3) It explains why the request for review was not filed within the stated time period. If the MAC finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards outlined at §§ 405.942(b)(2) and 405.942(b)(3).

(b) A party does not have the right to seek MAC review of an ALJ's remand to a QIC or an ALJ's affirmation of a QIC's dismissal of a request for reconsideration.

(c) For purposes of requesting MAC review (§ 405.1100 through § 405.1140), unless specifically excepted the term, "party," includes CMS where CMS has entered into a case as a party according to § 405.1012. The term, "appellant," does not include CMS, where CMS has entered into a case as a party according to § 405.1012.

§ 405.1104 Request for MAC review when an ALJ does not issue a decision timely.

(a) *Requesting escalation.* An appellant who files a timely request for hearing before an ALJ and whose appeal continues to be pending before the ALJ at the end of the applicable ALJ adjudication period under § 405.1016 may request MAC review if—

(1) The appellant files a written request with the ALJ to escalate the appeal to the MAC after the adjudication period has expired; and

(2) The ALJ does not issue a final action or remand the case to the QIC within the latter of 5 days of receiving the request for escalation or 5 days from the end of the applicable adjudication period set forth in § 405.1016.

(b) *Escalation.* (1) If the ALJ is not able to issue a final action or remand within the time period set forth in

paragraph (a)(2) of this section, he or she sends notice to the appellant.

(2) The notice acknowledges receipt of the request for escalation, and confirms that the ALJ is not able to issue a final action or remand order within the statutory time frame.

(3) If the ALJ does not act on a request for escalation within the time period set forth in paragraph (a)(2) of this section or does not send the required notice to the appellant, the QIC decision becomes a final administrative decision for purposes of MAC review.

(c) *No escalation.* If the ALJ's adjudication period set forth in § 405.1016 expires, the case remains with the ALJ until a final action is issued and the appellant does not request escalation to the MAC or the appellant requests escalation to the MAC.

§ 405.1106 Where a request for review or escalation may be filed.

(a) When a request for a MAC review is filed after an ALJ has issued a decision or dismissal, the request for review may be filed with the MAC or the hearing office that issued the ALJ's decision or dismissal. The appellant must also send a copy of the request for review to the other parties to the ALJ decision or dismissal. Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. If the request for review is timely filed with the ALJ hearing office rather than the MAC, the MAC's adjudication period to conduct a review begins on the date the request for review is received by the MAC. Upon receipt of a request for review from an entity other than the ALJ hearing office, the MAC will send written notice to the appellant of the date of receipt of the request and commencement of the adjudication time frame.

(b) If an appellant files a request to escalate an appeal to the MAC level because the ALJ has not completed his or her action on the request for hearing within the adjudication deadline under § 405.1016, the request for escalation must be filed with both the ALJ and the MAC. The appellant must also send a copy of the request for escalation to the other parties. Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. In a case that has been escalated from the ALJ, the MAC's 180-day period to issue a final action or remand the case to the ALJ begins on the date the request for escalation is received by the MAC.

§ 405.1108 MAC actions when request for review or escalation is filed.

(a) Except as specified in paragraphs (c) and (d) of this section, when a party requests that the MAC review an ALJ's decision, the MAC will review the ALJ's decision *de novo*. The party requesting review does not have a right to a hearing before the MAC. The MAC will consider all of the evidence in the administrative record. Upon completion of its review, the MAC may adopt, modify, or reverse the ALJ's decision or remand the case to an ALJ for further proceedings.

(b) When a party requests that the MAC review an ALJ's dismissal, the MAC may deny review or vacate the dismissal and remand the case to the ALJ for further proceedings.

(c) The MAC will dismiss a request for review when the party requesting review does not have a right to a review by the MAC, or will dismiss the request for a hearing for any reason that the ALJ could have dismissed the request for hearing.

(d) When an appellant requests escalation of a case from the ALJ level to the MAC, the MAC may take any of the following actions:

(1) Issue a decision based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ before the case was escalated.

(2) Conduct any additional proceedings, including a hearing, that the MAC determines are necessary to issue a decision.

(3) Remand the case to an ALJ for further proceedings, including a hearing.

(4) Dismiss the request for MAC review because the appellant does not have the right to escalate the appeal.

(5) Dismiss the request for a hearing for any reason that the ALJ could have dismissed the request.

§ 405.1110 MAC reviews on its own motion.

(a) *General rule.* The MAC may decide on its own motion to review a decision or dismissal issued by an ALJ. CMS or any of its contractors may refer a case to the MAC for it to consider reviewing under this authority anytime within 60 days after the date of an ALJ's decision or dismissal.

(b) *Referral of cases.* (1) CMS or any of its contractors may refer a case to the MAC if, in their view, the decision or dismissal contains an error of law material to the outcome of the claim or presents a broad policy or procedural issue that may affect the public interest. CMS may also request that the MAC take own motion review of a case if—

(i) CMS or its contractor participated in the appeal at the ALJ level; and

(ii) In CMS' view, the ALJ's decision or dismissal is not supported by the preponderance of evidence in the record or the ALJ abused his or her discretion.

(2) CMS's referral to the MAC is made in writing and must be filed with the MAC no later than 60 days after the ALJ's decision or dismissal is issued. The written referral will state the reasons why CMS believes that the MAC must review the case on its own motion. CMS will send a copy of its referral to all parties to the ALJ's action and to the ALJ. Parties to the ALJ's action may file exceptions to the referral by submitting written comments to the MAC within 20 days of the referral notice. A party submitting comments to the MAC must send such comments to CMS and all other parties to the ALJ's decision.

(c) *Standard of review.* (1) Referral by CMS after participation at the ALJ level. If CMS or its contractor participated in an appeal at the ALJ level, the MAC exercises its own motion authority if there is an error of law material to the outcome of the case, an abuse of discretion by the ALJ, the decision is not consistent with the preponderance of the evidence of record, or there is a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review under this standard, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(2) *Referral by CMS when CMS did not participate in the ALJ proceedings or appear as a party.* The MAC will accept review if the decision or dismissal contains an error of law material to the outcome of the case or presents a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(d) *MAC's action.* If the MAC decides to review a decision or dismissal on its own motion, it will mail the results of its action to all the parties to the hearing and to CMS if it is not already a party to the hearing. The MAC may adopt, modify, or reverse the decision or dismissal, may remand the case to an ALJ for further proceedings or may dismiss a hearing request. The MAC must issue its action no later than 90 days after receipt of the CMS referral, unless the 90-day period has been extended as provided in this subpart. The MAC may not, however, issue its action before the 20-day comment period has expired, unless it determines that the agency's referral does not provide a basis for reviewing the case. If the MAC does not act within the applicable adjudication deadline, the

ALJ's decision or dismissal remains the final action in the case.

§ 405.1112 Content of request for review.

(a) The request for MAC review must be filed with the MAC or appropriate ALJ hearing office. The request for review must be in writing and must be made on a standard form. A written request that is not made on a standard form is accepted if it contains the beneficiary's name; Medicare health insurance claim number; the specific service(s) or item(s) for which the review is requested; the specific date(s) of service; the date of the ALJ's final action, if any, if the party is requesting escalation from the ALJ to the MAC, the hearing office in which the appellant's request for hearing is pending; and the name and signature of the party or the representative of the party; and any other information CMS may decide.

(b) The request for review must identify the parts of the ALJ action with which the party requesting review disagrees and explain why he or she disagrees with the ALJ's decision, dismissal, or other determination being appealed. For example, if the party requesting review believes that the ALJ's action is inconsistent with a statute, regulation, CMS Ruling, or other authority, the request for review should explain why the appellant believes the action is inconsistent with that authority.

(c) The MAC will limit its review of an ALJ's actions to those exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. For purposes of this section only, we define a representative as anyone who has accepted an appointment as the beneficiary's representative, except a member of the beneficiary's family, a legal guardian, or an individual who routinely acts on behalf of the beneficiary, such as a family member or friend who has a power of attorney.

§ 405.1114 Dismissal of request for review.

The MAC dismisses a request for review if the party requesting review did not file the request within the stated period of time and the time for filing has not been extended. The MAC also dismisses the request for review if—

(a) The party asks to withdraw the request for review;

(b) The party does not have a right to request MAC review; or

(c) The beneficiary whose claim is being appealed died while the request for review is pending and all of the following criteria apply:

(1) The request for review was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the MAC considers whether the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of the services at issue;

(2) No other individual or entity with a financial interest in the case wishes to pursue an appeal under § 405.1102;

(3) No other party to the ALJ hearing filed a valid and timely review request under § 405.1102 and § 405.1112.

§ 405.1116 Effect of dismissal of request for MAC review or request for hearing.

The dismissal of a request for MAC review or denial of a request for review of a dismissal issued by an ALJ is binding and not subject to further review unless reopened and vacated by the MAC. The MAC's dismissal of a request for hearing is also binding and not subject to judicial review.

§ 405.1118 Obtaining evidence from the MAC.

A party may request and receive a copy of all or part of the record of the ALJ hearing, including the exhibits list, documentary evidence, and a copy of the tape of the oral proceedings. However, the party may be asked to pay the costs of providing these items. If a party requests evidence from the MAC and an opportunity to comment on that evidence, the time beginning with the MAC's receipt of the request for evidence through the expiration of the time granted for the party's response will not be counted toward the 90-day adjudication deadline.

§ 405.1120 Filing briefs with the MAC.

Upon request, the MAC will give the party requesting review, as well as all other parties, a reasonable opportunity to file briefs or other written statements about the facts and law relevant to the case. Any party who submits a brief or statement must send a copy to all of the other parties. Unless the party requesting review files the brief or other statement with the request for review, the time beginning with the date of receipt of the request to submit the brief and ending with the date the brief is received by the MAC will not be counted toward the adjudication timeframe set forth in § 405.1100. The MAC may also request, but not require, CMS or its contractor to file a brief or position paper if the MAC determines that it is necessary to resolve the issues in the case. The MAC will not draw any adverse inference if CMS or a contractor either participates, or decides not to participate in MAC review.

§ 405.1122 What evidence may be submitted to the MAC.

(a) *Appeal before the MAC on request for review of ALJ's decision.* (1) If the MAC is reviewing an ALJ's decision, the MAC limits its review of the evidence to the evidence contained in the record of the proceedings before the ALJ. However, if the hearing decision decides a new issue that the parties were not afforded an opportunity to address at the ALJ level, the MAC considers any evidence related to that issue that is submitted with the request for review.

(2) If the MAC determines that additional evidence is needed to resolve the issues in the case and the hearing record indicates that the previous decision-makers have not attempted to obtain the evidence, the MAC may remand the case to an ALJ to obtain the evidence and issue a new decision.

(b) *Appeal before MAC as a result of appellant's request for escalation.* (1) If the MAC is reviewing a case that is escalated from the ALJ level to the MAC, the MAC will decide the case based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ before the case was escalated.

(2) If the MAC receives additional evidence with the request for escalation that is material to the question to be decided, or determines that additional evidence is needed to resolve the issues in the case, and the record provided to the MAC indicates that the previous decision-makers did not attempt to obtain the evidence before escalation, the MAC may remand the case to an ALJ to consider or obtain the evidence and issue a new decision.

(c) *Evidence related to issues previously considered by the QIC.* (1) If new evidence related to issues previously considered by the QIC is submitted to the MAC by a provider, supplier, or a beneficiary represented by a provider or supplier, the MAC must determine if the provider, supplier, or the beneficiary represented by a provider or supplier had good cause for submitting it for the first time at the MAC level.

(2) If the MAC determines that good cause does not exist, the MAC must exclude the evidence from the proceeding, may not consider it in reaching a decision, and may not remand the issue to an ALJ.

(3) The MAC must notify all parties if it excludes the evidence. The MAC may remand to an ALJ if—

(i) The ALJ did not consider the new evidence submitted by the provider, supplier, or beneficiary represented by a provider or supplier because good cause did not exist; and

(ii) The MAC finds that good cause existed under § 405.1028 and the ALJ should have reviewed the evidence.

(iii) The new evidence is submitted by a party that is not a provider, supplier, or a beneficiary represented by a provider or supplier.

(d) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, the MAC may, on its own initiative or at the request of a party, issue subpoenas requiring a party to make books, records, correspondence, papers, or other documents that are material to an issue at the hearing available for inspection and copying.

(2) A party's request for a subpoena must—

(i) Give a sufficient description of the documents to be produced;

(ii) State the important facts that the documents are expected to prove; and

(iii) Indicate why these facts could not be proven without issuing a subpoena.

(3) A party to the MAC review on escalation that wishes to subpoena documents must file a written request that complies with the requirements set out in paragraph (d)(2) of this section within 10 calendar days of the request for escalation.

(4) A subpoena will issue only where a party—

(i) Has sought discovery;

(ii) Has filed a motion to compel;

(iii) Has had that motion granted; and

(iv) Nevertheless, has still not received the requested discovery.

(e) Reviewability of subpoena rulings—

(1) *General rule.* A MAC ruling on a subpoena request is not subject to immediate review by the Secretary.

(2) Exception. (i) To the extent a subpoena compels disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the MAC, the Secretary may review immediately that subpoena or portion of the subpoena.

(ii) Upon notice to the MAC that a party or non-party, as applicable, intends to seek Secretary review of the subpoena, the MAC must stay all proceedings affected by the subpoena.

(iii) The MAC determines the length of the stay under the circumstances of a given case, but in no event is less than 15 days after the day on which the MAC received notice of the party or non-party's intent to seek Secretary review.

(iv) If the Secretary grants a request for review, the subpoena or portion of the subpoena, as applicable, is stayed until the Secretary issues a written decision that affirms, reverses, modifies, or remands the MAC's action for the subpoena.

(v) If the Secretary does not grant review or take own motion review within the time allotted for the stay, the stay is lifed and the MAC's action stands.

(f) *Enforcement.* (1) If the MAC determines, whether on its own motion or at the request of a party, that a party or non-party subject to a subpoena issued under this section has refused to comply with the subpoena, the MAC may request the Secretary to seek enforcement of the subpoena in accordance with section 205(c) of the Act, 42 U.S.C. 405(c).

(2) Any enforcement request by the MAC must consist of a written notice to the Secretary describing in detail the MAC's findings of noncompliance and its specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the party or nonparty subject to the subpoena.

(3) The MAC must promptly mail a copy of the notice and related documents to the party or non-party subject to the subpoena, and to any other party and affected non-party to the appeal.

(4) If the Secretary does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the subpoena stands.

§ 405.1124 Oral argument.

A party may request to appear before the MAC to present oral argument.

(a) The MAC grants a request for oral argument if it decides that the case raises an important question of law, policy, or fact that cannot be readily decided based on written submissions alone.

(b) The MAC may decide on its own that oral argument is necessary to decide the issues in the case. If the MAC decides to hear oral argument, it tells the parties of the time and place of the oral argument at least 10 days before the scheduled date.

(c) In case of a previously unrepresented beneficiary, a newly hired representative may request an extension of time for preparation of the oral argument and the MAC must consider whether the extension is reasonable.

(d) The MAC may also request, but not require, CMS or its contractor to appear before it if the MAC determines that it may be helpful in resolving the issues in the case.

(e) The MAC will not draw any inference if CMS or a contractor decides not to participate in the oral argument.

§ 405.1126 Case remanded by the MAC.

(a) *When the MAC may remand a case.* Except as specified in § 405.1122(c), the MAC may remand a case in which additional evidence is needed or additional action by the ALJ is required. The MAC will designate in its remand order whether the ALJ will issue a final decision or a recommended decision on remand.

(b) *Action by ALJ on remand.* The ALJ will take any action that is ordered by the MAC and may take any additional action that is not inconsistent with the MAC's remand order.

(c) *Notice when case is returned with a recommended decision.* When the ALJ sends a case to the MAC with a recommended decision, a notice is mailed to the parties at their last known address. The notice tells them that the case was sent to the MAC, explains the rules for filing briefs or other written statements with the MAC, and includes a copy of the recommended decision.

