

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 March 4, 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, Intergovernmental

relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 17, 2004.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 40 CFR part 52 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 SS—Texas**

■ 2. In § 52.2270, the table in paragraph (e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures" is amended by adding one new entry to the end of the table to read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Second 10-year maintenance plan for Victoria County.	Victoria .....	02/05/03	01/03/05 [Insert FR page number where document begins].	

■ 3. Section 52.2275, Control strategy and regulations: Ozone, paragraph (e) is revised to read as follows:

**§ 52.2275 Control strategy and regulations: Ozone.**

\* \* \* \* \*

(e) Approval—The Texas Commission on Environmental Quality (TCEQ) submitted a revision to the Texas SIP on February 18, 2003, concerning the Victoria County 1-hour ozone maintenance plan. This SIP revision was adopted by TCEQ on February 5, 2003. This SIP revision satisfies the Clean Air Act requirement, as amended in 1990, for the second 10-year update to the Victoria County 1-hour ozone maintenance area.

[FR Doc. 04–28700 Filed 12–30–04; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 73 and 76**

[MM Docket No. 00–167; FCC 04–221]

**Broadcast Services; Children's Television; Cable Operators**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document resolves a number of issues regarding the obligation of television broadcasters to protect and serve children in their audience. The document addresses matters related to two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees protect children from excessive and inappropriate commercial messages. The Commission goal is to provide television

broadcasters with guidance regarding their obligation to serve children as we transition from an analog to a digital television environment, and to improve our children's programming rules and policies.

**DATES:** 47 CFR 73.670(a), (b) and (c) and Note 2, 47 CFR 73.673, and 47 CFR 76.225(b) and (c) are effective February 1, 2005. 47 CFR 73.670, Note 1; 47 CFR 73.671 (c)(6), (c)(7), (d), (e), and (f) and Note 2; and 47 CFR 76.225 (d) and Note 1 are effective January 1, 2006. 47 CFR 73.671(c)(5) and 47 CFR 73.3526(e)(11)(iii) contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document announcing the effective date for these sections.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Media Bureau, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Report and Order* in MM Docket No. 00-167, FCC 04-221, adopted September 9, 2004, and released November 23, 2004. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. To request materials in accessible formats for people with disabilities (braille, large print, electronic file, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

*Paperwork Reduction Act:* This document contains modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified and proposed information collection requirements contained in this proceeding.

### Summary of the Report and Order and Further Notice of Proposed Rule Making

1. In this Report and Order we resolve a number of issues raised in the Notice of Proposed Rulemaking (65 FR 66951-01, November 8, 2000) regarding the obligation of television broadcasters to protect and serve children in their audience. We address matters related to two areas: The obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees protect children from excessive and inappropriate commercial messages. For purposes of the Children's Television Act of 1990, which provides the basis for these limits on children's television commercial content, "the term 'commercial television broadcast licensee' includes a cable operator, as defined in section 602 of the Communications Act of 1934 (47 U.S.C. 522)." While some of the rules and policies we adopt herein apply only to digital broadcasters, others apply to both analog and digital broadcasters as well as cable operators. Our goals in

resolving these issues are to provide television broadcasters with guidance regarding their obligation to serve children as we transition from an analog to a digital television environment, and to improve our children's programming rules and policies.

2. First, we address the obligation of digital television ("DTV") broadcasters to provide children's educational and informational programming and, specifically, how that obligation applies to DTV broadcasters that use the multicast capability of their ATSC digital service to broadcast multiple program services. We adopt an approach pursuant to which digital broadcasters that choose to provide streams or hours of free video programming in addition to their required free over-the-air video program service will have an increased core programming benchmark roughly proportional to the additional amount of free video programming they choose to provide. Second, for both analog and digital broadcasters, we limit the number of preemptions allowed under our processing guideline to no more than 10 percent of core programs in each calendar quarter. A station that fails to meet the processing guideline because of excessive preemptions may still receive staff-level approval of its renewal application if it demonstrates that it has aired a package of educational and informational programming, including specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children, that demonstrates a commitment to educating and informing children at least equivalent to airing the amount of core programming indicated by the processing guideline. Licensees that do not qualify for staff level approval will have their license renewal applications referred to the Commission where they will have an additional opportunity to demonstrate compliance with the CTA. Third, we amend our rule regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol, E/I, which must be displayed throughout the program in order for the program to qualify as core educational programming. Fourth, we clarify that the children's television commercial limits and policies apply to all digital video programming directed to children ages 12 and under. Fifth, we interpret the commercial time limits to require that the display of Internet Web site addresses during program material is permitted as within the time limits only if the Web site meets certain

requirements, including the requirement that it offer a substantial amount of bona fide program-related or other noncommercial content and is not primarily intended for commercial purposes. Sixth, we revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. Educational and Informational Programming.

### Digital Core Children's Programming Processing Guideline

3. One of the questions posed in the Notice is how the current three-hour children's core educational programming processing guideline should apply to a DTV broadcaster that chooses to multicast. We asked if the processing guideline should apply to only one digital broadcasting program stream, to more than one program stream, or to all program streams the broadcaster chooses to provide. We also noted that DTV broadcasters may choose to devote a portion of their spectrum to either non-video services, such as datacasting, or to subscription video services available only to viewers who pay a fee, consistent with the requirement that they provide at least one free, over-the-air video program service to viewers. We asked whether the guideline should apply only to free broadcast services or also to services offered for a fee, and to video services only or also to non-video services. Finally, we asked how we should take into account the fact that DTV broadcasters have the flexibility to vary the amount and quality of broadcast programming they offer throughout the day. For example, a broadcaster could air 4 SDTV channels from 8 a.m. to 3 p.m., switch to two higher definition channels from 3 p.m. to 8 p.m., and finish with one HDTV channel for prime-time and late-night programming.

4. We have three main goals in crafting children's educational and informational programming rules for digital broadcasting. First, we want to ensure that the needs of children continue to be served "through the licensee's overall programming." We agree with children's television advocates who strongly support the position that any increase in multicasting channel capacity that broadcasters choose to implement as a result of digital technology should translate to a commensurate increase in the amount of educational programming available to children. Second, we want to provide broadcasters with flexibility in meeting their children's core

programming obligations to permit them to explore the myriad potential uses of their broadcast spectrum made possible by digital technology. Third, we want to address what has been identified by many as a persistent problem in our rules and policies implementing the CTA: the continued lack of awareness on the part of parents and others of the availability of core programming. This concern about lack of public awareness of core programming applies to both the analog and digital broadcast environments.