(d) *Filing briefs with the MAC when ALJ issues recommended decision.* (1) Any party to the recommended decision may file with the MAC briefs or other written statements about the facts and law relevant to the case within 20 days of the date on the recommended decision. Any party may ask the MAC for additional time to file briefs or statements. The MAC will extend this period, as appropriate, if the party shows that it has good cause for requesting the extension.

(2) All other rules for filing briefs with and obtaining evidence from the MAC follow the procedures explained in this subpart.

(e) *Procedures before the MAC.* (1) The MAC, after receiving a recommended decision, will conduct proceedings and issue its decision or dismissal according to the procedures explained in this subpart.

(2) If the MAC determines that more evidence is required, it may again remand the case to an ALJ for further inquiry into the issues, rehearing, receipt of evidence, and another decision or recommended decision. However, if the MAC decides that it can get the additional evidence more quickly, it will take appropriate action.

§ 405.1128 Action of the MAC.

(a) After it has reviewed all the evidence in the administrative record and any additional evidence received,

subject to the limitations on MAC consideration of additional evidence in § 405.1122, the MAC will make a decision or remand the case to an ALJ.

(b) The MAC may adopt, modify, or reverse the ALJ hearing decision or recommended decision.

(c) The MAC mails a copy of its decision to all the parties at their last known addresses. For overpayment cases involving multiple beneficiaries where there is no beneficiary liability the MAC may choose to send written notice only to the appellant. In the event the decision will result in a payment to a provider or supplier, the Medicare contractor must issue any electronic or paper remittance advice notice to that provider or supplier.

§ 405.1130 Effect of the MAC's decision.

The MAC's decision is binding on all parties unless a Federal district court issues a decision modifying the MAC's decision or the decision is revised as the result of a reopening in accordance with § 405.980. A party may file an action in a Federal district court within 60 days after the date it receives notice of the MAC's decision.

§ 405.1132 Request for escalation to Federal court.

(a) If the MAC does not issue a decision or dismissal or remand the case to an ALJ within the adjudication period specified in § 405.1100, or as extended as provided in this subpart, the appellant may request that the appeal, other than an appeal of an ALJ dismissal, be escalated to Federal district court. Upon receipt of a request for escalation, the MAC may—

(1) Issue a decision or dismissal or remand the case to an ALJ, if that action is issued within the latter of 5 calendar days of receipt of the request for escalation or 5 calendar days from the end of the applicable adjudication time period set forth in § 405.1100; or

(2) If the MAC is not able to issue a decision or dismissal or remand as set forth in paragraph (a)(1) of this section, it will send a notice to the appellant acknowledging receipt of the request for escalation and confirming that it is not able to issue a decision, dismissal or remand order within the statutory time frame.

(b) A party may file an action in a Federal district court within 60 days after the date it receives the MAC's notice that the MAC is not able to issue a final action or remand unless the party is appealing an ALJ dismissal.

§ 405.1134 Extension of time to file action in Federal district court.

(a) Any party to the MAC's decision or to a request for EAJR that has been certified by the review entity other than CMS may request that the time for filing an action in a Federal district court be extended.

(b) The request must—

(1) Be in writing.

(2) Give the reasons why the action was not filed within the stated time period.

(3) Be filed with the MAC.

(c) If the party shows that he or she had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards specified in § 405.942(b)(2) or (b)(3).

§ 405.1136 Judicial review.

(a) *General rules.* (1) To the extent authorized by sections 1869, 1876(c)(5)(B), and 1879(d) of the Act, a party to a MAC decision, or an appellant who requests escalation to Federal district court if the MAC does not complete its review of the ALJ's decision within the applicable adjudication period, may obtain a court review if the amount remaining in controversy satisfies the requirements of § 405.1006(c).

(2) If the MAC's adjudication period set forth in § 405.1100 expires and the appellant does not request escalation to Federal district court, the case remains with the MAC until a final action is issued.

(b) *Court in which to file civil action.* (1) Any civil action described in paragraph (a) of this section must be filed in the district court of the United States for the judicial district in which the party resides or where such individual, institution, or agency has its principal place of business.

(2) If the party does not reside within any judicial district, or if the individual, institution, or agency does not have its principal place of business within any such judicial district, the civil action must be filed in the District Court of the United States for the District of Columbia.

(c) *Time for filing civil action.* (1) Any civil action described in paragraph (a) of this section must be filed within the time periods specified in § 405.1130, § 405.1132, or § 405.1134, as applicable.

(2) For purposes of this section, the date of receipt of the notice of the MAC's decision or the MAC's notice that it is not able to issue a decision within the statutory timeframe shall be presumed to be 5 calendar days after the date of the notice, unless there is a reasonable showing to the contrary.

(3) Where a case is certified for judicial review in accordance with the expedited access to judicial review process in § 405.990, the civil action must be filed within 60 days after receipt of the review entity's certification, except where the time is extended by the ALJ or MAC, as applicable, upon a showing of good cause.

(d) *Proper defendant.* (1) In any civil action described in paragraph (a) of this section is filed, the Secretary of HHS, in his or her official capacity, is the proper defendant. Any civil action properly filed shall survive notwithstanding any change of the person holding the Office of the Secretary of HHS or any vacancy in such office.

(2) If the complaint is erroneously filed against the United States or against any agency, officer, or employee of the United States other than the Secretary, the plaintiff will be notified that he or she has named an incorrect defendant and is granted 60 days from the date of receipt of the notice in which to commence the action against the correct defendant, the Secretary.

(e) *Prohibition against judicial review of certain Part B regulations or instructions.* Under section 1869(e)(1) of the Act, a court may not review a regulation or instruction that relates to a method of payment under Medicare Part B if the regulation was published, or the instructions issued, before January 1, 1991.

(f) *Standard of review.* (1) Under section 205(g) of the Act, the findings of the Secretary of HHS as to any fact, if supported by substantial evidence, are conclusive.

(2) When the Secretary's decision is adverse to a party due to a party's failure to submit proof in conformity with a regulation prescribed under section 205(a) of the Act pertaining to the type of proof a party must offer to establish entitlement to payment, the court will review only whether the proof conforms with the regulation and the validity of the regulation.

§ 405.1138 Case remanded by a Federal district court.

When a Federal district court remands a case to the Secretary for further consideration, unless the court order specifies otherwise, the MAC, acting on behalf of the Secretary, may make a decision, or it may remand the case to an ALJ with instructions to take action and either issue a decision, take other action, or return the case to the MAC with a recommended decision. If the MAC remands a case, the procedures specified in § 405.1140 will be followed.

§ 405.1140 MAC review of ALJ decision in a case remanded by a Federal district court.

(a) *General rules.* (1) In accordance with § 405.1138, when a case is remanded by a Federal district court for further consideration and the MAC remands the case to an ALJ, a decision subsequently issued by the ALJ becomes the final decision of the Secretary unless the MAC assumes jurisdiction.

(2) The MAC may assume jurisdiction based on written exceptions to the decision of the ALJ that a party files with the MAC or based on its authority under paragraph (c) of this section.

(3) The MAC either makes a new, independent decision based on the entire record that will be the final decision of the Secretary after remand, or remands the case to an ALJ for further proceedings.

(b) *A party files exceptions disagreeing with the decision of the ALJ.* (1) If a party disagrees with an ALJ decision described in paragraph (a) of this section, in whole or in part, he or she may file exceptions to the decision with the MAC. Exceptions may be filed by submitting a written statement to the MAC setting forth the reasons for disagreeing with the decision of the ALJ. The party must file exceptions within 30 days of the date the party receives the decision of the ALJ or submit a written request for an extension within the 30-day period. The MAC will grant a timely request for a 30-day extension. A request for an extension of more than 30 days must include a statement of reasons as to why the party needs the additional time and may be granted if the MAC finds good cause under the standard established in § 405.942(b)(2) or (b)(3).

(2) If written exceptions are timely filed, the MAC considers the party's reasons for disagreeing with the decision of the ALJ. If the MAC concludes that there is no reason to change the decision of the ALJ, it will issue a notice addressing the exceptions and explaining why no change in the decision of the ALJ is warranted. In this instance, the decision of the ALJ is the final decision of the Secretary after remand.

(3) When a party files written exceptions to the decision of the ALJ, the MAC may assume jurisdiction at any time. If the MAC assumes jurisdiction, it makes a new, independent decision based on its consideration of the entire record adopting, modifying, or reversing the decision of the ALJ or remanding the case to an ALJ for further proceedings, including a new decision. The new decision of the MAC is the final decision of the Secretary after remand.

(c) *MAC assumes jurisdiction without exceptions being filed.* (1) Any time within 60 days after the date of the decision of the ALJ, the MAC may decide to assume jurisdiction of the case even though no written exceptions have been filed.

(2) Notice of this action is mailed to all parties at their last known address.

(3) The parties will be provided with the opportunity to file briefs or other written statements with the MAC about the facts and law relevant to the case.

(4) After the briefs or other written statements are received or the time allowed (usually 30 days) for submitting them has expired, the MAC will either issue a final decision of the Secretary affirming, modifying, or reversing the decision of the ALJ, or remand the case to an ALJ for further proceedings, including a new decision.

(d) *Exceptions are not filed and the MAC does not otherwise assume jurisdiction.* If no exceptions are filed and the MAC does not assume jurisdiction of the cases within 60 days after the date of the ALJ's decision, the decision of the ALJ becomes the final decision of the Secretary after remand.

Dated: January 12, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 12, 2005.

Tommy G. Thompson,

Secretary.

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Part IV

Federal Trade Commission

16 CFR Parts 801, 802, and 803
Premerger Notification; Reporting and Waiting Period Requirements; Final Rule and Notice

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Federal Trade Commission is amending the premerger notification rules, which require the parties to certain mergers or acquisitions to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions, pursuant to section 7A of the Clayton Act ("the Act"). The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. This rulemaking introduces a number of changes that attempt to reconcile, as far as is practical, the current disparate treatment of corporations, partnerships, limited liability companies and other types of non-corporate entities under the rules, particularly in the areas of acquisitions of interests in these entities; formations of the entities; and the application of certain exemptions, including the intraperson exemption. This rulemaking also makes technical corrections in other provisions in the rules.

DATES: These final rules are effective April 7, 2005.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director; Karen E. Berg, Attorney; Malcolm L. Catt, Attorney, B. Michael Verne, Compliance Specialist; or Nancy M. Ovuka, Compliance Specialist; Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

On April 8, 2004, the Commission published a Notice of Proposed Rulemaking and request for Public Comment. The comment period closed on June 4, 2004.[1] The Proposed Rules recommended changes improving and updating the HSR rules in 16 CFR parts 801, 802 and 803.

The proposed rules were intended to apply the Act as consistently as possible to all forms of legal entities, requiring filings for transactions that are likely to present antitrust concerns and exempting transactions that are not. The central thrust of these rules is that meaningful antitrust review should occur at the point at which control of an unincorporated entity changes.

The proposed changes to the coverage rules include a revision to Section 801.1(b) to remove the alternate control test for unincorporated entities; an amendment to Section 801.1(f) to define a "non-corporate interest"; a revision to Section 801.2(d) to clarify the consolidation rule; an amendment to Section 801.2(f) to define when acquiring interests in unincorporated entities may constitute an acquisition; a new subsection to Section 801.10 to define how to value such an acquisition; a new subsection to Section 801.13 to address aggregation of non-corporate interests; and a new Section 801.50, which makes certain formations of unincorporated entities a reportable event. There are also ministerial changes to Sections 801.4, 802.40 and 802.41 to adapt their application to both corporations and unincorporated entities. Additionally, there are minor changes to the Notification and Report Form to require that Item 5(d) be completed in connection with the formation of an unincorporated entity, to reflect the applicability of Items 7 and 8 to unincorporated entities and to change the reporting requirement in Items 1, 2 and 7 with regard to the formation of new entities.

Proposed changes to the exemption rules include modifying Section 802.4 to eliminate the dissimilar treatment of asset and voting securities acquisitions that are substantively the same; codifying in Section 802.10 a longstanding informal interpretation that pro-rata reformations (*i.e.*, reincorporation in a new jurisdiction) are exempt transactions; changing Section 802.30 to apply the intraperson exemption to entities that are held other than through holdings of voting securities; and adding a new Section 802.65 to exempt acquisitions of non-corporate interests in entities that are formed in connection with financing transactions.

In addition to amendments concerning unincorporated entities, there were technical corrections to Sections 801.13, 801.15 and 802.2.

The Commission received seven substantive public comments addressing the Proposed Rules. In addition to the substantive comments, the Commission received several non-substantive comments through the *http://www.regulations.gov* Web site. The comments are published on the FTC Web site at *http://www.ftc.gov/os/comments/hsr/index.htm*.

The following submitted substantive public comments on the Proposed Rules:

1. Section of Antitrust Law, American Bar Association (Grady, Kevin) (06/03/2004).
2. Bank of America (Wertz, Phillip) (06/03/2004).
3. Gunderson Dettmer (Caplice, Sean) (06/03/2004).
4. Howery, Simon, Arnold & White LLP on behalf of its client Bertelsmann AG (Grise, Jacqueline) (05/26/2004).
5. Kirkland & Ellis LLP (Sonda, Jim, *et al.*) (06/03/2004).
6. Sony Corporation of America (Kattan, Joseph) (05/27/2004).
7. Business Law Section, Virginia State Bar (Wheaton, James) (06/03/2004).

Introduction

The Act applies to acquisitions of voting securities or assets. Whether a transaction must be reported is determined by applying the statute, supporting regulations, and formal and informal staff interpretations. Neither the Act nor the Hart-Scott-Rodino rules ("HSR rules") specifically addresses whether interests in unincorporated entities are deemed to be voting securities or assets. The Premerger Notification Office, by informal interpretation, has long taken the position that partnership interests, and, by extension, interests in other types of unincorporated entities, are neither assets nor voting securities. Thus, any acquisition of such interests has not been deemed a reportable event unless 100 percent of the interests are acquired, in which case the acquisition is deemed to be that of all of the underlying assets of the partnership or other unincorporated entity.

Informal staff interpretations of the current rules with respect to unincorporated entities lead to several anomalies that do not occur with corporations. These inconsistencies relate primarily to three areas: changes of control, intraperson transfers of assets, and formations.

(a) Changes of Control

Section 801.2(a) states "[a]ny person which, as a result of an acquisition, will hold voting securities or assets * * * is an acquiring person." Section 801.1(c)(8) further states "* * * in addition to its own holding, an entity

[1] 69 FR 18686 (April 8, 2004).

holds all assets and voting securities held by the entities which it controls * * *." Despite this language, under current application of the rules, if a minority interest holder or a person that holds no interests at all acquires a controlling, but less than 100 percent interest in an existing unincorporated entity, the transaction is never reportable because the person that will control the unincorporated entity is not deemed to be acquiring the assets of the entity and no reportable acquisition occurs. However, under the rules, the person is immediately deemed to hold those same assets for purposes of determining the size-of-person test, by virtue of having the right to 50 percent or more of the profits and assets upon dissolution of the entity. Further, if the person that now controls the unincorporated entity, were to acquire the remaining interests, it would be required to file notification to acquire the same assets it is deemed to currently hold by virtue of Section 801.1(c)(8), assuming the jurisdictional thresholds are met. The intraperson exemption provided in Section 802.30 prevents this result in the context of a corporation but is not available to unincorporated entities because the exemption requires that the acquiring and acquired person be the same by reason of holdings of voting securities.

Thus, under this current application of the rules, if a person currently holding no interests, or a minority position, in a non-corporate entity acquires 100 percent of the interests, the person is required to file, but if it acquires 99 percent it is not. A person that controls a non-corporate entity and acquires the remainder of the interests must also file. Both situations are anomalous: A filing is required after control is obtained, yet no filing is required to gain control.