5. The current 3 hours per week processing guideline was adopted with the one channel per broadcaster analog model in mind. With the advent of digital broadcasting and the multicasting ability that technology offers, a new method of quantifying the current core programming guideline for digital broadcasting is both necessary and appropriate. We also believe that whatever additional requirements we impose should be as concrete and quantifiable as possible to remove uncertainty and facilitate enforcement.

6. We adopt today an approach pursuant to which digital broadcasters that choose to provide additional channels or hours of free video programming in addition to their required free over-the-air video program service will have an increased core programming benchmark roughly proportional to the additional amount of free video programming they choose to provide. This approach is similar to that proposed by a number of commenters in response to the NOI and the Notice. Our revised guideline will work as follows. Digital broadcasters will continue to be subject to the existing three hours per week core programming processing guideline on their main program stream. DTV broadcasters that choose to provide additional streams or channels of free video programming will, in addition, have the following guideline applied to the additional programming: 1/2 hour per week of additional core programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, digital broadcasters providing between 1 and 28 hours per week of free video programming in addition to their main program stream will have a guideline of 1/2 hour per week of core programming in addition to the 3 hours per week on the

main program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of 1 1/2 hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming. These benchmarks were derived by dividing the total number of hours in the week (168) by 6 (the number of 1/2 hour core programming increments required under our current guideline, as core programs must be at least 30 minutes in length), which equals 28. Thus, under the revised guideline, for every increment of 1 to 28 hours of additional free video programming offered in addition to the main digital program stream, the broadcaster must air at least an additional 1/2 hour of core programming. Another way to look at this is that for each full time stream of additional free video programming (24 hours day 7 days per week), the licensee must air an additional 3 hours per week of core programming.

7. Although we encourage stations to air more than an additional 1/2 hour per week of core programming for every increment of 28 hours of additional free video programming, in order to receive staff level approval of the CTA portion of their license renewal application under our revised processing guideline digital broadcasters must air at least 1/2 hour of core educational children's programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. As under our current processing guideline for the analog channel, a licensee will continue to be eligible for staff level approval if it demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less core programming than indicated by the revised guideline, demonstrates a level of commitment to educating and informing children at least equivalent to airing the amount of programming indicated by the guideline. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children may be counted toward the processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have the opportunity to demonstrate compliance with the CTA

in the same manner as under our current processing guideline.

8. To be considered core, the programming must comply with all of the requirements for core programming specified in our rules: that is, it must have serving the educational and informational needs of children ages 16 and under as a significant purpose; it must be aired between the hours of 7 a.m. and 10 p.m.; it must be a regularly scheduled weekly program; it must be at least 30 minutes in length; the educational and informational objective and the target child audience must be specified in writing the licensee's Children's Television Programming Report; and instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, must be provided by the licensee to publishers of program guides.

9. Our current 3 hours per week core programming processing benchmark is averaged over a six-month period in order to provide broadcasters with scheduling flexibility. We will also average the revised core programming processing benchmark to be applied to DTV broadcasters over a six-month period, thus providing some flexibility for digital broadcasters. The revised digital core programming guideline will become effective one year after release of this Report and Order.

10. We are concerned that digital broadcasters do not simply replay the same core programming in order to meet our revised processing guideline, particularly if broadcasters offer multiple streams of free video programming and thereby face a higher core programming guideline. We recognize, however, that to some degree children can benefit from repeated viewing of the same core program, as the educational lesson or message is reinforced. Accordingly, we will not prohibit all repeats of core programming by digital broadcasters under our revised guideline, but will require that at least 50 percent of core programming not be repeated during the same week to qualify as core. Under our current 3 hours per week processing guideline that applies to the analog channel, we allow repeats and reruns of core programming to be counted toward fulfillment of the guideline. We will exempt from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. In addition, during the digital transition, we will not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

11. In order to receive staff level approval of their license renewal application under our revised core programming processing guideline, digital broadcasters will be required to air at least three hours per week of core programming on their main program stream. To provide broadcasters with flexibility in choosing how best to serve their child audience, however, we will permit digital broadcasters to air all of their additional digital core programming, beyond the 3 hour baseline on the main digital program stream, on one free digital video channel or distribute it across multiple free digital video channels, at their discretion, as long as the stream/s on which the core programming is aired has comparable carriage on multichannel video programming distributors ("MVPDs") as the stream whose programming generates the core programming obligation under the revised processing guideline. Educational and informational programming aired on subscription channels, however, will not be considered core under our processing guideline. In addition, the current three hours per week core programming processing guideline will continue to apply to analog stations until the analog channel is returned to the Commission at the end of the digital transition. Core programs aired on digital program streams will not be considered in evaluating whether a station has complied with the core programming processing guideline for its analog channel.

12. We agree with those commenters who argue that, in some cases, children and parents may be best served by having core programming available on a channel that is devoted to programming appropriate for child or family viewing during all or part of the programming day or week. We also agree that requiring every programming stream to carry core programming could discourage broadcasters from experimenting with innovative multicasting services. If, for example, alternative content streams are used to directly expand the value of the main stream through the broadcasting of associated information or different camera angles or the alternative streams are used for low bit rate video services such as a dedicated weather channel, they may not be appropriate for the carriage of children's programming. Moreover, we do not want to discourage broadcasters from providing highly specialized channels on which content directed to children might depart from the specialized focus. It is our

expectation that broadcasters will develop such programming services. In the next three years, we intend to revisit the issues addressed in this Report and Order in another proceeding. At that time, we will consider, among other things, whether we should give broadcasters who choose to multicast more flexibility in terms of placement of core programming.

13. The revised guideline discussed above applies to digital broadcasters and the digital programming they provide. Up until the time that analog channels are returned to the Commission, we will continue to apply our current three hours per week core children's programming processing guideline to analog channels. Broadcasters will continue to file, on a quarterly basis, their Children's Television Programming Report, on FCC Form 398. We will revise current FCC Form 398 to permit broadcasters to report both analog and digital core programming on that form. Once the new form has been approved for use, we will issue a Public Notice informing broadcasters of the availability of the form and the date on which the revised form must begin to be used in place of the current form. On that date, reports will also be required to include information about digital core programming. As we have done in the analog context, we will continue to exempt noncommercial television licensees from children's programming reporting requirements with respect to their digital programming.

14. We also decline, at this time, to require high definition, interactivity, or other features made possible by digital technology to enhance core programming. We believe it would be premature to impose any requirement for use of technological advances in children's programming until broadcasters have had more opportunity to experiment with these features in other programming. However, we encourage broadcasters to provide high definition educational and informational programming for children as well as educational interactive features, to ensure that children benefit from the capabilities of digital technology. We agree with those commenters who argue that use of such features could improve the educational potential of core programming.