Consistent with the treatment of corporate entities, meaningful antitrust review should occur at the time that control of an unincorporated entity changes, and not after control is already acquired. Currently, if a person that controls a partnership or other unincorporated entity is acquiring the remaining interests, that interest holder is deemed both an acquiring and acquired person, and must file notification to acquire the assets that, according to a literal reading of the rules, it already holds.[2] For example, a 90 percent partner acquiring the remaining 10 percent of the interest in a partnership must file. An HSR filing for this type of transaction appears to be of little antitrust significance. The Commission receives a significant number of such filings each year and believes that additional transactions are not reported as currently required due to the counterintuitive nature of the current application of the rules.[3]

(b) Intraperson Transfers

In the context of corporations, any transfer of assets from a corporation to a controlling shareholder, or a transfer of assets from one corporate subsidiary of a parent to another corporate subsidiary of the same parent is exempt.[4] However, because partnerships and other unincorporated entities are not controlled through the holding of voting securities, similar transfers involving such entities are reportable. For example, a reportable transaction results when assets are transferred from a partnership to a partner that holds a 90 percent interest in the partnership, irrespective of the fact that the controlling partner is already deemed to hold those assets. Similarly, if a person controls two different partnerships and transfers assets from one to the other, that person would have a filing requirement despite the fact that it holds the assets under the rules both before and after the transfer. This result conflicts with the definition in Section 801.2 of an acquiring person as "Any person which, *as a result of an acquisition* will hold voting securities or assets * * *" (emphasis supplied).

(c) Formations

With the exception of certain limited liability company formations, [5] formations of unincorporated entities are not reportable events. This leads to a number of transactions where a *de facto* change of control of assets can occur without notification. For example, A and B form a non-corporate entity to which B will contribute a business in exchange for a 40 percent interest and A will contribute cash in exchange for a 60 percent interest. Although A now holds assets that were previously held by B, current application of the rules does not require notification because A will not hold 100 percent of the interests in the non-corporate entity nor are two pre-existing businesses being combined in an LLC. This would not be reportable in an LLC or partnership formation but would be reportable in the formation of a corporation. While Formal Interpretation 15 was an attempt to address this inconsistency in the context of limited liability company formations, its application still results in non-reportable transactions that could have significant antitrust implications.

Public Comments

The comments received were generally positive. The American Bar Association, Section of Antitrust Law stated:

> The Section also supports most of the Commission's proposed rule changes. As the first attempt at improved harmonization of the treatment for all entities, the proposed rules are grounded in improved logic with due regard for administrability and the undeniable structural differences between and among entities. The proposed rules are therefore better able to serve the goals of Section 7 enforcement than the current rules and interpretations. Similarly, to the extent that the proposed rules reduce anomalies and logical inconsistencies, they can also be said to promote HSR Act compliance, for illogical rules can promote inadvertent violations." [6]

The suggested changes to the Proposed Rules advanced by the public comments fell into three broad categories: (1) Requests for changing the control test for unincorporated entities from an equity test to a governance test; (2) requests for expansion of proposed exemptions or promulgation of additional exemptions; and (3) other requests for clarification. Additionally, a number of the comments contained observations on the proposed rules but did not ask for any specific action. These observations are not addressed in this notice. The Commission agreed with a number of the recommendations and has incorporated them into these final rules. Other recommendations were not adopted for the reasons detailed below.

In addition to requesting specific modifications to the rules, Comments 1 and 2 expressed concern that the estimated number of additional filings these rules would entail (as calculated in the Paperwork Reduction Act section of the proposed rules) may not reflect the actual number that may ultimately be required. The Commission agrees

[2] 16 CFR 801.1(c)(8).

[3] From FY 1997 through FY 2004, the Commission received 259 filings in which the acquiring person and the acquired person were the same.

[4] "An acquisition (other than the formation of a joint venture or other corporation the voting securities of which will be held by two or more persons) in which, by reason of holdings of voting securities, the acquiring and acquired persons are (or as a result of formation of a wholly owned entity will be) the same person, shall be exempt from the requirements of the Act." 16 CFR 802.30.

[5] Formal Interpretation 15 (64 FR 5808 (February 5, 1999)) treats the formation of an LLC as reportable if (1) two or more pre-existing, separately controlled businesses will be contributed to the LLC, and (2) at least one of the members will control the LLC. The formation of all other LLCs is treated like the formation of a partnership, which is not reportable.

[6] Comment of The Section of Antitrust Law, American Bar Association, Kevin E. Grady, Esq., p. 2.

that it is difficult to project the impact of these changes and will monitor the number and types of transactions that require notification as a result of these amendments. It will consider revisiting these amendments if a significant number of filings for transactions that do not raise antitrust issues are received as a result of the changes.

Four of the new exemptions that were requested by the comments were not adopted by the Commission. A discussion of the requested new exemptions is found at the end of part 802. The Commission will adopt one new exemption requested by the comments and will expand two others. Comments 4 and 6 requested a new transitional exemption for previously unreportable transactions that become reportable while they are under investigation by one of the agencies. The Commission has adopted this proposal in new Section 802.80. The Commission agrees with the commenters that transactions in this category are unlikely to raise any new antitrust issues and do not warrant the burden of notification under the Act.

In addition, the Commission will broaden the scope of two of the proposed exemptions. Proposed Section 802.65 will be extended to cover existing unincorporated entities, and the prong requiring that the acquiring person not be a competitor of the unincorporated entity will be eliminated. Second, voting securities will be added to the language of Section 802.30(c) so that both contributions of assets and voting securities to the formation of a new unincorporated entity will be exempt with respect to the contributor.

Other amendments to the proposed rules are discussed by section. Unless specifically modified in this document, all of the analysis accompanying the proposed rules in the Notice of Proposed Rulemaking is adopted and incorporated into this Statement of Basis and Purpose for the final rules.

Part 801—Coverage Rules

Section 801.1 Definitions

The proposed amendment to Section 801.1(b)(2) would remove the alternate test of control for unincorporated entities, which provides for control through having the present contractual power to designate individuals exercising similar functions to those of directors of a corporation. This proposed amendment was intended to ensure that it was clear that an acquisition involving an unincorporated entity is reportable only when control is acquired through an acquisition of non-corporate interests that confer the right to profits or assets upon dissolution of the entity. However, the proposed amendment had the unintended effect of eliminating the test for control of certain trusts, defined in Section 801.1(c)(3) through (5), as having the right to designate 50 percent or more of the trustees of such a trust. The final rule adds back the alternate test of control for these trusts.

Comments 2 and 7 requested that the Commission change its test of control for unincorporated entities from an equity test to a governance test, more in line with the test of control for corporations. As the Commission noted in its discussion of the proposed amendment to the control rule, this option was considered at length but rejected as too difficult to apply to unincorporated entities because of the inherent differences in legal structure between corporations and unincorporated entities. As comment 7 noted: "By their very nature, unincorporated entities tend to be contractual in nature, and their management arrangements reflect a broad continuum of contractual options." [7]

When the Commission promulgated the control definition for unincorporated entities in 1987, it considered other indicia of control of partnerships, including a governance test that would designate general partners as controlling persons.

> In formulating the 50% ownership criterion, consideration was given to whether other indicators of control should be included. For example, the Commission might have proposed treating all general partners or the sole general partner of a limited partnership as controlling the partnership. While the Commission did not doubt its authority to attribute control on the basis of this or other criteria, the Commission declined to utilize that authority at this time because it might require many unnecessary filings * * * At present, a rule requiring all general partners to file seems unnecessary and therefore unduly burdensome * * *" [8]

While the Commission agrees that a workable governance test for non-corporate entities would align the treatment of such entities even more closely with corporations, the Commission continues to believe that applying a governance test to partnerships is in practice unworkable and is even more difficult to apply to other types of unincorporated entities, such as LLCs, which seem to have an endless range of different governance structures. Accordingly, the Commission declines to change the control rule at this time, but will continue to consider alternatives that bring the test for unincorporated entities more in line with corporations. It therefore invites continued input from interested parties on this subject.

Comments 1, 2 and 5 raised questions concerning the determination of control where the right to profits or assets upon dissolution is governed by a formula that is based upon variables that cannot be determined at the time of the formation of the entity, or upon an acquisition of interests in an existing entity. If an agreement designates a fixed percentage of profits and/or assets upon dissolution for each person contributing to the formation of the entity or for a person acquiring an interest in an existing entity, the analysis is straightforward. If, however, the profit distribution or distribution of assets upon dissolution is dependent on variables that will be determined in the future, the analysis is more complex.

In order to provide guidance on this issue, the Commission will determine whether a controlling interest has been acquired, either in the formation of a new unincorporated entity or in the acquisition of interests in an existing unincorporated entity when the right to profits and/or the right to assets upon dissolution is not fixed in the following manner: If the right to profits is variable and the right to assets upon dissolution is fixed, the right to 50 percent or more of the assets upon dissolution will be deemed to confer control. Conversely, if the right to assets upon dissolution is variable and the right to profits is fixed, the right to 50 percent or more of the profits will be deemed to confer control. In a situation where both the right to profits and assets upon dissolution are variable, control will be determined by applying the formula for determining rights to assets upon dissolution to the total assets of the unincorporated entity at the time of the acquisition, as if the entity were being dissolved at that time.

Where rights to both profits and assets are variable, for purposes of determining control of a to-be-formed unincorporated entity, a pro forma balance sheet should be prepared in the manner prescribed in Section 801.11(e)(2)(i). For purposes of determining control of an existing unincorporated entity, the last regularly prepared balance sheet in existence at the time of the acquisition should be used. If no such regularly prepared balance sheet exists, a pro forma balance sheet should be prepared in the same manner as prescribed above for a to-be-formed unincorporated entity. If no

[7] Comment from Troutman Sanders LLP, on behalf of the Business Law Section of the Virginia State Bar, James J. Wheaton, Esq., p.4.

[8] 52 FR 20061 (May 29, 1987).

person has the right to 50 percent or more of the assets of the entity using this method, no person has acquired control of the entity as a result of the proposed acquisition.

The Commission realizes that this is not a perfect solution and may produce some anomalies, but believes that it is the best methodology available at present that will offer a degree of certainty in determining when a potentially reportable acquisition of non-corporate interests will occur. As always, the Commission encourages additional input by interested parties and will give serious consideration to any alternative method that appears to be a better solution.

Proposed new Section 801.1(f)(1)(ii) would define the term "non-corporate interest" as an interest in any unincorporated entity that gives the holder the right to any profits of the entity or the right to any assets of the entity in the event of dissolution of that entity. Comment 5 requested that the proposed definition be clarified to indicate that such interests include only equity interests and not debt interests. The definition in its final form provides this clarification by modifying the definition to include the right to any profits of the entity or, in the event of dissolution of that entity, the right to any of its assets after payment of its debts.

Section 801.2 Acquiring and Acquired Persons

The proposed amendments to Section 801.2(d) would codify a longstanding informal staff position that the combination of any two entities into a new holding company is the functional equivalent of a consolidation and should be treated in the same manner, regardless of whether the entities are corporations or non-corporate entities. It also clarifies that even if the two entities are retaining their separate legal identities by becoming subsidiaries of the new holding company, the transaction would be treated in the same manner, *i.e.*, as a consolidation.

The proposed amendments to Section 801.2(d) would treat arrangements such as dual-listing agreements the same as consolidations.[9] Comment 1 requested that this provision be eliminated because it could not distinguish such arrangements from other types of contractual agreements that do not fall under the scope of the Act. The Commission recognizes that all of these arrangements involve foreign entities and to date have occurred fairly rarely. Given these facts and because the Commission concurs that it is difficult to differentiate dual listing arrangements from other types of non-reportable contractual combinations of businesses, it agrees that the provision covering dual listing company agreements should be removed from the final rule defining consolidations. In the future, the Commission may consider reexamining this issue should it find that a significant number of combinations raising substantial antitrust issues use a dual-listing type of arrangement.

Proposed new Section 801.2(f)(1) provides that an acquisition occurs at the time non-corporate interests which confer control of an unincorporated entity are acquired. At this point the person who controls the entity is deemed to hold all of the assets of the entity. Thus the proposed rules would shift reporting from when 100% of the interest in an unincorporated entity is received to the more significant point when control is obtained.[10] This change would be consistent with Section 801.2(a) which defines an acquiring person as "[a]ny person which, as a result of an acquisition, will hold voting securities or assets, either directly or indirectly * * * is an acquiring person."

Proposed new Section 801.2(f)(2) would clarify that a contribution of assets or voting securities to an existing unincorporated entity is an acquisition by that entity and that such a transaction would not be governed by new Section 801.50, even if all or part of the consideration is interests in the entity. This differs from Formal Interpretation 15 which views the contribution of a business to an existing LLC in exchange for membership interests as a new formation of that LLC. Note that when a person acquires control of an existing non-corporate entity as a result of a contribution made to that non-corporate entity, the acquisition by the non-corporate entity from the contributing person is not separately reportable.

Proposed Section 801.2(f)(3) would also codify a longstanding informal position that acquiring the right to designate 50 percent or more of the board of directors of a not-for-profit corporation is an acquisition of all of the underlying assets of such an entity. This is generally accomplished by becoming a member with the right to designate 50 percent or more of the board of directors.

There were no comments received on these sections. 801.2(f)(3) will be adopted as proposed without change. The final rules incorporate minor edits to sections 801.2(f)(1) and (2) to clarify when a potentially reportable acquisition of non-corporate interests has occurred and who the acquiring and acquired persons are.

Section 801.4 Secondary Acquisitions

The proposed amendment to Section 801.4 would clarify that any indirect acquisition of voting securities of an issuer that is not controlled by the acquired entity in the primary acquisition is deemed a secondary acquisition and is separately subject to the reporting requirements of the Act. This is true whether the primary acquisition confers control of a corporation or of an unincorporated entity. There were no comments on this section and the proposed rule will be adopted without change.

Section 801.10 Value of Voting Securities, Assets and Non-Corporate Interests To Be Acquired

Proposed Section 801.10(d) would specify the method of valuing a transaction in which non-corporate interests that confer control of an existing unincorporated entity are acquired. Under the current rules, in an acquisition of voting securities of a non-publicly traded corporation, where a person acquires 50 percent or more of the corporation's voting securities, that person is deemed to hold all of the assets of the corporation. However, the value of the transaction is the value of the percentage interest held in the corporation, not the value of 100 percent of the underlying assets. The Commission believes that it is appropriate to similarly value an acquisition of non-corporate interests. Rather than treating such a transaction as a stand-alone acquisition of assets, which would be valued in accordance with Section 801.10(b), the proposed rule establishes the value of the transaction by using the same methodology employed in valuing voting securities of a non-publicly traded corporation. Therefore, the value of any non-corporate interests which are being acquired is the acquisition price if determined or if undetermined, the fair market value of those interests. The value of any non-corporate interests in the same unincorporated entity which are already held prior to the instant acquisition is the fair market value of those interests.

[9] See proposed section 801.2(d)(2)(iii).

[10] *See* Sec. 801.1(c)(8), which provides that a "person holds all assets and voting securities held by the entities included within it; in addition to its own holdings, an entity holds all assets and voting securities held by the entities which it controls directly or indirectly."

There were no comments on this section and the proposed rule will be adopted without change.

Section 801.11 Annual Net Sales and Total Assets

The final rules will include a technical correction to Section 801.11(b), which states that this section is inapplicable to the determination of the size of a newly formed entity, that adds a reference to unincorporated entities formed under Section 801.50 to make it consistent with the formation of corporations under Section 801.40.

Section 801.13 Aggregation of Voting Securities, Assets and Non-Corporate Interests

The proposed amendment to Section 801.13(b) would correct a drafting oversight that has existed since the original rulemaking in 1978.[11] Amended Section 801.13(b) would require aggregation if, within the 180 days preceding the execution of a letter of intent or agreement, (1) a still valid letter of intent or agreement, which has not been consummated, was entered into with the same acquired person; or (2) assets were acquired from the same acquired person and are still held by the acquiring person. No aggregation is required if the earlier contemplated or consummated acquisition was subject to the requirements of the Act.

Proposed new Section 801.13(c) would require that any new acquisition of non-corporate interests be aggregated with any previously acquired non-corporate interests in the same unincorporated entity for purposes of determining the value of the transaction in accordance with new Section 801.10(d).

There were no comments on these provisions and the proposed rule will be adopted with minor edits for clarification.

Section 801.15 Aggregation of Voting Securities and Assets the Acquisition of Which Was Exempt

As explained in the Notice of Proposed Rulemaking, the proposed amendment to Section 801.15 would correct a drafting oversight in the rulemaking promulgated in March, 2002.[12] To correct this earlier drafting error, the proposed amendment to Section 801.15 would move reference to Sections 802.50 and 802.51 from paragraph (b) to new paragraph (d), which requires that sales in or into the U.S. be aggregated under both foreign exemptions to determine if the $50 million limitation is exceeded. There were no comments on this section and the proposed rule will be adopted without change.

Section 801.21 Securities and Cash Not Considered Assets When Acquired

The final rules add a technical correction to Section 801.21 to include a reference to its use in Section 802.4. The change also corrects a potentially misleading statutory reference in the rule.

Section 801.50 Formation of Unincorporated Entities

Proposed Section 801.50 would govern the reportability of formations of new unincorporated entities. Because the formation of an entity presents the same potential antitrust concerns regardless of whether its legal form is that of a corporation or a non-corporate entity, the Commission believes that all such formations should be treated as similarly as possible under the rules. Thus, proposed new Section 801.50 would mirror Section 801.40, which governs the formation of corporations, with two exceptions as discussed in the NPRM. Most importantly, like any potentially reportable acquisition of an existing unincorporated entity, acquisitions of non-corporate interests which confer control must be reported.

The final rules reorganize Section 801.50 for clarity and add language that was inadvertently omitted in the proposed rule. The added language clarifies that a newly formed entity is not an acquiring person with respect to any contribution to its formation and comports with similar language in Section 801.40 governing corporate formations. There is also a new example added to illustrate the interplay among sections 801.50, 802.4 and 802.30(c). There were no comments on this section.

Part 802—Exemption Rules

Section 802.2 Certain Acquisitions of Real Property Assets

In 2001, the FTC amended the HSR Form and Instructions to require reporting of revenue data by NAICS[13] rather than by SIC[14] code.[15] At the same time, the two HSR Rules that had referenced SIC codes were amended so as to replace those references with "the applicable NAICS sector." Accordingly, the parenthetical in the agricultural property exemption was amended to read:

"(activities within NAICS sector 11)."

The agencies have since discovered that timberland, which was in SIC major group 08 and thus not originally referenced in the parenthetical at issue, is in NAICS sector 11, which is captioned "Agriculture, Forestry, Fishing and Hunting." Within sector 11 are "timber tract operations", "forest nurseries and gathering of forest products", and "logging." Thus, the change to NAICS sector 11 could be read as expanding the exemption beyond the agricultural property originally intended.

To rectify this ambiguity and clarify that timberland acquisitions are not exempted by Section 802.2(g), the proposed amendment to this rule would make two changes. First, the parenthetical at issue would be revised to make it clear that only real property and assets that primarily generate revenues from "certain" activities within NAICS sector 11, *i.e.*, activities named in the text of the rule (the production of crops, fruits, vegetables, livestock, poultry, milk and eggs), are exempted. Second, the amendment would add a new subsection under the exceptions to the rule providing that timberland and other real property that generates revenues from activities within NAICS subsector 113 (Forestry and logging) and NAICS industry group 1153 (Support activities for forestry and logging) do not qualify for the agricultural property exemption. There were no comments on this section and the proposed rule will be adopted without change.

Section 802.4 Acquisitions of Voting Securities of Issuers or Non-Corporate Interests in Unincorporated Entities Holding Certain Assets the Acquisition of Which Is Exempt

Proposed Section 802.4 exempts an acquisition of voting securities if the acquired issuer or issuers do not, in the aggregate, hold non-exempt assets exceeding the $50 million notification threshold. The proposed rule would expand the current rule in two ways: First, consistent with the other proposed amendments to the rules, the proposed amendments to this exemption would apply to both acquisitions of voting securities and to acquisitions of non-corporate interests. Second, the proposed exemption would be broadened to include acquisitions of voting securities or of non-corporate interests that confer control of an unincorporated entity if the assets of the issuer or unincorporated entity are

[11] The Notice of Proposed Rulemaking explains the problem with the current provision. 69 FR 18691 (April 8, 2004).

[12] 67 FR 11898 (March 18, 2002)

[13] North American Industry Classification System.

[14] Standard Industrial Classification System

[15] 66 FR 23561 (May 9, 2001) (interim rules); 66 FR 35541 (July 6, 2001) (finalizing interim rules).

exempt under any section of part 802 of the rules or Section 7A(c) of the Act, or are specified under Section 801.21 of the rules. There were no comments on this section and the proposed rule will be adopted without change.

Section 802.10 Stock Dividends and Splits; Reorganizations

Proposed new Section 802.10(b) would expand the existing exemption to codify a longstanding informal staff position that exempts the reincorporation or formation of an upstream holding company by an existing corporation, as long as two conditions are met: (1) No new assets will be introduced as a result of the conversion, and (2) the percentage of interests that will be held by an acquiring person in the new entity will be, pro-rata, the same or less than the percentage of holdings in the original entity. The reorganization will be exempt for a person that controlled the original entity regardless of its holdings in the new entity as long as the first condition is met. There were no comments on this section and the proposed rule will be adopted without change.

Section 802.30 Intraperson Transactions

Section 802.30 in its present form exempts acquisitions in which, by reason of holdings of voting securities, the acquiring and acquired person are the same person. Current Section 802.30 produces another inconsistent application of an exemption dependent on whether a corporation or an unincorporated entity is involved in the transaction. Because of the qualifying phrase "by reason of holdings of voting securities", entities that do not issue voting securities are excluded from the exemption. For example, if a corporate subsidiary transfers assets to its controlling shareholder, no filing is required. If an unincorporated subsidiary made the same transfer to a person who controlled it, the exemption would not apply. Similarly, if a parent controlled two corporations and transferred assets from one to the other, no filing is required. If a parent controlled two partnerships and made the same transfer between them, the exemption is inapplicable and a filing would be required. These scenarios seem at odds with the HSR rules' definition of "control" and "hold" because the parent holds the assets of the controlled entities both before and after each transaction.

Proposed Section 802.30(a) would eliminate the requirement that control be achieved through the holding of voting securities, and instead applies the appropriate control test in Section 801.1(b)(1) to any type of entity. This proposed section also adds the provision that the exemption would apply if "at least one of the acquired persons" is the same person. This insures that the proposed exemption would be available in an acquisition where there are two acquired ultimate parent entities as in proposed Example 1.

The proposed amendment to Section 802.30(b) would restate the existing exemption for formation of wholly-owned subsidiaries, but would change the language slightly to exempt the formation of any type of wholly-owned entity.

Proposed new Section 802.30(c) would provide that assets that will be contributed to a new entity upon its formation would not be subject to the requirements of the Act with respect to the person contributing the assets to the formation. This is intended to eliminate a filing requirement where the assets contributed to the formation by other persons would not on their own be subject to the Act, such as when the controlling person contributes assets and the non-controlling person contributes only cash. This proposed exemption would be applicable to the formations of both unincorporated entities and corporations.

Comment 1 requested that voting securities be added to the language in 802.30(c) so that a contribution of either voting securities or assets to the formation of a new entity would be exempt with respect to the person contributing them. The Commission will incorporate the requested language in the final version of this section. The final rule also incorporates minor edits for clarity.

Section 802.40 Exempt Formation of Corporations or Unincorporated Entities

Section 802.40 is intended to exempt the formation of not-for-profit corporations, but its requirement that the acquisition be of voting securities of the not-for-profit is inapposite because the vast majority of not-for-profit corporations do not issue voting securities. The proposed amendment to Section 802.40 would correct this by removing the reference to voting securities, thereby extending the exemption to the formation of any not-for-profit entity within the meaning of the cited sections of the Internal Revenue Code. There were no comments on this section and the proposed rule will be adopted without change.

Section 802.41 Corporations or Unincorporated Entities at the Time of Formation

Section 802.41 states that in a formation of a joint venture or other corporation under Section 801.40, only the acquiring persons need file notification; the new corporation being formed is not required to file as an acquired person. The proposed amendment to Section 802.41 would extend the same treatment to new unincorporated entities being formed under proposed new Section 801.50. There were no comments on this section and the proposed rule will be adopted without change.

Section 802.65 Exempt Acquisition of Non-Corporate Interests in Financing Transactions

Proposed new Section 802.65 would exempt certain acquisitions in financing transactions involving the formation of unincorporated entities. In some financing transactions, a new unincorporated entity is formed into which one party contributes assets and another contributes only cash. Initially, the cash investor will have a preferred return in order to recover its investment. As a result, that person may have the right to 50 percent or more of the profits of the entity for some period of time following the formation. This type of transaction is analogous to a creditor acquiring secured debt in the entity, an event that is not subject to the Act. Rather than taking back secured debt, however, the investor acquires an equity interest in the entity only long enough to obtain its return on investment. For these reasons, the Commission believes that such a financing arrangement is unlikely to raise antitrust concerns.

As proposed in the NPRM, the new exemption would be applicable when four conditions are met: (a) The acquiring person is contributing only cash to the formation of the entity; (b) the formation transaction is in the ordinary course of the acquiring person's business; (c) the terms of the formation agreement are such that the acquiring person will no longer control the entity after it realizes its preferred return; and (d) the acquiring person will not be a competitor of the new entity.

Various comments requested changes to proposed Section 802.65. Comments 2 and 3 recommended removing proposed paragraph (d) because the term "competitor" is not defined in the rules and may unreasonably narrow the scope of the exemption in certain situations. The Commission agrees that this may be ambiguous and that if the other three conditions of the exemption

are satisfied, the need for this fourth condition is diminished. Therefore, Section 802.65 in its final form will not contain requirement (d).

Comments 2 and 3 also recommended that the exemption be expanded to cover financing transactions that involve acquisitions of interests in existing unincorporated entities. The Commission agrees that if an interest is acquired in an existing unincorporated entity in a bona fide financing transaction that satisfies the other requirements of this exemption, there is no reason for the exemption not to be available. Therefore, the final rule will incorporate this recommendation.

Comments 1, 3 and 7 requested that paragraph (b), which requires that the financing transaction be in the ordinary course of the acquiring person's business, be eliminated. The stated concern was that this provision might prevent an entity that was not a financial institution, such as a bank, from using the exemption in an otherwise bona fide financing transaction. A second concern was that a recently formed entity that had not yet engaged in previous financing transactions would not satisfy this test. The intent of this test was not to require that the transaction be in the ordinary course of business of the acquiring person, rather that the transaction be for the purpose of providing financing. Therefore, paragraph (b) will remain in the final rule but will be reworded to clarify its application.

Comments 1, 2, 3 and 7 recommended eliminating paragraph (c), which requires that the acquiring person cede control of the unincorporated entity once it has recovered its investment. The criticism of this provision was that it narrowed the exemption to a specific type of financing structure and would exclude transactions where the equity return to the investor was fixed for the life of the financing vehicle. These final rule amendments will have the result that, in a transaction where one party ("A") contributes cash and takes back a 50 percent or greater equity interest in an unincorporated entity, and another party ("B") contributes non-exempt assets, the person acquiring the controlling interest must file notification if the statutory thresholds are exceeded. This result departs from the methodology of Formal Interpretation 15, which makes the formation of a new LLC reportable only when it combines two previously separately controlled businesses.[16] Formal Interpretation 15 has proven unsatisfactory in capturing a number of LLC transactions that the Commission believes should be reported, such as the type of transaction described above. In this transaction, A now holds assets that were previously held by B. If A directly acquires the assets from B, the acquisition is reportable. The Commission sees no reason why a change in beneficial ownership of the same assets should be non-reportable because it is effected through acquiring for cash a controlling interest in an unincorporated entity. A new Formal Interpretation 18 will be issued that revokes Formal Interpretation 15.

New Section 802.65 was intended to be a narrow exception to the general notion that acquisition of a controlling interest in an unincorporated entity should be reportable, limited to instances where a cash acquisition is an ordinary course of business mechanism of providing financing, and the acquiring person's acquisition of a controlling interest is only temporary. The Commission did not intend to exempt cash acquisitions of controlling interests in unincorporated entities generally. The Commission believes that the exemption is workable, especially with the two amendments described above, although clearly not as broad as some commenters desire. Therefore, paragraph (c) will remain in the final rule. As with this rulemaking generally, the Commission will revisit this exemption if experience with the rules warrants.

Section 802.80 Transitional Rule for Transactions Investigated by the Agencies

The final rules add a new transitional exemption for transactions that are or have been under active investigation by the FTC or the DOJ and would otherwise be subject to notification when these rules become final. Comments 4 and 6 requested an exemption with regard to formation of unincorporated entities, designed to exempt transactions from filing requirements if the parties have or are currently providing documents regarding the same transaction to one of the agencies under a subpoena or CID that is the functional equivalent of a second request. The Commission agrees that subjecting the parties to additional filing and waiting period requirements, as well as filing fees, would serve no useful purpose and would be unduly burdensome and unfair. Therefore, the exemption will be included in the final rules, as new Section 802.80. The Commission notes that a transaction involving an acquisition of control of an existing unincorporated entity that meets the same criteria should also be exempt from reporting. It has therefore added a reference to Section 801.2 to the language suggested by the commenters, which requested the exemption only for new formations of unincorporated entities under Section 801.50. It should be noted, however, that if the transaction materially changes during or after the pendency of the investigation, it may be subject to notification under these new rules.

Additional Exemptions Requested by the Commenters

Commenters requested three types of new additional exemptions. Comments 2 and 3 requested a new exemption for investments in passive investment vehicles, including mutual funds, investment companies, hedge funds, and structured finance and securitization vehicles. The Commission believes that the recommended new exemption for investments in passive investment vehicles goes beyond the scope of the proposed exemption for financing transactions that will be adopted in these rules. While some acquisitions of interests in these types of entities may have no antitrust implications, the Commission is concerned that such a broad exemption, particularly without a definition of precisely which types of entities are included, could lead to problematic acquisitions going unreported to the agencies. Although certain of these transactions will fall under new Section 802.65 and other existing exemptions, the Commission is concerned that broadening the scope of exemptions to the extent requested by the commenters could result in potentially anticompetitive combinations.

Comment 7 asked for a new exemption for acquisitions of non-voting interests in unincorporated entities. Similarly, Comment 1 requested a new exemption for acquisitions of economic rights in an unincorporated entity that is structured to separate economic rights from control rights. The requested new exemptions for acquisitions of non-voting interests and economic rights are in direct conflict with the control test for unincorporated entities, which remains an equity test as indicated above in the discussion of Section 801.1(b).

Comment 2 requested an exemption for transactions entered into pursuant to

[16] 64 FR 5808 (February 5, 1999). The requirement that two businesses must be combined to make an LLC formation reportable was included in Formal Interpretation 15 to eliminate a filing requirement for financing transactions of the type now exempted by new Section 802.65.

the Community Reinvestment Act.[17] The Community Reinvestment Act requires Federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals. As part of this review, the relevant agency evaluates an institution's record of helping to meet the credit needs through qualified investments that benefit the relevant assessment areas. These investments can take many forms, including project financing, in which an unincorporated entity is created and funded for the purpose of building or renovating real property, such as low income housing; and equity investments in socially conscious private equity funds that invest in businesses that hire predominantly low income workers. The project financing entities generally are each limited to one project and are highly unlikely to be of sufficient size to satisfy the statutory size-of-transaction test and would, at any rate, most likely be exempted by expanded Section 802.4. Even the private equity investments, effected through the bank's merchant banking arm, would rarely reach reportable size and the few that might reach reportable size would generally be exempted by the financing exemption in new Section 802.65, as extended in these Final Rules to existing unincorporated entities. Given the availability of other exemptions and the rarity of such transactions meeting the required size-of-transaction test, the Commission concludes that it is unnecessary to promulgate the requested exemption at this time.

Although the Commission declines to adopt these four exemptions, it will continue to monitor the volume of transactions which result from these rule changes and will consider reassessing these issues should the numbers and types of filings received warrant it.