15. Finally, we disagree with those commenters that argue that the Commission lacks legal authority to impose new children's educational and informational programming requirements. As noted above, digital broadcasters are subject to the CTA's educational and informational programming requirements. In the 1996

Children's Programming Report and Order, we concluded that a safe harbor processing guideline approach to implementing the CTA is consistent with both the language and the intent of the statute. The revised quantitative processing guideline we adopt today for digital broadcasters is also consistent with the CTA and the First Amendment. In adopting the three hours per week core programming processing guideline for analog broadcasters, we concluded that defining what qualifies as programming "specifically designed" to serve the educational needs of children and giving broadcasters clear but nonmandatory guidance on how to guarantee compliance is a constitutional means of giving effect to the CTA's programming requirement. The actions we take today extend the current processing guideline to digital broadcasters and increase the guideline only for broadcasters who choose to use their digital capacity to air more free video programming. Broadcasters continue to retain wide discretion in choosing the ways in which they will meet their CTA obligations. Our new guideline imposes reasonable parameters on a broadcaster's use of the public airwaves and is narrowly tailored to advance the government's substantial, and indeed compelling, interest in the protection and education of America's children.

#### Preemption

16. Related to the issue of digital broadcasters' educational and informational programming obligations under the CTA is the issue of how we will treat preemptions of core programs by DTV broadcasters. To qualify as "core programming" for purposes of the three-hour-per-week processing guideline, the Commission requires that a children's program be "regularly scheduled"; that is, a core children's program must "be scheduled to air at least once a week" and "must air on a regular basis." In adopting the current educational programming rules, the Commission stated that television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission noted that programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. The Commission stated that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled

programming and what level of preemption is allowable.

17. We requested comment in the Notice on whether the Commission's policies regarding preemption of core programs should be revised in view of the greater programming capacity that will be available to DTV broadcasters. We noted that the ability of DTV broadcasters to multicast provides them with the option of airing multiple streams of programming simultaneously, thus increasing their flexibility to either avoid preempting core programs or to reschedule such programs to a regular "second home." Given this capability, we asked if we should fashion a rule defining clearly the requirement that a "core" program be "regularly scheduled," including the number of times a core program could be preempted and still count toward the three-hour-per-week processing guideline, and the efforts that must be made to reschedule and promote preempted programs in order for these programs to contribute toward the core programming guideline. If we were to adopt such a rule, we asked if we should continue to exempt from the requirement that core programs be rescheduled core programs preempted for breaking news. We also sought comment on the kind of rescheduling practices and promotion of rescheduled programs that we could require from digital broadcasters.

18. For both analog and digital broadcasters, to be considered core programming we will generally require that a preempted core program be rescheduled. In addition, we will consider, in determining whether the rescheduled program counts as a core educational program, the reason for the preemption, the licensee's efforts to promote the rescheduled program, the time when the rescheduled program is broadcast, and, as discussed below, the station's level of preemption of core programming. We will continue to exempt from the requirement that core programs be rescheduled core programs preempted for breaking news. Absent clear evidence that broadcasters are abusing this exemption, we intend to rely on broadcasters' journalistic judgment regarding the necessity of interrupting scheduled core programming because of a news alert.

19. As a general matter, for digital broadcasters we will not consider a core program moved to the same time slot on another of the station's digital program streams to be preempted as long as the alternate program stream receives MVPD carriage comparable to the stream from which the program is being moved and the station provides

adequate on-screen information about the move, including when and where the program will air, on both the original and the alternate program stream. This policy applies only to program moves from one digital stream to another digital stream on the same station. Thus, as long as viewers are adequately notified of the move and the program is moved to a program stream that is accessible to a comparable number of viewers, broadcasters may use their multicasting capability to avoid preempting core programming.

20. For both analog and digital broadcasters, we will limit the number of preemptions under our processing guideline to no more than 10 percent of core programs in each calendar quarter. Each preemption beyond the 10 percent limit will cause that program not to count as core under the processing guideline, even if the program is rescheduled. We will exempt from this preemption limit preemptions for breaking news.

21. We believe that this preemption limit will help parents and children to locate core programming and to anticipate when it will be aired. We believe that most stations currently do not preempt more than 10 percent of core programs in each calendar quarter. We also note that our processing guideline is averaged over a six-month period, which will provide broadcasters with some scheduling flexibility. In addition, a station that fails to meet the processing guideline because of excessive preemptions may still receive staff-level approval of its renewal application if it demonstrates that it has aired a package of educational and informational programming, including specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children, that demonstrates a commitment to educating and informing children at least equivalent to airing the amount of core programming indicated by the processing guideline. Licensees that do not qualify for staff level approval will have their license renewal applications referred to the Commission where they will have an additional opportunity to demonstrate compliance with the CTA.

#### Identification of Core Programming

22. As we stated in the NPRM, studies of the effectiveness of our educational programming requirements show a continued lack of awareness on the part of parents regarding the availability of core programming. As one study observed:

Information about E/I programs remains hard for parents to find. Although commercial

broadcasters are consistently using E/I icons, the on-air information is often brief and difficult to identify. Printed listing services do not carry the information. \* \* \* Thus, there is a serious lack of information for parents about core educational and informational offerings, mostly because the popular press does not appear to be interested in or have the capacity to publish such information. Not surprisingly, only one in seven parents is able to correctly identify the meaning of the E/I symbol.

23. As we noted when we adopted the current children's educational programming rules in 1996, parents can increase the audience of an educational program by encouraging their children to watch the show, but can only do so if they know in advance when the show will air and that the show is educational. The public information initiatives adopted by the Commission in 1996 were designed to maximize public access to information about core programming while minimizing the cost to licensees. In adopting the current on-air identification requirement, the Commission noted that on-air identifiers were likely to reach a larger audience than information published in program guides, at minimal cost to stations. We continue to believe that on-air identification of core programming is a cost-effective means of ensuring that core programming reaches the child audience, but agree with those commenters that argue that the use of different identifiers by different broadcasters is confusing parents and impairing their ability to choose core programming for their children.

24. Accordingly, we will amend our rules regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol: E/I. We will also require that this symbol be displayed throughout the program in order for the program to qualify as core. We believe this change to our on-air identification requirement will not prove onerous to broadcasters, who already use on-screen identifiers for core programs, and could greatly improve the public's ability to recognize and locate core programs. We note that broadcasters now display icons and other on-screen information with increasing frequency in many kinds of programming, and the public is increasingly used to seeing such information displayed along with program material. Broadcasters' increasing voluntary use of onscreen identifiers, such as network logos, presumably reflects their judgment as to the effectiveness of this technique in communicating information. We believe that broadcasters can display the E/I

icon in an unobtrusive manner that will help parents and others identify core programs without deterring potential child viewers.