Part 803—Transmittal Rules

Section 803.2 Instructions Applicable to Notification and Report Form

The final rules add a new paragraph to Section 803.2 instructing an acquired person in an acquisition of non-corporate interests to limit its response to Items 5 through 8 of the Notification and Report Form to the unincorporated entity whose non-corporate interests are being acquired. This addition is consistent with the manner in which acquisitions of voting securities and assets are currently treated.

Section 803.10 Running of Time

The final rules add to Section 803.10(a) a reference to unincorporated entities. This paragraph establishes that the waiting period in the formation of a new corporation commences when filings required from all acquiring persons in the formation are received. The added language extends the same treatment to the formation of an unincorporated entity.

Appendix: Premerger Notification and Report Form

Section 7A(d)(1)[18] authorizes the Commission to determine the nature of the notification to be required under the Act and to designate for inclusion such "documentary material and information relevant to a proposed acquisition as is necessary and appropriate" to ascertain the potential anticompetitive impact of a proposed acquisition. Consequently, in light of this rulemaking, certain items to the Premerger Notification and Report Form and its Instructions ("the Form and Instructions") require minor modification and, in two cases, new subsections. The Commission proposed changes to three of the items on the Form and Instructions (Items 5(d), 7 and 8). There were no comments on these items and the proposed amendments will be adopted without change. Additionally, the Commission is amending several other items on the Form and Instructions to clarify how an acquisition of non-corporate interests should be reported. All of these changes are described below.

Item 1(c) Description of the Person Filing Notification

Current Item 1(c) requires persons to indicate in the appropriate box whether the filing person is a corporation, partnership or some other type of entity, such as an individual. New Item 1(c) would replace the reference to partnership with unincorporated entity.

Item 1(f) Name and Address of Entity Being Acquired

Current Item 1(f) requires, in part, the name and address of the entity whose assets or voting securities are being acquired, if different from the person filing. New Item 1(f) would be amended to include instances where non-corporate interests are being acquired. as well.

Item 2(b) Identification of the Type of Transaction

Item 2(b) lists various types of acquisitions and requires the reporting person to identify those that accurately describe the transaction. Amended 2(b) would add non-corporate interests to the list of possible transaction types.

Item 2(d) Value of Transaction

Current Item 2(d) requires the reporting persons to state in several subsections (i) the value of the voting securities to be held, (ii) the percentage of voting securities, (iii) the value of assets to be held and (iv) the aggregate total value of the transaction. Amended Item 2(d)(iv) would require parties to disclose the value of the non-corporate interests to be held as a result of the transaction. Former 2(d)(iv), the aggregate total value. would become new subsection, Item 2(d)(v), and would include a reference to non-corporate interests in the Instructions.

Item 3(b)(iii) Assets Held by Unincorporated Entities

Item 3(b)(iii), a new subsection to Item 3 of the Form, would require persons acquiring non-corporate interests to identify the assets held by the unincorporated entity(ies) being acquired. The instructions to Item 3(b)(iii) would read: "This Item is to be completed only to the extent that the transaction is an acquisition of non-corporate interests. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction. For examples of general classes of assets refer to Item 3(b)(i)."

Item 5(d) Corporations and Unincorporated Entities at the Time of Formation

Current Item 5(d) requires that certain additional information be provided when the Notification and Report Form is being submitted in connection with the formation of a new corporation. The proposed amendment to the Item 5(d) instructions would require that the same information be provided in connection with the formation of a new unincorporated entity pursuant to new Section 801.50. Item 5(d) on the Notification and Report Form would be amended to include reference to unincorporated entities as well as corporations. Item 5(d) and the Instructions are being amended as proposed.

[17] 12 U.S.C. 2901 *et seq.*

[18] 15 U.S.C. 18a(d)(1).

Item 7 NAICS Code Overlaps

The instructions to Item 7 currently require the reporting of any NAICS codes in which the person filing notification and any other person that is a party to the transaction both derived revenues in the most recent year. This language implies that in the formation of a new entity, overlaps among the acquiring persons contributing to the formation must be reported. The Commission believes that is overly burdensome and provides little helpful information because the only relevant overlap is between the person filing notification as an acquiring person and the newly-formed entity. The proposed new language would also clarify that this information should be provided in connection with the formation of new corporations and new unincorporated entities. These instructions are being amended as proposed.

Item 8 Previous Acquisitions

The instructions to Item 8 are being amended as proposed to include reference to newly formed unincorporated entities as well as corporations.

Note for Items 5 Through 8 and the Appendix

This note in the Instructions, which precedes more detailed information concerning Items 5–8, advises the acquired person to limit its responses pursuant to § 803.2 of the rules to the assets or voting securities being sold. The amended note also would include a reference to the sale of non-corporate interests.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of a transaction necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, the 2000 amendments to the Act were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less. Further, none of the proposed rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq.* ("PRA"), the Commission submitted the proposed rule changes to the Office of Management and Budget ("OMB") for review. The OMB has approved the rules' information collection requirements.[19] The Commission did not receive any comments that necessitated modifying its original burden estimates for the rules' information collection requirements.

Only two of the comments, Comments 1 and 2, addressed the burden estimate. Comment 1 noted that it is difficult, if not impossible, to quantify the impact of the proposed rules on filing obligations, but that the Commission's effort generated a reasonably sensible prediction. It expressed a belief, however, that because the burden estimate is based on unverifiable assumptions, the Commission should revisit the rules after two years to evaluate the volume and the antitrust significance of the filings received, as well as any additional burden on businesses.

Comment 2 disagreed with the methodology used by the Commission in calculating the burden, and thereby concluded that the resulting estimate was too low. Specifically, the comment stated that acquisitions of control in non-corporate entities should represent about half of all reportable acquisitions, and that existing and proposed exemptions will not winnow out as many of these acquisitions as the Commission has projected. This comment also calls for monitoring the volume and burden of reportable transactions to see if it becomes necessary to revise the new rules.

The Commission agrees with Comment 1 that it is difficult to estimate accurately the number of filings that it is likely to receive involving acquisitions of previously unreportable interests. The Commission believes that the methodology it chose was based on reasonable assumptions and extrapolations from available data. Furthermore, it employed fairly conservative estimates of acquisitions that would be exempted from filing, either by proposed extensions of existing corporate exemptions or by newly-proposed exemptions for non-corporate entities. Moreover, as previously discussed, the final rules expand the scope of the proposed exemptions, which should result in even fewer reportable non-corporate filings overall. Thus, the Commission declines to revise its estimate as suggested by Comment 2 because it believes its methodology and estimate are reasonable and does not believe another approach would yield a more accurate figure. The Commission will, however, as stated earlier, monitor the volume and types of transactions that result from these rules changes and will consider revisiting these amendments if it finds that these changes result in filings being required for a significant number of transactions that do not raise antitrust issues.

[19] The assigned OMB control number is 3084–0005.

List of Subjects in 16 CFR Parts 801, 802 and 803

Antitrust.

■ For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR parts 801, 802 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by revising paragraphs (b)(1)(ii) and (b)(2), redesignating paragraph (f)(1) as (f)(1)(i) and adding paragraph (f)(1)(ii) to read as follows:

§ 801.1 Definitions.

* * * * *

(b) * * *

(1) * * *

(ii) In the case of an unincorporated entity, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(2) Having the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts described in paragraphs (c)(3) through (5) of this section, the trustees of such a trust.

* * * * *

(f)(1)(i) *Voting securities.* * * *

(ii) *Non-corporate interest.* The term "non-corporate interest" means an interest in any unincorporated entity which gives the holder the right to any profits of the entity or in the event of dissolution of that entity the right to any of its assets after payment of its debts. These unincorporated entities include, but are not limited to, general

partnerships, limited partnerships, limited liability partnerships, limited liability companies, cooperatives and business trusts; but these unincorporated entities do not include trusts described in paragraphs (c)(3) through (5) of this section and any interest in such a trust is not a non-corporate interest as defined by this rule.

* * * * *

■ 3. Amend § 801.2 by revising the introductory text to paragraph (d)(2)(iii), adding new Example 5 to the existing examples 1–4 in paragraph (d)(2)(iii), and by adding a new paragraph (f) to read as follows:

§ 801.2 Acquiring and acquired persons.

* * * * *

(d) * * *

(2) * * *

(iii) All persons party to a transaction as a result of which all parties will lose their separate pre-acquisition identities or will become wholly owned subsidiaries of a newly formed entity shall be both acquiring and acquired persons. This includes any combination of corporations and unincorporated entities consolidating into any newly formed entity. In such transactions, each consolidating entity is deemed to be acquiring all of the voting securities (in the case of a corporation) or interests (in the case of an unincorporated entity) of each of the others.

Examples: * * *

5. Partnership A and Corporation B form a new LLC in which they combine their businesses. A and B cease to exist and partners of A and shareholders of B receive membership interests in the new LLC. For purposes of determining reportability, A is deemed to be acquiring 100 percent of the voting securities of B and B is deemed to be acquiring 100 percent of the interests of A. Pursuant to § 803.9(b) of this chapter, even if such a transaction consists of two reportable acquisitions, only one filing fee is required.

* * * * *

(f)(1)(i) In an acquisition of non-corporate interests which results in an acquiring person controlling the entity, that person is deemed to hold all of the assets of the entity as a result of the acquisition. The acquiring person is the person acquiring control of the entity and the acquired person is the pre-acquisition ultimate parent entity of the entity.

(ii) The value of an acquisition described in paragraph (f)(1)(i) of this section is determined in accordance with § 801.10(d).

(2) Any contribution of assets or voting securities to an existing unincorporated entity or to any successor thereof is deemed an acquisition of such voting securities or assets by the ultimate parent entity of that entity and is not subject to § 801.50.

Examples: 1. A, B and C each hold 33⅓ percent of the interests in Partnership X. D contributes assets valued in excess of $50 million (as adjusted) to X and as a result D receives 40 percent of the interests in X and A, B and C are each reduced to 20 percent. Partnership X is deemed to be acquiring the assets from D, in a transaction which may be reportable. This is not treated as a formation of a new partnership. Because no person will control Partnership X, no additional filing is required by any of the four partners.

2. LLC X is its own ultimate parent entity. A contributes a manufacturing plant valued in excess of $200 million (as adjusted) to X which issues new interests to A resulting in A having a 50% interest in X. A is acquiring non-corporate interests which confer control of X and therefore will file as an acquiring person. Because A held the plant prior to the transaction and continues to hold it through its acquisition of control of LLC X after the transaction is completed no acquisition of the plant has occurred and LLC X is therefore not an acquiring person.

(3) Any person who acquires control of an existing not-for-profit corporation which has no outstanding voting securities is deemed to be acquiring all of the assets of that corporation.

Example: A becomes the sole corporate member of not-for-profit corporation B and accordingly has the right to designate all of the directors of B. A is deemed to be acquiring all of the assets of B as a result.

■ 4. Amend § 801.4 by revising paragraph (a) to read as follows:

§ 801.4 Secondary acquisitions.

(a) Whenever as the result of an acquisition (the "primary acquisition") an acquiring person controls an entity which holds voting securities of an issuer that entity does not control, then the acquiring person's acquisition of the issuer's voting securities is a secondary acquisition and is separately subject to the act and these rules.

* * * * *

■ 5. Amend § 801.10 by revising the heading and by adding paragraph (d) to read as follows:

§ 801.10 Value of voting securities, non-corporate interests and assets to be acquired.

* * * * *

(d) *Value of interests in an unincorporated entity.* In an acquisition of non-corporate interests that confers control of either an existing or a newly-formed unincorporated entity, the value of the non-corporate interests held as a result of the acquisition is the sum of the acquisition price of the interests to be acquired (provided the acquisition price has been determined), and the fair market value of any of the interests in the same unincorporated entity held by the acquiring person prior to the acquisition; or, if the acquisition price has not been determined, the fair market value of interests held as a result of the acquisition.

■ 6. Amend § 801.11 by revising the introductory text to paragraph (b) to read as follows:

§ 801.11 Annual net sales and total assets.

* * * * *

(b) Except for the total assets of a corporation or unincorporated entity at the time of its formation which shall be determined pursuant to Sec. 801.40(d) or 801.50(c) the annual net sales and total assets of a person shall be as stated on the financial statements specified in paragraph (c) of this section: *Provided:*

* * * * *

■ 7. Amend § 801.13 by revising the heading, by revising paragraph (b)(2), by removing the Example following paragraph (b)(2) and adding four Examples in its place, and adding paragraph (c) and two examples to read as follows:

§ 801.13 Aggregation of voting securities, assets and non-corporate interests.

* * * * *

(b) *Assets.* * * *

(2) If the acquiring person signs a letter of intent or agreement in principle to acquire assets from an acquired person, and within the previous 180 days the acquiring person has

(i) Signed a letter of intent or agreement in principle to acquire assets from the same acquired person, which is still in effect but has not been consummated, or has acquired assets from the same acquired person which it still holds; and

(ii) The previous acquisition (whether consummated or still contemplated) was not subject to the requirements of the Act; then for purposes of the size-of-transaction test of Section 7A(a)(2), both the acquiring and the acquired persons shall treat the assets that were the subject of the earlier letter of intent or agreement in principal as though they are being acquired as part of the present acquisition. The value of any assets which are subject to this paragraph is determined in accordance with § 801.10(b).

Examples: 1. On day 1, A enters into an agreement with B to acquire assets valued at $45 million. On day 90, A and B sign a letter of intent pursuant to which A will acquire additional assets from B, valued at $45 million. The original transaction has not closed, however, the agreement is still in effect. For purposes of the size-of-transaction test in Section 7A(a)(2), A must aggregate the

value of both of its acquisitions and file prior to acquiring the assets if the aggregate value exceeds $50 million (as adjusted).

2. On March 30, A enters into a letter of intent to acquire assets of B valued at $45 million. On January 31, earlier the same year, A closed on an acquisition of assets of B valued at $45 million. For purposes of the size-of-transaction test in Section 7A(a)(2), A must aggregate the value of both of its acquisitions and file prior to acquiring the assets of B if the aggregate value exceeds $50 million (as adjusted).

3. On day 1, A enters into an agreement with B to acquire assets valued in excess of $50 million (as adjusted). A and B file notification and observe the waiting period. On day 60, A signs a letter of intent to acquire an additional $40 million of assets from B. Because the earlier acquisition was subject to the requirements of the Act, A does not aggregate the two acquisitions of assets and is free to acquire the additional assets of B without filing an additional notification.

4. On day 1, A consummates an acquisition of assets of B valued at $45 million. On day 60, A consummates a sale of the same assets to an unrelated third party. On day 120, A enters into an agreement to acquire additional assets of B valued at $45 million. Because A no longer holds the assets from the previous acquisition, no aggregation of the two asset acquisitions is required and A may acquire all of the additional assets without filing notification.

(c)(1) *Non-corporate interests.* In an acquisition of non-corporate interests, any previously acquired non-corporate interests in the same unincorporated entity is aggregated with the newly acquired interests. The value of such an acquisition is determined in accordance with § 801.10(d) of these rules.

(2) *Other assets or voting securities of the same acquired person.* An acquisition of non-corporate interests which does not confer control of the unincorporated entity is not aggregated with any other assets or voting securities which have been or are currently being acquired from the same acquired person.

Examples: 1. A currently has the right to 30 percent of the profits in LLC. B has the right to the remaining 70 percent. A acquires an additional 30 percent interest in LLC from B for $90 million in cash. As a result of the acquisition, A is deemed to now have a 60 percent interest in LLC. The current acquisition is valued at $90 million, the acquisition price. The value of the 30 percent interest that A already holds is the fair market value of that interest. The value for size-of-transaction purposes is the sum of the two.

2. A acquires the following from B: (1) All of the assets of a subsidiary of B; (2) all of the voting securities of another subsidiary of B; and (3) a 30 percent interest in an LLC which is currently wholly-owned by B. In determining the size-of-transaction, A aggregates the value of the voting securities and assets of the subsidiaries that it is acquiring from B, but does not include the value of the 30 percent interest in the LLC, pursuant to § 801.13(c)(2).

■ 8. Amend § 801.15 by revising paragraphs (b) and (c), adding paragraph (d), designating the Examples as Examples to the entire section, and adding Example 9 to read as follows:

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

* * * * *

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under Section 7A(c)(9) and §§ 802.3, 802.4, and 802.64 of this chapter unless the limitations contained in Section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) Voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(11)(A) unless additional voting securities of the same issuer have been or are being acquired; and

(d) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under §§ 802.50(a), 802.51(a), 802.51(b) of this chapter unless the limitations, in aggregate for §§ 802.50(a), 802.51(a), 802.51(b) , do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held.

Examples: * * *

9. A acquires assets of B located outside of the U.S. with sales into the U.S. of $45 million. It also acquires voting securities of B's foreign subsidiary X which has sales into the U.S. of $45 million. Both the assets and the voting securities of X are exempt under §§ 802.50 and 802.51 respectively when analyzed separately. However, because § 801.15(d) requires that the sales into the U.S. for both the assets and the voting securities be aggregated to determine whether the $50 million (as adjusted) limitation has been exceeded, both are held as a result of the acquisition because the aggregate sales into the U.S. total in excess of $50 million (as adjusted).

■ 9. Amend § 801.21 by revising the introductory text to read as follows:

§ 801.21 Securities and cash not considered assets when acquired.

For purposes of determining the aggregate total amount of assets under Section 7A(a)(2)(A), Section 7A(a)(2)(B)(i), Sec. 801.13(b), and Sec. 802.4:

* * * * *

■ 10. Add new § 801.50 to read as follows:

§ 801.50 Formation of unincorporated entities.

(a) In the formation of an unincorporated entity (other than in connection with a consolidation), even though the persons contributing to the formation of the unincorporated entity and the unincorporated entity itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of § 801.2, the contributors shall be deemed acquiring persons only and the unincorporated entity shall be deemed the acquired person only.

(b) Unless exempted by the Act or any of these rules, upon the formation of an unincorporated entity, in a transaction meeting the criteria of Section 7A(a)(1) and 7A(a)(2)(A) (other than in connection with a consolidation), a person is subject to the requirements of the Act if it acquires control of the newly-formed entity. Unless exempted by the Act or any of these rules, upon the formation of an unincorporated entity, in a transaction meeting the criteria of Section 7A(a)(1), the criteria of Section 7A(a)(2)(B)(i) (other than in connection with a consolidation), a person is subject to the requirements of the Act if:

(1)(i) The acquiring person has annual net sales or total assets of $100 million (as adjusted) or more;

(ii) The newly-formed entity has total assets of $10 million (as adjusted) or more; and

(iii) The acquiring person acquires control of the newly-formed entity; or

(2)(i) The acquiring person has annual net sales or total assets of $10 million (as adjusted) or more;

(ii) The newly-formed entity has total assets of $100 million (as adjusted) or more; and

(iii) The acquiring person acquires control of the newly-formed entity.

(c) For purposes of paragraph (b) of this section, the total assets of the newly-formed entity is determined in accordance with § 801.40(d).

(d) Any person acquiring control of the newly-formed entity determines the value of its acquisition in accordance with § 801.10(d).

(e) The commerce criterion of Section 7A(a)(1) is satisfied if either the

Activities of any acquiring person are in or affect commerce, or the person filing notification should reasonably believe that the Activities of the newly-formed entity will be in or will affect commerce.

Example: A and B form a new partnership (LP) in which each will acquire a 50 percent interest. A contributes a plant valued at $250 million and $100 million in cash. B contributes $350 million in cash. Because each is acquiring non-corporate interests, valued in excess of $50 million (as adjusted) which confer control of LP both A and B are acquiring persons in the formation. Each must now determine if the exemption in § 802.4 is applicable to their acquisitions of non-corporate interests in LP. For A, LP's exempt assets consist of all of the cash contributed by A and B (pursuant to § 801.21) and A's contribution of the plant (pursuant to § 802.30(c)). Because all of the assets of LP are exempt with regard to A, A's acquisition of non-corporate interests in LP is exempt under § 802.4. For B, LP's exempt assets include only the cash contributions by A and B. The plant contributed by A, valued at $250 million is not exempt under § 802.30(c) with regard to B. Because LP has non-exempt assets in excess of $50 million (as adjusted) with regard to B, B's acquisition of non-corporate interests in LP is not exempt under § 802.4. B must now value its acquisition of non-corporate interests pursuant to § 801.10(d) and because the value of the non-corporate interests is the same as B's contribution to the formation ($350 million), the value exceeds $200 million (as adjusted) and B must file notification prior to acquiring non-corporate interests in LP. See additional examples following § 802.30(c) and § 802.4.

PART 802—EXEMPTION RULES

■ 11. The authority citation for part 802 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 12. Amend § 802.2 by revising the introductory text to paragraph (g), by revising (g)(1)(ii), and by adding paragraph (g)(1)(iii) to read as follows:

§ 802.2 Certain acquisitions of real property assets.

* * * * *

(g) *Agricultural property.* An acquisition of agricultural property and assets incidental to the ownership of such property shall be exempt from the requirements of the Act. Agricultural property is real property that primarily generates revenues from the production of crops, fruits, vegetables, livestock, poultry, milk and eggs (certain activities within NAICS sector 11).

(1) * * *

(ii) Any real property and assets either adjacent to or used in conjunction with processing facilities that are included in the acquisition; or

(iii) Timberland or other real property that generates revenues from activities within NAICS subsector 113 (Forestry and logging) or NAICS industry group 1153 (Support activities for forestry and logging).

* * * * *

■ 13. Amend § 802.4 by revising the heading; by revising paragraph (a) and adding an example thereunder; and by revising paragraphs (b) and (c) introductory text to read as follows:

§ 802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt.

(a) An acquisition of voting securities of an issuer or non-corporate interests in an unincorporated entity whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to Section 7A(c) of the Act, this part 802, or pursuant to § 801.21 of this chapter, is exempt from the reporting requirements if the acquired issuer or unincorporated entity and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than $50 million (as adjusted). The value of voting or non-voting securities of any other issuer or interests in any non-corporate entity not included within the acquired issuer does not count toward the $50 million (as adjusted) limitation for non-exempt assets.

Example: A and B form a new corporation as an acquisition vehicle to acquire all of the voting securities of C. Each contributes $250 million in cash. Because all of the cash is considered to be exempt assets pursuant to § 801.21, the new corporation does not have non-exempt assets valued in excess of $50 million (as adjusted), and the acquisition of its voting securities by A and B is exempt under § 802.4. Note that the result is the same if the acquisition vehicle is formed as an unincorporated entity. Also see the examples to § 802.30(c) for additional applications of § 802.4.

(b) For purposes of paragraph (a) of this section, the assets of all issuers and unincorporated entities that are being acquired from the same acquired person are included in determining if the limitation for non-exempt assets is exceeded.

(c) In connection with paragraph (a) of this section and § 801.15 (b), the value of the assets of an issuer whose voting securities or an unincorporated entity whose non-corporate interests are being acquired pursuant to this section shall be the fair market value, determined in accordance with § 801.10(c).

* * * * *

■ 14. Revise § 802.10 to read as follows:

§ 802.10 Stock dividends and splits; reorganizations.

(a) The acquisition of voting securities pursuant to a stock split or pro rata stock dividend is exempt from the requirements of the Act under section 7A(c)(10).

(b) An acquisition of non-corporate interests or voting securities as a result of the conversion of a corporation or unincorporated entity into a new entity is exempt from the requirements of the Act if:

(1) No new assets will be contributed to the new entity as a result of the conversion; and

(2) Either:

(i) As a result of the transaction the acquiring person does not increase its per centum holdings in the new entity relative to its per centum holdings in the original entity; or

(ii) The acquiring person controlled the original entity.

Examples: 1. Partners A and B hold 60 percent and 40 percent respectively of the partnership interests in C. C is converted to a corporation in which A and B hold 60 percent and 40 percent respectively of the voting securities. No new assets are contributed. The conversion to a corporation is exempt from notification for both A and B.

2. Shareholder A holds 55% and B holds 45% of the voting securities of corporation C. C is converted to a limited liability company in which A holds 60% and B holds 40% of the membership interests. No new assets are contributed. The conversion to a limited liability company is exempt from notification because A controlled the corporation. If however, B holds 55% and A holds 45% in the new limited liability company, the conversion is not exempt for B and may require notification because control changes.

3. Shareholders A, B and C each hold one third of the voting securities of corporation X. Pursuant to a reorganization agreement, A and B each contribute new assets to X and C contributes cash. X is then being reincorporated in a new state. Each of A, B and C receive one third of the voting securities of newly reincorporated C. The reincorporation is not exempt from notification and may be reportable for A, B and C because of the contribution of new assets.

■ 15. Revise § 802.30 to read as follows:

§ 802.30 Intraperson transactions.

(a) An acquisition (other than the formation of a corporation or unincorporated entity under § 801.40 or § 801.50 of this chapter) in which the acquiring and at least one of the acquired persons are, the same person by reason of § 801.1(b)(1) of this chapter, or in the case of a not-for-profit corporation which has no outstanding voting securities, by reason of § 801.1(b)(2) of this chapter, is exempt from the requirements of the Act.

Examples to paragraph (a): 1. A and B each have the right to 50% of the profits of partnership X. A also holds 100% of the voting securities of corporation Y. A pays B in excess of $50 million in cash (as adjusted) and transfers certain assets of X to Y. Because A is the acquiring person through its control of Y, pursuant to § 801.1(b)(1)(i), and one of the acquired persons through its control of X pursuant to § 801.1(b)(1)(ii), the acquisition of assets is exempt under § 802.30(a).

2. A and B each have the right to 50% of the profits of partnership X. A contributes assets to X valued in excess of $50 million (as adjusted). B contributes cash to X. Because B is an acquiring person but not an acquired person, its acquisition of the assets contributed to X by A is not exempt under § 802.30(a). However, A is both an acquiring and acquired person, and its acquisition of the assets it is contributing to X is exempt under § 802.30(a).

(b) The formation of any wholly owned entity is exempt from the requirements of the Act.

(c) For purposes of applying Sec. 802.4(a) to an acquisition that may be reportable under Sec. 801.40 or Sec. 801.50, assets or voting securities contributed by the acquiring person to a new entity upon its formation are assets or voting securities whose acquisition by that acquiring person is exempt from the requirements of the Act.

Examples to paragraph (c): 1. A and B form a new partnership to which A contributes a manufacturing plant valued at $102 million and acquires a 51% interest in the partnership. B contributes $98 million in cash and acquires a 49% interest. B is not acquiring non-corporate interests which confer control of the partnership and therefore is not making a reportable acquisition. A is acquiring non-corporate interests which confer control of the partnership, however, the manufacturing plant it is contributing to the formation is exempt under § 802.30(c) and the cash contributed by B is excluded under § 801.21, therefore, the acquisition of non-corporate interests by A is exempt under § 802.4.

2. A and B form a new corporation to which A contributes a plant valued at $120 million and acquires 60% of the voting securities of the new corporation. B contributes a plant valued at $80 million and acquires 40% of the voting securities of the new corporation. While the assets contributed to the formation are exempted by § 802.30(c) for each of A and B, the new corporation holds more than $50 million (as adjusted) in non-exempt assets (the plant contributed by the other person) with respect to both acquisitions. A is now acquiring voting securities of an issuer which holds $80 million in non-exempt assets (the plant contributed by B), and B is acquiring voting securities of an issuer which holds $120 million in non-exempt assets (the plant contributed by A). Therefore neither acquisition of voting securities is exempt under § 802.4. Note that in contrast to the formation of the partnership in Example 1, B is not required to acquire a controlling interest in the corporation in order to have a reportable transaction.

3. A and B form a 50/50 partnership. A contributes a plant valued at $100 million and B contributes a plant valued at $40 million and $60 million in cash. Because with respect to A, the new partnership has non-exempt assets of $40 million (the plant contributed by B), A's acquisition of non-corporate interests is exempt under § 802.4. With respect to B, the new partnership holds in excess of $50 million (as adjusted) in non-exempt assets (the plant contributed by A), therefore B's acquisition of non-corporate interests would not be exempt under § 802.4.

■ 16. Revise § 802.40 to read as follows:

§ 802.40 Exempt formation of corporations or unincorporated entities.

The formation of an entity is exempt from the requirements of the Act if the entity will be not-for-profit within the meaning of sections 501(c)(1)–(4), (6)–(15), (17)–(20) or (d) of the Internal Revenue Code.

■ 17. Amend § 802.41 by revising the heading and the introductory text to read as follows:

§ 802.41 Corporations or unincorporated entities at time of formation.

Whenever any person(s) contributing to the formation of an entity are subject to the requirements of the Act by reason of § 801.40 or § 801.50 of this chapter, the new entity need not file the notification required by the Act and § 803.1 of this chapter.

* * * * *

■ 18. Add new § 802.65 to read as follows:

§ 802.65 Exempt acquisition of non-corporate interests in financing transactions.

An acquisition of non-corporate interests that confers control of a new or existing unincorporated entity is exempt from the notification requirements of the Act if:

(a) The acquiring person is contributing only cash to the unincorporated entity;

(b) For the purpose of providing financing; and

(c) The terms of the financing agreement are such that the acquiring person will no longer control the entity after it realizes its preferred return.

■ 19. Add new § 802.80 to read as follows:

§ 802.80 Transitional rule for transactions investigated by the agencies.

§§ 801.2 and 801.50 shall not apply to any transaction that has been the subject of investigation by either the Federal Trade Commission or the Antitrust Division of the Department of Justice in which, prior to the effective date of that section, the reviewing agency obtained documentary material and information under compulsory process from all parties that would be required to submit a Notification and Report Form for Certain Mergers and Acquisitions under Section 801.50 but for this transitional rule.

PART 803—TRANSMITTAL RULES

■ 20. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 21. Amend § 803.2(b)(1) by redesignating existing paragraph (b)(1)(iv) as paragraph (b)(1)(v), and by adding new paragraph (b)(1)(iv), to read as follows:

§ 803.2 Instructions applicable to the Notification and Report Form.

* * * * *

(b) * * *

(1) * * *

(iv) By acquired persons, in the case of an acquisition of non-corporate interests, with respect to the unincorporated entity whose non-corporate interests are being acquired, and all entities controlled by such unincorporated entity; and

* * * * *

■ 22. Amend § 803.10 by revising paragraph (a)(2) to read as follows:

§ 803.10 Running of time.

(a)* * *

(2) In the case of the formation of a corporation covered by Sec. 801.40 or an unincorporated entity covered by Sec. 801.50, all persons contributing to the formation of the joint venture or other corporation that are required by the act and these rules to file notification;

* * * * *

■ 23. Revise Pages I through VI of the Instructions in the Appendix to part 803, and Pages 1, 2, 4, and 11 of the Notification and Report Form for Certain Mergers and Acquisitions in the Appendix to part 803, to read as follows:

BILLING CODE 6750–01–P

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-15) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These instructions specify the information which must be provided in response to the Items on the Answer Sheets. Only the completed Answer Sheets, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with each copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 3(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983) and Pub. L. No. 106-533, 114 Stat. 2762.

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a)).

Responses-*Each answer* should identify the Item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) Data-This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS national industry code level. To the extent that dollar revenues are derived from *manufacturing operations* (NAICS Sectors 31-33), data must also be submitted at the *7-digit NAICS product class and 10-digit NAICS product code levels.* The term "dollar revenues" is defined in § 803.2(d).

References-In reporting information by 6-digit NAICS industry code refer to the *North American Industry Classification System - United States, 1997* (*1997 NAICS Manual*) published by the Executive Office of the President, Office of Management and Budget. In reporting information by 7-digit NAICS product class and 10-digit NAICS product code refer to the *1997 Numerical List of Manufactured and Mineral Products* (EC97M31R-NL) published by the Bureau of the Census. Information regarding NAICS also is available at www.census.gov.

Privacy Act Statement-Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws.

Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $11,000 per day.

Items 5, 7, 8-Supply information only with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See §§ 801.1(k); 803.2(c)(1).)