25. We will apply this revised on-air identification requirement to both commercial and noncommercial broadcasters. Although we have previously exempted noncommercial licensees from the requirement that they identify core programming, we believe that requiring all broadcasters to use the E/I symbol throughout the program to identify core programming will help reinforce viewer awareness of the meaning of this symbol. We will, however, continue to exempt noncommercial television licensees from the other public information initiatives adopted in the 1996 Children's Programming Report and Order. Thus, noncommercial television stations will not be required to prepare and file quarterly Children's Television Programming Reports or to provide information identifying programming specifically designed to educate and inform children to publishers of program guides. As is our current practice, we will require noncommercial broadcast stations to maintain documentation sufficient to show compliance with the CTA's programming obligations at renewal time in response to a challenge or to specific complaints.

#### Commercial Limits

##### *Application of Existing Commercial Limits Rules and Policies to DTV*

26. We sought comment in the Notice on how the limits on the amount of commercial matter in children's programming should apply in the digital environment and how we should interpret with respect to DTV broadcasters the policies set forth in the 1974 Policy Statement on children's programming. We asked whether children's advertising limits and policies should apply only to free over-the-air channels, or to all digital channels, both fee and pay. We sought comment specifically on the proposal by CME, *et al.* that the Commission prohibit all direct links to commercial Web sites during children's programming. If we were to permit certain kinds of commercial links during children's programs, we asked if such links should be permitted to appear during the program itself, or be limited to appearing during commercials adequately separated from program material as required by our separations policy.

27. We will apply the commercial limits and policies, as clarified in

today's Order, to all digital video programming directed to children ages 12 and under, whether that programming is aired on a free or pay digital stream. We note that the commercial limits and policies currently apply to cable operators and DBS providers and that cable operators are defined as "broadcast licensees" for purposes of the commercial matter limitations in the CTA. Therefore, the application of such limits and policies to pay broadcast channels provides for consistent treatment of these program delivery systems for purposes of children's advertising restrictions. We agree with those commenters that argue that the same concerns that led to adoption of the advertising restrictions in the 1974 Policy Statement and the CTA—the unique vulnerability of children as television viewers—apply regardless of the channel that a child viewer watches. Thus, any advertising restrictions for children's programming should apply to all such programming, regardless of the free or pay status of the channel. This determination is both consistent with and required by Section 336 of the Communications Act, which states that the Commission "shall adopt regulations that allow the holders of [DTV] licenses to offer such ancillary and supplementary services on designated frequencies as may be consistent with the public interest, convenience and necessity." Providing programs intended for children that do not comply with the advertising limits or commercial policies is contrary to the public interest because they could expose children to excessive and abusive advertising practices.

28. We are aware that some broadcasters are currently displaying Internet Web site addresses that appear during children's program material (for example, in a crawl at the bottom of screen) which raises the issue of how the CTA commercial time limits should apply. We are concerned that the display of such addresses for Web sites established solely for commercial purposes in children's programs is inconsistent with our mandate under the CTA to protect children, who are particularly vulnerable to commercial messages and incapable of distinguishing advertising from program material. This is a concern that arises with respect to all broadcasters, both analog and digital, and to cable operators. Accordingly, we adopt a proposal similar to that advanced by Sesame Workshop with respect to this display of commercial Web site information in children's programs. Specifically, we will interpret the CTA

commercial time limits to require that, with respect to programs directed to children ages 12 and under, the display of Internet Web site addresses during program material is permitted as within the CTA limitations only if the Web site: (1) Offers a substantial amount of bona fide program-related or other noncommercial content; (2) is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).

29. For Web sites meeting these requirements, we will not limit the amount of time that the Web site address may be displayed during children's programs. In addition, we will permit the commercial portions of Web sites that comply with these requirements to sell or advertise products associated with the related television program. Because we require that permissible Web sites clearly separate the commercial portions of the site from the site's other content, we believe that children will be adequately protected from program-related merchandise sales. Because of the unique vulnerability of young children to host-selling, however, we will prohibit the display of Web site addresses in children's programs when the site uses characters from the program to sell products or services. This restriction on Web sites that use host-selling applies to Web site addresses displayed both during program material and during commercial material. We do not impose other restrictions at this time on the use of Web site addresses displayed only during commercials aired in children's programs.

30. We believe that this approach to the display of Web site addresses in programs directed to children ages 12 and under fairly balances the interest of all broadcasters in exploring the potential uses of the Internet in connection with their children's programs with our mandate to protect children from over commercialization. We will require a broadcaster that chooses to air children's programs displaying Web site addresses during program material to certify, as part of its certification in its license renewal application of compliance with the commercial limits on children's

programming, that it has also complied with the requirements concerning the display of Web site addresses in such programming. In addition, these broadcasters will be required to maintain in their public inspection file, until final action has been taken on the station's next license renewal application, records sufficient to substantiate the station's certification of compliance with the restrictions on Web site addresses in programs directed to children ages 12 and under. Cable operators airing children's programming must maintain records sufficient to verify compliance with these new rules and make such records available to the public. Such records must be maintained by cable operators for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

31. With respect to the appearance of direct, interactive, links to commercial Internet sites in children's programming, we agree with those commenters that express concern that prohibiting such links at least at this stage in the digital transition is premature and unnecessary and could hamper the ability of broadcasters to experiment with potential uses of interactive capability in children's programming. There is little if any use of direct Internet connectivity today in television programming of the type that was contemplated when the Notice in this proceeding was issued. Accordingly, we find that it would be premature and unduly speculative to attempt to regulate such direct connectivity at this time. We agree that direct links to Web sites with program-related material could provide beneficial educational and informational content in children's programs and do not wish to place unnecessary barriers in the way of technical developments in this area that may take place.

32. We encourage broadcasters to experiment with the capabilities digital television offers by developing interactive services that can be used to enhance the educational value of children's programming. With the benefits of interactivity, however, come potential risks that children will be exposed to additional commercial influences. We therefore seek comment in the Further Notice of Proposed Rulemaking that is part of this Report and Order about what kinds of services broadcasters and cable operators are developing and what rules would be appropriate to adopt. During the pendency of this proceeding, however, we emphasize that broadcasters and cable operators may not circumvent our

rules on commercial limits through technological developments in interactivity. We encourage broadcasters and cable operators to innovate and experiment with new uses of interactive technology that is educational in nature.