Information need not be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. Separate responses may be required where a person is both acquiring and acquired. (See § 803.2(b) and (c).)

Filing-Complete and return two copies (with one notarized original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Three copies (with one set of documentary attachments) should be sent to: Director of Operations, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Room #3335, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice do not use the 20530 zip code; use zip code 20004.)

ITEM BY ITEM

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets. Acquiring persons in transactions covered by § 801.30 are required to also submit a copy of the notice served on the acquired person pursuant to § 803.5(a)(1). (See § 803.5(a)(3).)

Fee Information-The fee for filing the Notification and Report Form is based on the aggregate total amount of assets and voting securities to be held as a result of the acquisition:

Value of assets or voting securities to be held	Fee Amount
greater than $50 million but less than $100 million (as adjusted)	$45,000
$100 million or greater but less than $500 million (as adjusted)	$125,000
$500 million or greater (as adjusted)	$280,000

Amount Paid-Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges. Where an explanatory attachment is required, include in your explanation any adjustments to the acquisition price that serve to lower the fee from that which would otherwise be due. If there is no acquisition price or if the acquisition price may fall within a range that straddles two filing fee thresholds, state the transaction value on which the fee is based and explain the valuation method used. Include in your explanation a description of any exempt assets, the value assigned to each, and the valuation method used.

A Valuation Worksheet available from the Premerger Notification Office will be helpful in determining the value of a transaction for filing and fee purposes. This Worksheet need not be submitted with the Notification and Report Form, but it or something similar should be utilized and retained by the acquiring person in the event Commission staff has questions about the valuation of the transaction.

Payer Identification- Provide the 9-digit Taxpayer Identification Number (TIN) of the acquiring person and, if different from the filing person, the TIN of the payer(s) of the filing fee. A payer or filing person who is a natural person having no TIN must provide the name and social security number (SSN) of the payer. If the payer or filing person is a foreign person, only the name of the payer and the name of the filing person need be supplied if different.

Method of Payment-Check the box indicating the method of fee payment. If paying by electronic wire transfer (EWT), provide the name of the financial institution from which the EWT is being sent and the confirmation number.

To insure filing fees paid by EWT are attributed to the appropriate payer filing notification, the payer must provide the following information to the financial institution initiating the EWT:

The Department of Treasury's ABA Number: 021030004; and
The Federal Trade Commission's ALC Number: 29000001.

If the name used to transmit the EWT differs from the filer's name, provide the alternative name. If the confirmation number is unavailable at the time notification is filed, provide this information by letter within one business day of filing.

Corrective Filing-Put an X in the appropriate box to indicate whether the notification is a corrective filing being made for an acquisition that has already taken place in violation of the statute. Attach a detailed, written explanation signed by a company official explaining (1) how the violation occurred, (2) when and how the violation was discovered and (3) what steps will be taken to ensure compliance in the future.

Transactions Subject to Foreign Antitrust Notification-If to the knowledge or belief of the filing person at the time of filing this notification, a foreign antitrust or competition authority has been or will be notified of the proposed transaction, list the name of each such authority and the date or anticipated date of each such notification. Response to this item is voluntary.

Cash Tender Offer-Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy-Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or a debtor-in-possession for a transaction that is subject to section 363(b) of the Bankruptcy Code (11USC § 363).

Early Termination-Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act and on the FTC web site www.ftc.gov.

ITEM 1

Item 1(a)-Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

Item 1(b)-Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2.)

Item 1(c)-Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity or other (specify).

Item 1(d)-Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(e)-Put an X in the appropriate box to indicate if this Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) of the Form.

Item 1(f)-If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets, voting securities or non-corporate interests of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).

Item 1(g)-Print or type the name and title, firm name, address, telephone number, fax number and e-mail address of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 1(h)-Foreign filing persons print or type the name and title, firm name, address, telephone number, fax number and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

ITEM 2

Item 2(a)-Give the names of all ultimate parent entities of acquiring and acquired person which are parties to the acquisition whether or not they are required to file notification.

Item 2(b)-Put an X in all the boxes that apply to this acquisition.

Item 2(c)-*Acquiring persons* put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1(h)): $50 million (as adjusted), $100 million (as adjusted), $500 million (as adjusted), 25% (if value of voting securities to be held is greater than $1 billion), or 50%. The notification threshold selected should be based on voting securities only that will be held as a result of the acquisition.

Item 2(d)-*Assets and voting securities held as a result of the acquisition* (to be completed by both acquiring and acquired persons). State:

Item 2(d)(i)-the value of voting securities;

Item 2(d)(ii)-the percentage of voting securities;

Item 2(d)(iii)-the value of assets;

Item 2(d)(iv)-the value of non-corporate interests;

Item 2(d)(v)-the aggregate total amount of voting securities, assets and non-corporate interests of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

Item 2(e)-Acquiring persons must provide the name(s) of the person(s) who performed any fair market valuation used to determine the aggregate total value of the transaction reported in Item 2(d)(iv).

ITEM 3

Item 3(a)-*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification. Indicate for each party whether assets or voting securities (or both) are to be acquired. Also indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.

If the voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons involved in tender offers should describe the terms of the offer.

Item 3(b)(i)-*Assets to be acquired.* This Item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction, giving dollar values thereof.

Give the total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

Item 3(b)(ii)-*Assets held by acquiring person.* (To be completed by acquiring persons). If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 3(b)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 3(b)(iii) –*Assets held by unincorporated entities.* This item is to be completed only to the extent that the transaction is an acquisition of non-corporate interests. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction. For examples of general classes of assets refer to Item 3(b)(i).

Item 3(c)-*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition: (If, as a result of the acquisition, the acquiring person will hold 100 percent of the voting securities of the acquired issuer or if the acquisition is a merger or consolidation (see § 801.2(d)), the parties may so state and provide the total dollar value of the transaction instead of responding to Items 3(c)(i)-3(c)(vi).

Item 3(c)(i)-List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

Item 3(c)(ii)-Total number of shares of each class of securities listed which will be outstanding after the acquisition has been completed;

Item 3(c)(iii)-Total number of shares of each class of securities listed which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(iv)-Identity of each person acquiring any securities of any class listed. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(v)-Dollar value of securities of each class listed to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made);

Item 3(c)(vi)-Total number of each class of securities listed which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(d)-Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (Do not attach these documents to the Answer Sheets.)

ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

Item 4(a)-all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition); the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed; if the acquisition is a tender offer, Schedule TO. Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance;

NOTE: In response to Item 4(a), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

Item 4(b)-the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recently regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person;

Item 4(c)-all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

ITEMS 5 through 8

NOTE: For Items 5 through 8, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be sold, in the case of an acquisition of non-corporate interests, to the unincorporated entity being acquired, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. A person filing as both acquiring and acquired may be required to provide a separate response to these items in each capacity so that it can properly limit its response as an acquired person. (See § 803.2(b) and (c).)

Items 5(a)-5(c): These items request information regarding dollar revenues and lines of commerce at three NAICS levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must also be submitted at the 7-digit product class level and 10-digit product code level (NAICS-based codes). Where certain published NAICS industry codes contain only 5 digits, the filing person should add a zero (0) after the fifth (5^{th}) digit.

NOTE: See "References" listed in the General Instructions to the Form. Refer to the *1997 NAICS Manual* for the 6-digit industry codes and the *1997 Numerical List of Manufactured and Mineral Products (1997 Numerical List)* for the 7-digit product classes and 10-digit product codes. Report revenues for the 7-digit NAICS product classes and 10-digit NAICS product codes using the codes in the columns labeled "Product code" in the *1997 Numerical List*.

Nondepository credit intermediation (NAICS Industry Group Code 5222); securities, commodity contracts, and other financial investments (NAICS Subsector 523); funds, trusts, and other financial vehicles (NAICS Subsector 525); real estate (NAICS Subsector 531); lessors of nonfinancial intangible assets, except copyright works (NAICS Subsector 533); and management of companies and enterprises (NAICS Subsector 551) should identify or explain the revenues reported (e.g. dollar sales receipts).

Persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 1997). For example, if the person filing notification acquired an entity in 1998, it must include that entity's 1997 revenues in items 5(a) and 5(b)(i). It must also include that entity's most recent year's revenues in Item 5(b)(iii) and/or Item 5(c).

Item 5(a)-*Dollar revenues by industry.* Provide aggregate 6-digit NAICS industry data for 1997.

Item 5(b)(i)-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 1997 for each 10-digit NAICS product of the person in NAICS Sectors 31-33 (manufacturing industries).

NOTE: Where the *1997 Numerical List* denotes footnote 1 at the end of a specific Subsector, refer to Appendices A, and then B for detail collected in a specified Current Industrial Report. You must provide 10-digit NAICS product codes and descriptions listed in Appendix B.

Item 5(b)(ii)-*Products added or deleted.* Within NAICS Sectors 31-33 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1997, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 10-digit NAICS product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1997 by reason of mergers or acquisitions of entities occuring since 1997. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1997 by the person filing notification (and now included within the person) itself has added any products since 1997, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets constituting less than substantially all of the assets of an entity since 1997 should also be listed here.

Item 5(b)(iii)-*Dollar revenues by manufactured product class.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 7-digit NAICS product class within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 7-digit NAICS product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)-*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 6-digit NAICS industry code in NAICS Sectors other than 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry code may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

JOINT VENTURE OR OTHER CORPORATIONS

Item 5(d)-Supply the following information only if the acquisition is the formation of a joint venture corporation or unincorporated entity. (See § 801.40.)

Item 5(d)(i)-List the name and mailing address of the joint venture corporation or unincorporated entity.

Item 5(d)(ii)(A)-List contributions that each person forming the joint venture corporation or unincorporated entity has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(d)(ii)(B)-Describe any contracts or agreements whereby the joint venture corporation or unincorporated entity will obtain assets or capital from sources other than the persons forming it.

Item 5(d)(ii)(C)-Specify whether and in what amount the persons forming the joint venture corporation or unincorporated entity have agreed to guarantee its credit or obligations.

Item 5(d)(ii)(D)-Describe fully the consideration which each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

Item 5(d)(iii)-Describe generally the business in which the joint venture corporation or unincorporated entity will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(d)(iv)-Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing also specify each 7-digit NAICS product class in which it will derive dollar revenues.

ITEM 6

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired. Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "document attachment" furnished with this Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each Item the specific page(s) of the document that are responsive to that Item.

Item 6(a)-*Entities within the person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $10 million may be omitted.

Item 6(b)-*Shareholders of person filing notification.* For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(c)-Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holding of issuers with total assets of less than $10 million may be omitted.

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person filing notification derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which any acquired person that is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture corporation or unincorporated entity will derive dollar revenues), then for each such 6-digit NAICS industry code:

Item 7(a)-supply the 6-digit NAICS industry code and description for the industry;

Item 7(b)-list the name of each person which is a party to the acquisition which also derived dollar revenues in the 6-digit industry;

Item 7(c)-*Geographic market information*:

Item 7(c)(i)-for each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a) above, list the states or, if desired, portions thereof in which, to the knowledge or belief of the person filing notification, the products in that 6-digit NAICS code produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(ii)- for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 11 (agriculture, forestry, fishing and hunting); 21 (mining); 22 (utilities); 23 (construction); 48-49 (transportation and warehousing); 511(publishing industries); 513 (broadcasting and telecommunications); and 71 (arts, entertainment and recreation) listed in item 7(a) above, list the states or, if desired, portions thereof in which the person filing notification conducts such operations;

Item 7(c)(iii)-for each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a) above, list the states or, if desired, portions thereof in which the customers of the person filing notification are located;

Item 7(c)(iv)-for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 44-45 (retail trade); 512 (motion picture and sound recording industries); 521 (monetary authorities-central bank); 522 (credit intermediation and related activities); 532 (rental and leasing services); 62 (health care and social assistance); 72 (accommodations and food services); 811 (repair and maintenance); and 812 (personal and laundry services) listed in Item 7(a) above, provide the address, **arranged by state, county and city or town,** of each establishment from which dollar revenues were derived in the most recent year by the person filing notification;

Item 7(c)(v)- for each 6-digit NAICS industry code within NAICS Subsectors 514 (information services and data processing services); 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 531 (real estate); 533 (lessors of nonfinancial intangible assets, except copyright works); 54 (professional, scientific and technical services); 55 (management of companies and enterprises); 56 (administrative and support and waste management and remediation services); 61 (educational services); 813 (religious, grantmaking, civic, professional, and similar organizations); and NAICS Industry Group 5242 (insurance agencies and brokerages, third party administration of insurance and pension funds, claims adjusting, and other insurance related activities) listed in Item 7(a) above, list the states or, if desired, portions thereof in which establishments were located from which the person filing notification derived revenues in the most recent year; and

Item 7(c)(vi)-for each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

NOTE: Except in the case of those NAICS major industries in the Sectors and Subsectors mentioned in Item 7(c)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

ITEM 8

Item 8-*Previous acquisitions* (to be completed by acquiring persons). Determine each 6-digit NAICS industry code listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which either the acquired issuer derived revenues of $1 million or more in the recent year (or, in which, in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive revenues of $1 million or more), or revenues of $1 million or more in the most recent year were attributable to the acquired assets. For each such 6-digit NAICS industry code, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 6-digit NAICS industry code. List only acquisitions of 50 percent or more of the voting securities of an issuer which had annual net sales or total assets greater than $10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

For each such acquisition, supply:

(a) the name of the entity acquired;

(b) the headquarters address of the entity prior to the acquisition;

(c) whether securities or assets were acquired;

(d) the consummation date of the acquisition; and

(e) the 6-digit (NAICS code) industries by (number and description) identified above in which the acquired entity derived dollar revenues.

CERTIFICATION- (See § 803.6.)

TRANSACTION NUMBER ASSIGNED ☐☐☐☐☐☐☐☐

16 C.F.R. Part 803 - Appendix
NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

Approved by OMB
3084-0005
Expires 05/31/2007

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

↓ Attach the Affidavit required by § 803.5 to this page.

FEE INFORMATION

AMOUNT PAID $_____

In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee *(acquiring persons only)*.

Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER _____
or SOCIAL SECURITY NUMBER of payer _____
(acquiring person (and payer if different from acquiring person))

CHECK ATTACHED ☐ MONEY ORDER ATTACHED ☐

WIRE TRANSFER ☐ CONFIRMATION NO. _____

FROM: NAME OF INSTITUTION _____

NAME OF PAYER (if different from PERSON FILING) _____

IS THIS A CORRECTIVE FILING? ☐ YES ☐ NO

IS THIS ACQUISITION SUBJECT TO FOREIGN FILING REQUIREMENTS? ☐ YES ☐ NO
If YES, list jurisdictions: *(voluntary)* _____

IS THIS ACQUISITION A CASH TENDER OFFER? ☐ YES ☐ NO | BANKRUPTCY? ☐ YES ☐ NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? *(Grants of early termination are published in the Federal Register AND on the FTC web site www.ftc.gov)*
☐ YES ☐ NO

ITEM 1 – PERSON FILING

1(a) NAME and
HEADQUARTERS ADDRESS
of PERSON FILING

1(b) PERSON FILING NOTIFICATION IS
☐ an acquiring person ☐ an acquired person ☐ both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE PERSON FILING NOTIFICATION
☐ Corporation ☐ Unincorporated Entity ☐ Other *(Specify)*: _____

1(d) DATA FURNISHED BY
☐ calendar year ☐ fiscal year *(specify period)* _____ (month/year) to _____ (month/year)

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $11,000 for each day during which such person is in violation of 15 U.S.C. §18a.

All information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Filing - Complete and return *two* copies (with one original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. *Three* copies (with one set of documentary attachments) should be sent to: Director of Operations and Merger Enforcement, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Room #3335, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004.)

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 39 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office,
H-303
Federal Trade Commission
Washington, DC 20580

Office of Information and
Regulatory Affairs,
Office of Management and Budget
Washington, DC 20503

Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears in the upper right-hand corner of the first page of this form.