#### *Definition of Commercial Matter*

33. The Notice also invited commenters to address a broader question related to our restriction on the duration of advertising during children's programming. This issue arises with respect to both analog and digital programming. We noted that, under our current policy, the limitation of 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays applies to "commercial matter." "Commercial matter" is defined to exclude certain types of program interruptions from counting toward the commercial limits, including promotions of upcoming programs that do not mention sponsors, public service messages promoting not-for-profit activities, and air-time sold for purposes of presenting educational and informational material. We observed in the Notice that there is a significant amount of time devoted to these types of announcements in children's programming, thereby often reducing the amount of time devoted to actual program material to an amount far less than the limitation on the duration of commercial matter alone might suggest.

34. Accordingly, we invited comment in the Notice on whether the Commission should revise its definition of "commercial matter" to include some or all of these types of program interruptions that do not currently contribute toward the commercial limits. We noted that some of the types of program interruptions currently excluded from the commercial limits may contain information valuable to children, such as promotion of upcoming educational programs or certain types of public service messages. We asked if we should nonetheless require that the time devoted to these announcements count toward the commercial limits to maximize the amount of time devoted to program material and reduce the time taken by interruptions. We also asked whether, if we were to revise our definition of "commercial matter," we should apply the new definition only to digital broadcasting or also to analog broadcasting. Finally, we asked commenters to address whether our ability to revise this definition is restricted by the CTA and its legislative history.

35. We will revise our definition of "commercial matter" to include

promotions of television programs or video programming services other than children's educational and informational programming. This revised definition will apply to analog and digital television stations and to cable operators. In the Further Notice of Proposed Rulemaking that is part of this Report and Order, we also propose to apply this revised definition to Direct Broadcast Satellite service providers. Our goals in making this revision to the definition of commercial matter are to reduce the number of commercial interruptions in children's programming and encourage the promotion of educational and informational programming for children.

36. We agree with those commenters who argue that program promotions should fall within the scope of commercial matter because the station broadcasting the promotion receives significant consideration for airing these advertisements: specifically, the increased audiences for the promoted program which presumably leads to increased advertising rates for the station. Reducing the number of program promotions will help protect children from overcommercialization of programming consistent with the overall intent of Congress in the CTA. At the same time, exempting program promotions for children's educational and informational programming may encourage broadcasters to promote this programming, thereby increasing parents' awareness of the programming and possibly the program's audience, and thus extending the educational benefit of the programming. As noted above, there is evidence of a continued lack of awareness on the part of parents regarding the availability of core programming. Our action may lead to additional promotion of children's educational and informational programming, including core programming, thereby helping to address this problem.

37. This decision is consistent with the CTA and its legislative history. The term "commercial matter" is not defined in the CTA. The House and Senate Reports state that the definition should be "consistent" with the definition used in former Form 303-C, which defined commercial matter to include, among other things, promotional announcements by commercial stations for or on behalf of another commonly owned or controlled broadcast station serving the same community. Including program promotions in the definition of commercial matter is consistent with this aspect of the definition of commercial matter on former Form 303-

C, as in either case the station is receiving indirect consideration for the program promotion.

#### **Inappropriate Promotions in Children's Programming**

38. Another issue raised both in the Notice and in the NOI relates to the airing, in programs viewed by children, of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content or inappropriate language. This issue arises with respect to both analog and digital broadcasting and applies not only to educational and informational children's programming but to any programming that is viewed by a substantial number of children. We sought comment in the Notice on steps the Commission could take to ensure that programs designed for children or families do not contain promotions that are unsuitable for children to watch. We noted that the broadcast, cable, and motion picture industries voluntarily rate video programming that contains sexual, violent, or other indecent material and broadcast signals containing these ratings so that these programs can be screened by "V-Chip" technology available in television sets. The ratings identify the age group for which a particular program is suitable and indicate when the program contains violence, sexual content, or suggestive or coarse language. We asked in the Notice whether the ratings of programs promoted by broadcasters should be consistent with the ratings of the program during which the promotions run. We also asked whether we should require that promotions themselves be rated and encoded so they can be screened by V-Chip technology, or that promotions be rated and that programs with a significant child audience contain only promotions consistent with the rating of the program in which they appear.

39. In light of the consensus among commenters that voluntary efforts rather than Commission action are preferable to ensure that age-inappropriate promotions are not aired in children's programs, we will not take action on this issue at this time. Instead, we urge broadcasters to ensure that industry mechanisms are in place and are used effectively to prevent the airing of promotions in children's programs that are inappropriate for child viewing. We also urge the public to continue to monitor promotions aired in children's programming and to notify us of instances in which broadcasters air age-inappropriate promotions. If we receive

information suggesting that age-inappropriate promotions have become a systemic problem, we will revisit this issue.

40. We agree with those commenters that argue that DTV technical standards should not foreclose the implementation of changes to or improvements in the V-Chip system. We also believe that DTV technical standards should not foreclose the option of using V-Chip technology to support multiple rating systems. In our Report and Order in the Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, we adopted rules to ensure that V-Chip functionality is available in the digital world. In that proceeding, we stated our belief that the ability to modify the content advisory rating system is beneficial and required that television receivers be able to process new ratings should they be developed. We also adopted standards that do not preclude manufacturers from incorporating additional blocking standards or techniques into receivers, thereby permitting manufacturers to develop V-Chip technology that can be used in conjunction with additional ratings systems.

41. We will not at this time adopt the other V-Chip proposals advanced by commenters. Nonetheless, we encourage broadcasters to consider various ways of improving V-Chip utility, including making available in their programming a link to a Web site where parents and other viewers can get additional information about program ratings and the V-Chip, once such technology or functionality is available to consumers. We also encourage the broadcast, cable, and motion picture industries to consider whether any revisions to the ratings system would make it more accurate and easier to understand.

42. In our next periodic review of the status of the digital transition, we plan to address whether we should require digital broadcasters to embed E/I information in the core program stream so that this information can be sought by V-Chip or other technology. Given the lack of information in the record of this proceeding about how this information would be used and the potential benefits of this technology in helping parents locate core programming, and the potential costs such a requirement would impose, we do not address this issue today.

#### **Future Proceedings**

43. We intend to revisit the issues addressed in this item in the next three years and consider whether the determinations made herein should be

changed in light of technological developments. In particular, we will consider whether broadcasters should be given more flexibility to determine the program stream on which core programming is placed.

44. In addition, we intend to issue a Public Notice in the near future seeking comment on whether broadcasters are complying with the letter and intent of the CTA in terms of, among other things, the amount and quality of core children's programming being provided and the extent of preemption of such programming. The Commission staff also intends to conduct a review of broadcaster compliance with the CTA and our rules and to issue a report on the results of this review and the comments filed in response to the Public Notice. The Commission last issued a report on compliance with the CTA in 2001. The Commission plans to conduct similar reviews and issue similar reports on a regular basis roughly every three years.