NAME OF PERSON FILING NOTIFICATION	DATE

1(e) PUT AN X IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF ENTITY FILING NOTIFICATION (if other than ultimate parent entity)

☐ NA ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4. ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME OF ENTITY FILING NOTIFICATION	ADDRESS

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

1(g) IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (See § 803.20(b)(2)(iii))

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

2(b) THIS ACQUISITION IS *(put an X in all the boxes that apply)*

- ☐ an acquisition of assets
- ☐ a merger (see § 801.2)
- ☐ an acquisition subject to § 801.2(e)
- ☐ a formation of a joint venture of other corporation (see § 801.40)
- ☐ an acquisition subject to § 801.30 (*specify type*)
- ☐ other (*specify*) _____
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31
- ☐ non-corporate interests

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED *(acquiring person only in an acquisition of voting securities)*

☐ $50 million (as adjusted) ☐ $100 million (as adjusted) ☐ $500 million (as adjusted) ☐ 25% (see Instructions) ☐ 50%

2(d)(i) VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(ii) PERCENTAGE OF VOTING SECURITIES	(iii) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION	(iv) VALUE OF NONCORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION	(v) AGGREGATE TOTAL VALUE
$	%	$	$	$

NAME OF PERSON FILING NOTIFICATION	DATE

3(b)(i) ASSETS TO BE ACQUIRED (to be completed only for asset acquisitions)

3(b)(ii) ASSETS HELD BY ACQUIRING PERSON

3(b)(iii) ASSETS HELD BY UNINCORPORATED ENTITIES

3(c) VOTING SECURITIES TO BE ACQUIRED

3(c)(i) LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES:

3(c)(ii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY:

3(c)(iii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED:

NAME OF PERSON FILING NOTIFICATION	DATE

5(d) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY.

5(d)(i) NAME AND ADDRESS OF THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY

5(d)(ii)

(A) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

(B) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS

(C) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS

(D) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

5(d)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

5(d)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 7-DIGIT PRODUCT CLASS (manufacturing)

Complete copies of the Instructions and of the Notification and Report Form for Certain Mergers and Acquisitions in the Appendix to part 803 can also be found at the following address on theWeb site of the Commission: *http://www.ftc.gov/bc/hsr/hsrform.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–4302 Filed 3–7–05; 8:45 am]

BILLING CODE 6750–01–C

FEDERAL TRADE COMMISSION

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Issuance of Formal Interpretation 18 repealing Formal Interpretation 15.

SUMMARY: The Premerger Notification Office of the Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department, is issuing this Formal Interpretation of the Hart-Scott-Rodino Act to repeal Formal Interpretation 15, which governs the reportability of certain transactions involving the formation of a Limited Liability Company ("LLC"). All transactions involving LLCs will be governed by 16 CFR parts 801, 802 and 803 beginning on the effective date of this notice.

DATES: This Formal Interpretation is effective April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director; Karen E. Berg, Attorney; Malcolm L. Catt, Attorney; B. Michael Verne, Compliance Specialist; or Nancy M. Ovuka, Compliance Specialist: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation 18 is set out below:

Formal Interpretation Pursuant to § 803.30 of the Premerger Notification Rules, 16 CFR 803.30, Concerning Premerger Notification: Reporting and Waiting Period Requirements for Limited Liability Companies Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

1. This formal interpretation of the Premerger Notification Rules concerning limited liability companies is issued by the Federal Trade Commission pursuant to 16 CFR 803.30. It supersedes a formal interpretation issued by the staff of the Federal Trade Commission on February 5, 1999.[1]

2. The formal interpretation issued on February 5, 1999 will no longer be used to analyze the reportability of transactions involving limited liability companies. Such transactions will now be analyzed under Parts 801–803 of the Premerger Notification Rules in the same manner as any other unincorporated entities.

The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice concurs in this interpretation.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–4301 Filed 3–7–05; 8:45 am]

BILLING CODE 6750–01–P

[1] Formal Interpretation 15–64 FR @ 5808 (February 5, 1999).

Federal Register

Tuesday,
March 8, 2005

Part V

Securities and Exchange Commission

17 CFR Parts 210, 228, 229, 240, and 249
Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Non-Accelerated Filers and Foreign Private Issuers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 240 and 249

[Release Nos. 33–8545; 34–51293; File Nos. S7–40–02; S7–06–03]

RIN 3235–AI66 and 3235–AI79

Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Non-Accelerated Filers and Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates.

SUMMARY: We are extending the compliance dates for non-accelerated filers and foreign private issuers that were published on March 1, 2004, in Release No. 33–8392 [69 FR 9722] for certain amendments to Rules 13a–15 and 15d–15 under the Securities Exchange Act of 1934, Items 308(a) and (b) of Regulations S–K and S–B, and the corresponding provisions in Forms 20–F and 40–F, that require companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting, and to evaluate, as of the end of each fiscal period, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. We are also extending the compliance dates for non-accelerated filers and foreign private issuers for amendments to certain representations that must be included in the certifications required by Exchange Act Rules 13a–14 and 15d–14 regarding a company's internal control over financial reporting.

DATES: *Effective Date:* The effective date published on June 18, 2003, in Release No. 33–8238 [68 FR 36636] remains August 14, 2003.

Compliance Dates: The compliance dates are extended as follows: A company that is a non-accelerated filer, or foreign private issuer that files its annual reports on Form 20–F or Form 40–F, must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2006.

These filers must begin to comply with the provisions of Exchange Act Rule 13a–15(d) or 15d–15(d), whichever applies, requiring an evaluation of changes to internal control over financial reporting requirements with respect to the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting.

In addition, we are applying the extended compliance period for these filers to the amended portion of the introductory language in paragraph 4 of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b). The amended language must be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter. The extended compliance dates also apply to the amendments of Exchange Act Rules 13a–15(a) and 15d–15(a) relating to the maintenance of internal control over financial reporting. The remainder of the compliance dates relating to accelerated filers and registered investment companies published in Release No. 33–8392 [69 FR 9722] are not affected by this release.

The extended compliance period for non-accelerated filers and foreign private issuers does not in any way alter requirements regarding internal control that are in effect, including, without limitation, Section 13(b)(2) of the Exchange Act or the rules thereunder.

FOR FURTHER INFORMATION CONTACT: Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0509.

SUPPLEMENTARY INFORMATION: On June 5, 2003,[1] the Commission adopted several amendments to its rules and forms implementing Section 404 of the Sarbanes-Oxley Act of 2002.[2] Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting and an accompanying auditor's report, and to evaluate, as of the end of each fiscal quarter, or year in the case of a foreign private issuer filing its annual report on Form 20–F or Form 40–F,[3] any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

On February 24, 2004, we approved an extension of the original compliance dates for the amendments related to internal control reporting.[4] Specifically, we extended the compliance dates for companies that are "accelerated filers," as defined in Exchange Act Rule 12b–2,[5] to fiscal years ending on or after November 15, 2004, and for non-accelerated filers and foreign private issuers, to fiscal years ending on or after July 15, 2005.[6] We believed that providing additional time for compliance was appropriate in light of both the substantial time and resources needed to properly implement the rules and to provide additional time for companies and their auditors to implement Auditing Standard No. 2, which set forth new attestation standards.[7]

Recent events have caused us to examine the need for additional relief for foreign companies and non-accelerated filers. Foreign companies have faced particular challenges in complying with the internal control over financial reporting and related requirements, which include language, culture and organization structures that are far different from what is typical in the United States. In addition, on January 1, 2005, companies incorporated under the laws of a European Union ("EU") member country, and whose securities are publicly traded within the EU, began to be required to prepare their consolidated financial statements under International Financial Reporting Standards ("IFRS").[8] It has been estimated that these requirements will affect more than 7,000 companies within the EU.[9] While we fully support

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[1] *See* Release No. 33–8238 (June 5, 2003) [68 FR 36636].

[2] 15 U.S.C. 7262.

[3] 17 CFR 249.20f and 249.40f.

[4] *See* Release No. 33–8392 (February 24, 2004) [69 FR 9722].

[5] 17 CFR 240.12b–2.

[6] We also extended the compliance dates for registered investment companies to comply with certain amendments to fiscal years ending on or after November 15, 2004. *See* Release No. 33–8392.

[7] *See* Release No. 34–49884, File No. PCAOB 2004–03 (June 17, 2004) [69 FR 35083]. Auditing Standard No. 2 provides the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting.

[8] *See* Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001–0004.

[9] *See* Committee of European Securities Regulators, "European Regulation and Application of IFRS in 2005: Recommendation for Additional Guidance Regarding Transition to IFRS" (December 2003).

conversion to IFRS, we are mindful that this change will require significant resources, people, and time.[10] The new standards are fundamental changes that will change how affected foreign companies use and report financial information. We understand that the successful conversion to IFRS is currently the primary focus of these foreign companies.

In December 2004, we announced that we were establishing the Securities and Exchange Commission Advisory Committee on Smaller Public Companies to assist the Commission in evaluating the current securities regulatory system relating to smaller public companies, including the rules relating to internal control reporting.[11] In addition to this initiative, we announced on February 22, 2005, that we will host a roundtable discussion on April 13, 2005, and are soliciting written feedback regarding registrants' and accounting firms' experiences implementing the new internal control reporting requirements.[12] We believe it is important to provide the Advisory Committee with time to consider the framework for internal control over financial reporting applicable to smaller public companies, methods for management's assessment of such internal control, and standards for auditing the internal controls of these companies.

In addition, at the request of Commission staff, a task force of the Committee of Sponsoring Organizations ("COSO") has been established to expand the existing COSO Framework[13] to provide more guidance on how the framework can be applied to small companies.[14] Under the Commission's internal control requirements, a reporting company is required to use a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, such as the COSO Framework, to assess the effectiveness of the company's internal control over financial reporting.[15] We understand that COSO intends to publish the additional guidance for small companies during the summer of 2005.

We believe that it is appropriate under these circumstances to extend for an additional year the compliance dates for the internal control over financial reporting and related requirements for non-accelerated filers and foreign private issuers. An extension will avoid certain foreign companies having to prepare for, and initially comply with, two different sets of significant new financial reporting requirements within the same approximate time period. The extension also will afford smaller issuers that are subject to Exchange Act reporting time to consider the new guidance in the COSO Framework. The extension should make implementation of the internal control reporting requirements more effective for non-accelerated filers and all foreign private issuers. Consequently, this will benefit investors and improve confidence in the reliability of the disclosure made by these companies about their internal control over financial reporting.

However, we wish to emphasize that this extension should not be viewed as a basis for smaller companies and foreign private issuers to slow down or delay their Section 404 compliance efforts. Smaller companies or foreign private issuers may find that they need all the time available, including the time afforded by this extension, to comply fully with the internal control reporting requirements.

We for good cause find that, based on the reasons cited above, notice and solicitation of comment regarding extension of the compliance dates is impracticable, unnecessary, and contrary to the public interest.[16] In addition, for good cause and because the extension will relieve a restriction, the extension will be effective on March 8, 2005.

By the Commission.

Dated: March 2, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–4450 Filed 3–7–05; 8:45 am]

BILLING CODE 8010–01–P

[10] In March 2004, we proposed amendments to Form 20–F under the Exchange Act that would provide foreign private issuers a one-time accommodation relating to financial statements prepared under IFRS. *See* Release No. 34–49403 (March 11, 2004) [69 FR 12904].

[11] *See* Release No. 33–8514 (December 16, 2004) [69 FR 76498].

[12] *See* SEC Press Release No. 2005–20 (February 22, 2005), *see also* SEC Press Release 2005–13 (February 7, 2005).

[13] *See* COSO, *Internal Control—Integrated Framework.*

[14] *See* COSO News Release (January 11, 2005).

[15] *See* Exchange Act Rules 13a–15(c) and 15d–15(c) [17 CFR 240.13a–15(c) and 240.15d–15(c)].

[16] *See* Section 553(b)(3)(B) of the Administrative Procedure Act [5 U.S.C. 55s(b)(3)(B)] (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest").

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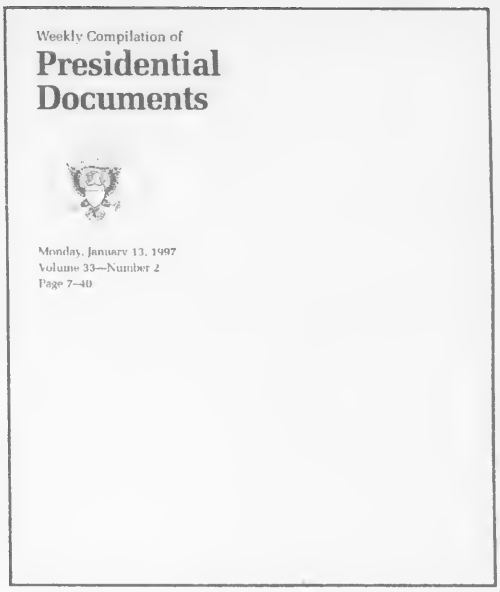

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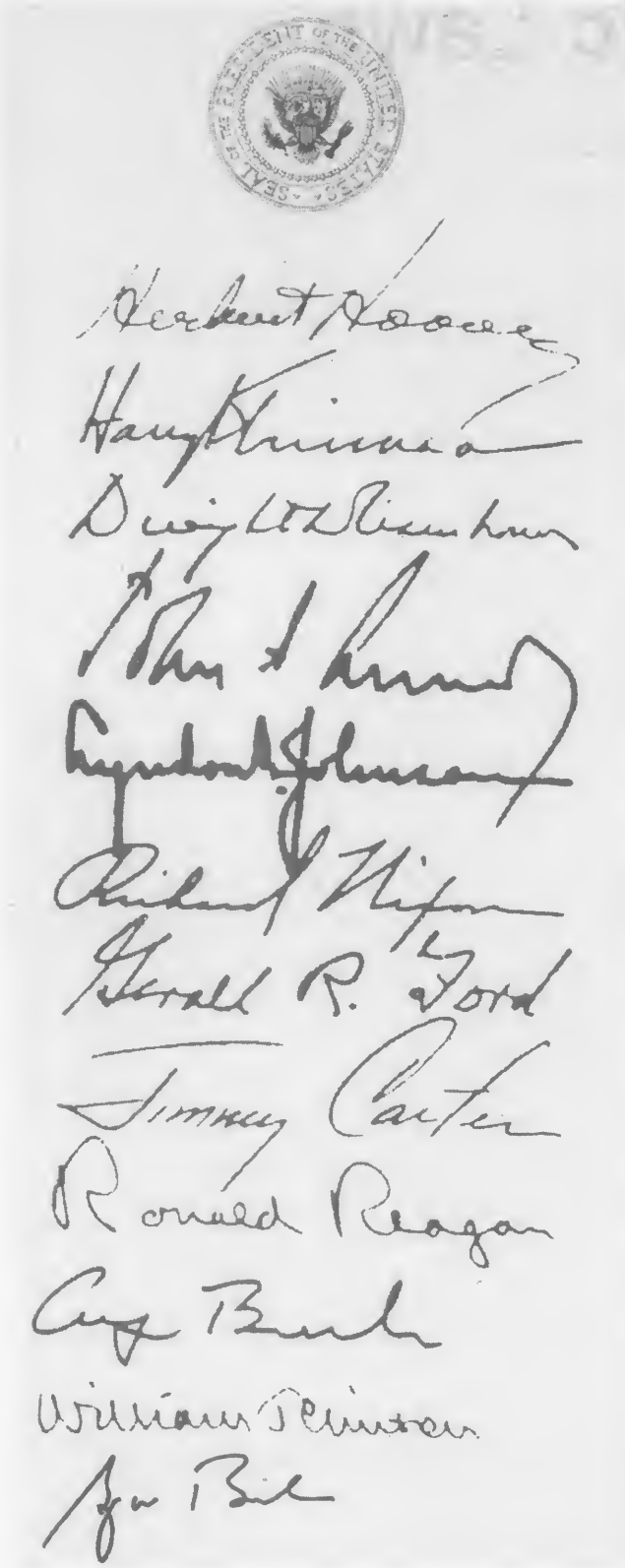

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