#### **Effective Dates and Transition Period**

45. Our revised policies and rules regarding application of the commercial limits and policies to digital programming as well as those regarding the display of Internet addresses in analog and digital programming and in programming aired by cable operators, will become effective February 1, 2005. We will begin to evaluate compliance with these requirements in renewal applications filed after that date. Thus, the first renewal applications to which these new requirements will be applied are those required to be filed by April 1, 2005, by television stations located in the states of Indiana, Kentucky, and Tennessee. Licensee performance during any portion of the renewal term that predates February 1, 2005, will be evaluated under the current rules and policies and performance that post-dates the rules will be judged under the new provisions.

46. Our rules regarding on-air identification of core programming will become effective after approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 ("PRA"). Upon OMB approval, we will issue a Public Notice announcing the effective date of this rule. The effective date will be no earlier than February 1, 2005. Similarly, we will issue a Public Notice announcing when the revised FCC Form 398, also subject to OMB approval under the PRA, will be available for use by licensees and when licensees must commence using the revised form to report digital core programming.



47. Our revised definition of commercial matter will become effective January 1, 2006. This transition period will give programmers time to produce sufficient children's programming and other material to include within children's programming that would not be considered commercial matter. Similarly, our revised safe harbor processing guideline for digital broadcasters will become effective January 1, 2006. The limit on the number of preemptions for digital broadcasters under our processing guideline to no more than 10 percent of core programs in each calendar quarter and the limit for digital broadcasters on the number of repeats of core programming to no more than 50 percent of core programming during the same week will also become effective January 1, 2006. These requirements relate to the calculation of hours of core programming under our revised guideline and therefore should become effective at the same time as the revised guideline. In addition, to give analog broadcasters time to come into compliance with our rule limiting the number of preemptions under the current analog processing guideline to no more than 10 percent of core programs in each calendar quarter, we will also delay the effective date of that rule as applied to analog broadcasters until January 1, 2006. We believe that this transition period is appropriate to give licensees time to develop programming or to renegotiate or allow expiration of existing program contracts as necessary. Renewal applications filed earlier than January 1, 2006, will be evaluated for compliance with the CTA based on our current rules and the policies expressed in the 1996 Children's Programming Report and Order and the 1991 Report and Order, as modified upon reconsideration. License renewal applications filed after January 1, 2006, will be evaluated to determine whether broadcasters are providing core programming using the revised definition of commercial matter and processing guideline adopted herein and are complying with the revised rules concerning preemption and repeats of core programming. Thus, the first renewal applications to which these new requirements will be applied are those required to be filed by February 1, 2006, by stations located in the states of Kansas, Nebraska, and Oklahoma. Licensee performance during any portion of the renewal term that predates January 1, 2006, will be evaluated under the current rules and policies and performance that post-dates

the new rules will be judged under the new provisions.

### Conclusion

48. We adopt this Report and Order and Further Notice of Proposed Rule Making to address the obligation of DTV broadcasters under the CTA to air educational programming for children and to protect children from excessive and inappropriate commercial messages. Our goals are to ensure that parents and children benefit from broadcasters' use of digital technology to provide multiple broadcast streams and to permit broadcasters flexibility to explore the potential uses of the broadcast spectrum made possible by digital technology, including the use of direct Web site links in children's programming, consistent with the mandate of the CTA. We believe that the rules and policies adopted herein further the mandate of the CTA that broadcast television fulfill its potential to teach the nation's children and that broadcasters protect children from over commercialization.

### VII. Administrative Matters

49. This Report and Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding. Written comments by the public on the proposed new and modified information collection(s) are due 60 days from date of publication of this Report and Order in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *CathyWilliams@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *KristyL.LaLonde@omb.eop.gov*, or via fax at 202-395-5167.

50. As required by the Regulatory Flexibility Act,<sup>1</sup> the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this

Report and Order. The FRFA is set forth below.

51. The Commission will send a copy of the Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

52. For additional information on this proceeding, please contact Kim Matthews, Policy Division, Media Bureau at (202) 418-2154.

### Final Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rule Making ("NPRM"). The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. One comment was received on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

#### *I. Need for, and Objectives of, the Report and Order*

The purpose of this proceeding is to determine how the existing children's educational television programming obligations and limitations on advertising in children's programs should be interpreted and adapted to apply to digital television broadcasting in light of the new capabilities made possible by that technology. First, we address the obligation of digital television ("DTV") broadcasters to provide children's educational and informational programming and, specifically, how that obligation applies to DTV broadcasters that use the multicast capability of their ATSC digital service to broadcast multiple program services. We adopt an approach pursuant to which digital broadcasters that choose to provide streams or hours of free video programming in addition to their required free over-the-air video program service will have an increased core programming benchmark roughly proportional to the additional amount of free video programming they choose to provide. Second, for both analog and digital broadcasters, we limit the number of preemptions allowed under our processing guideline to no more than 10 percent of core programs in each calendar quarter. Third, we amend our rule regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol, E/I, which must be displayed throughout the program in order for the program to qualify as core

<sup>1</sup> See 5 U.S.C. § 604.

educational programming. Fourth, we clarify that the children's television commercial limits and policies apply to all digital video programming directed to children ages 12 and under. Fifth, we interpret the commercial time limits to require that the display of Internet Web site addresses during program material is permitted as within the time limits only if the Web site meets certain requirements, including the requirement that it offer a substantial amount of bona fide program-related or other noncommercial content and is not primarily intended for commercial purposes. Sixth, we revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. Finally, we seek comment on several additional proposals concerning the children's programming commercial limits and indicate our intention to issue a Public Notice in the near future seeking comment on broadcaster compliance with the Children's Television Act of 1990 ("CTA"). Our objectives in resolving these issues are to provide television broadcasters with guidance regarding their obligation to serve children as we transition from an analog to a digital television environment and to improve our children's programming rules and policies.

## *II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

The U.S. Small Business Administration ("SBA") filed the only comment in this proceeding responding to the IRFA. According to the SBA, the IRFA does not satisfy the requirements of the RFA, as it does not describe many of the "compliance requirements" contained in the NPRM and their impact on small firms. The SBA also argues that the IRFA does not discuss significant alternatives that would accomplish the objectives while minimizing the significant economic impact on small entities. SBA states that it does not question the Commission's goals in this proceeding, but instead asks that the Commission seek ways to minimize the burdens on small business while still accomplishing its goals.

The NPRM described a number of possible ways of applying the current core programming processing guideline to digital broadcasters. These proposals were suggested by commenters responding to the NOI in this docket. It was not possible for the Commission to develop detailed estimates of the cost of adopting each of these proposals

because the details of how any of the proposals would be implemented were not known. The NPRM sought comment on these various proposals in large part to determine, in the view of broadcasters and others, which would be the preferable means of adapting our current rules. Commenters responding to the NPRM address, among other issues, the cost of the various proposals and the advantages, from cost and other perspectives, of the approach they advocate. In determining what approach to adopt, the Commission carefully considered all of the comments, particularly those offering less burdensome means of accomplishing our stated objectives. The approach adopted in the Report and Order attempts to balance the need to adapt our current rules to the digital environment and to improve our children's programming rules and policies with the need to minimize costs where possible and provide broadcasters with flexibility to continue to explore different ways of employing digital technology.

## *III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

**Television Broadcasting.** The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 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. 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.

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.

There are also 380 non-commercial TV stations in the BIA database. Since these stations do not receive advertising revenue, there are no revenue estimates for these stations. We believe that virtually all of these stations would be considered "small businesses" given that they are generally owned by non-commercial entities including local schools and governments and, for the most part, rely on public donations and funding.

**Cable Operators.** The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually. The Commission has developed, with SBA's approval, our 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 fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 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 decisions and rules in this Report and Order.

The Communications Act, as amended, also contains a size standard for a small cable system operator, which

is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 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. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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

The Order adopts a revised core children's programming processing guideline for digital television broadcasters. Our revised guideline will work as follows. Digital broadcasters providing only one stream of free digital video programming will continue to be subject to the existing 3 hours per week core programming processing guideline. DTV broadcasters that choose to provide additional streams or channels of free video programming will, in addition, have the following guideline applied to the additional programming: ½ hour per week of additional core programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, digital broadcasters providing between 1 and 28 hours per week of free video programming in addition to their main program stream will have a guideline of ½ hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 29 and 56 hours per week of free video programming in addition to their main program stream will have a guideline of 1 hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of

1½ hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming. In addition, for digital broadcasters, we will require that at least 50 percent of core programming not be repeated during the same week to qualify as core.

The revised guideline discussed above applies to digital broadcasters and the digital programming they provide. Up until the time that analog channels are returned to the Commission, we will continue to apply our current 3 hours per week core children's programming processing guideline to analog channels. Broadcasters will continue to file, on a quarterly basis, their Children's Television Programming Report, on FCC Form 398. We will revise current FCC Form 398 to permit broadcasters to report both analog and digital core programming on that form. Once the new form has been approved for use, we will issue a public notice informing broadcasters of the availability of the form and the date on which the revised form must begin to be used in place of the current form. On that date, reports will also be required to include information about digital core programming. As we have done in the analog context, we will continue to exempt noncommercial television licensees from children's programming reporting requirements with respect to their digital programming.

As a general matter, for digital broadcasters we will not consider a core program moved to the same time slot on another of the station's digital program streams to be preempted as long as the alternate program stream receives MVPD carriage comparable to the stream from which the program is being moved and the station provides adequate on-screen information about the move, including when and where the program will air, on both the original and the alternate program stream. Thus, as long as viewers are adequately notified of the move and the program is moved to a program stream that is accessible to a comparable number of viewers, broadcasters may use their multicasting capability to avoid preempting core programming. For both analog and digital broadcasters, however, we will limit the number of preemptions under our processing guideline to no more than 10 percent of core programs in each calendar quarter. Each preemption beyond the 10 percent limit will cause that program not to count as core under the processing guideline, even if the program is rescheduled. We will exempt from this

preemption limit preemptions for breaking news.

In addition, the item amends our rules regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol: E/I. We will also require that this symbol be displayed throughout the program in order for the program to qualify as core. We will apply this revised on-air identification requirement to both commercial and noncommercial broadcasters.

The item applies the commercial limits and policies to all digital video programming directed to children ages 12 and under, whether that programming is aired on a free or pay digital stream. In addition, we interpret the CTA commercial time limits to require that, for both analog and digital broadcasters, with respect to programs directed to children ages 12 and under, the display of Internet Web site addresses during program material is permitted as within the CTA limitations only if the Web site: (1) Offers a substantial amount of bona fide program-related or other noncommercial content; (2) is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material). Finally, the item also revises our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming.

#### *V. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

Several steps were taken to minimize significant impact on small entities. For the many broadcasters simulcasting the core programming offered on their analog channel on a single digital program stream and offering no other digital free video programming, compliance with the new processing guideline should be automatic, as the digital stream will simulcast the core programming aired on the analog stream and the current 3 hours/week guideline will apply to both streams. For broadcasters choosing to provide additional streams of digital free video

programming, the revised guideline establishes a series of graduated benchmarks which increase the core programming obligation in relation to the number of hours of additional free video programming offered by the licensee. Thus, only those stations choosing to provide additional free video programming are subject to the revised processing guideline. We rejected the "pay or play" and "menu" alternatives to the revised guideline largely because these approaches were more administratively burdensome to stations. Under the current and revised guideline, stations have and will continue to have the option of sponsoring core programming on other stations in the market.

In addition, for digital broadcasters we require under the new processing guideline that at least 50 percent of core programming not be repeated during the same week to qualify as core. However, we exempt from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. Also, during the transition, we will not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

For both analog and digital broadcasters, however, the item limits the number of preemptions under our processing guideline to no more than 10 percent of core programs in each calendar quarter. We exempt from this preemption limit preemptions for breaking news, however. We believe that most stations currently do not preempt more than 10 percent of core programs in each calendar quarter. We also note that our processing guideline is averaged over a six-month period, which will provide broadcasters with some scheduling flexibility. In addition, a station that fails to meet the processing guideline because of excessive preemptions may still receive staff-level approval of its renewal application if it demonstrates that it has aired a package of educational and informational programming, including specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children, that demonstrates a commitment to educating and informing children at least equivalent to airing the amount of core programming indicated by the processing guideline. Licensees that do not qualify for staff level approval will have their license renewal applications referred to the Commission where they will have an additional opportunity to demonstrate compliance with the CTA.

Although we have previously exempted noncommercial licensees from the requirement that they identify core programming, we believe that requiring all broadcasters to use the E/I symbol throughout the program to identify core programming will help reinforce viewer awareness of the meaning of this symbol. We will, however, continue to exempt noncommercial television licensees from the other public information initiatives adopted in the 1996 Children's Programming Report and Order. Thus, noncommercial television stations will not be required to prepare and file quarterly Children's Television Programming Reports or to provide information identifying programming specifically designed to educate and inform children to publishers of program guides. As is our current practice, we will require noncommercial broadcast stations to maintain documentation sufficient to show compliance with the CTA's programming obligations at renewal time in response to a challenge or to specific complaints. We also decline to require licensees to use high definition, interactivity, or other features to enhance core programming.

Although the Order limits the display in children's programming of Internet Web site addresses to sites established solely for commercial purposes, it does not prohibit the display of all Web site addresses. In addition, the item does not prohibit direct Internet links in children's programs as several commenters advocated. This approach was adopted in an attempt to balance the interest of digital broadcasters in exploring the potential uses of interactivity with our mandate to protect children from over commercialization. The Order also declines to do more than urge voluntary action on the part of broadcasters to ensure that age-inappropriate promotions are not aired in children's programs.

#### VI. Report to Congress

The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

#### List of Subjects

47 CFR Part 73

Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Rule Changes

■ For the reasons discussed in the preamble 47 CFR Parts 73 and 76 of the Code of Federal Regulations are amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.670 is revised to read as follows:

#### § 73.670 Commercial limits in children's programs.

(a) No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) The display of Internet Web site addresses during program material is permitted only if the Web site:

(1) Offers a substantial amount of bona fide program-related or other noncommercial content;

(2) Is not primarily intended for commercial purposes, including either e-commerce or advertising;

(3) The Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and

(4) The page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled "store" and no links to another page with commercial material).

(c) The display of Web site addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

**Note 1:** *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

**Note 2:** For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

\* \* \* \* \*

■ 3. Section 73.671 is amended by revising paragraphs (c)(5) and (c)(6), adding paragraphs (c)(7), (d), (e), and (f), and removing Note 2 to read as follows:

**§ 73.671 Educational and informational programming for children.**

\* \* \* \* \*

(c) \* \* \*

(5) The program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I;

(6) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in § 73.3526(e)(11)(iii); and

(7) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in § 73.673.

(d) Until analog channels are returned to the Commission, the Commission will apply the following processing guideline to analog stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its analog channel. A licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Licensees that do not meet these processing guidelines will be referred to

the Commission, where they will have full opportunity to demonstrate compliance with the CTA (e.g., by relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

(e) The Commission will apply the following processing guideline to digital stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its digital channel(s).

(1) A digital television licensee providing only one stream of free digital video programming will be subject to the 3 hour/week Core Programming processing guideline discussed in paragraph (d) of this section on that channel; *i.e.*, a licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) on its main program stream will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA (e.g., by relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

(2)(i) A digital television licensee providing streams of free digital video programming in addition to its main program stream will be subject to the processing guideline described in paragraph (e)(1) of this section on its main program stream and to the following guideline applied to the additional programming: ½ hour per week of additional Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, digital broadcasters providing between 1 and 28 hours per week of free video programming in addition to their main program stream will have a guideline of ½ hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 29 and 56 hours per week of free video programming in addition to their main program stream will have a guideline of 1 hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of 1½ hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming.

(ii) Broadcasters providing more than one stream of free digital video programming may air all of their additional core programming, apart from the 3 hours of core programming that must be aired on the main program stream, on one free video channel, or distribute it across multiple free video channels, at their discretion, as long as the stream on which the core programming is aired has comparable MVPD carriage as the stream whose programming generates the core programming obligation under the processing guideline described in paragraph (e)(2)(i) of this section.

(3) For purposes of the guideline described in paragraphs (e)(1) and (e)(2) of this section at least 50 percent of core programming cannot be repeated during the same week to qualify as core. This requirement does not apply to any program stream that merely time shifts the entire programming line-up of another program stream and, during the digital transition, to core programs aired on both the analog station and a digital program stream.

(f) No more than 10 percent of Core Programs may be preempted in each calendar quarter to qualify as Core Programming.

\* \* \* \* \*

**§ 73.673 [Amended]**

■ 4. Section 73.673 is amended by removing and reserving paragraph (b).

■ 5. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

(e) \* \* \*

(11) \* \* \*

(iii) *Children's television*

*programming reports.* For commercial TV broadcast stations, both analog and digital, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673, as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

\* \* \* \* \*

**PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

■ 6. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 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.

■ 7. Section 76.225 is amended by revising paragraph (b) and Note 1 and by adding paragraphs (c) and (d) to read as follows:

**§ 76.225 Commercial limits in children's programs.**

\* \* \* \* \*

(b) The display of Internet Web site addresses during program material is permitted only if the Web site:

(1) Offers a substantial amount of bona fide program-related or other noncommercial content;

(2) Is not primarily intended for commercial purposes, including either e-commerce or advertising;

(3) The Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and

(4) The page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).

(c) The display of Web site addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

(d) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

**Note 1 to § 76.225:** Commercial matter means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

\* \* \* \* \*

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**BILLING CODE 6712-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**48 CFR Chapter 3**

**Acquisition Regulation**

**AGENCY:** Department of Health and Human Services (HHS).

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Health and Human Services is amending its acquisition regulation (HHSAR) for the purpose of making administrative and editorial changes to reflect organizational title changes resulting from Office of the Secretary (OS) and Operating Division (OpDiv) reorganizations; updating and removing outdated references; providing procedural guidance for reporting violations of the Procurement Integrity Act; assigning unique document numbers for contracts and task orders, in accordance with an Office of Management and Budget Memorandum dated August 6, 2003; adding a new training requirement for HHS project officers; adding the terms "veteran-owned" and "service-disabled veteran-owned" to describe small business categories consistent with the Federal Acquisition Regulation (FAR); permitting a total of basic and option periods of up to ten years for all service contracts not subject to the Service Contract Act or other statutory requirements; adding the Choice of Law (Overseas) clause in solicitations and contracts when contract performance will be outside the United States, its possessions, and Puerto Rico, except as otherwise provided in a government-to-government agreement; removing the reference to the Department's General Administration Manual with respect to major system acquisitions; deleting unconstitutional and unenforceable portions of the Confidentiality of Information clause resulting from the outcome of *Board of Trustees of Leland Stanford Junior Univ. v. Sullivan*, and providing current references with respect to assurances and regulations governing the protection of human subjects. HHS is issuing a direct final rule for this action because HHS expects there will be no significant adverse comments on the rule.

**DATES:** This direct final rule will become effective March 4, 2005, unless significant adverse comments are received by February 2, 2005. If adverse comment is received, HHS will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments by either of the following methods: E-Mail: *Tracey.Mock@hhs.gov* or by mail to: Tracey Mock, DHHS, OS, ASAM, Office of Acquisition Management and Policy, 200 Independence Ave., SW., Room 324E, Washington, DC 20201. Please state "48 CFR 3" on the subject line.