

Dated: September 17, 2001.

**Thomas A. Scully,**  
Administrator, Centers for Medicare &  
Medicaid Services.

Dated: October 1, 2001.

**Tommy G. Thompson,**  
Secretary.

[FR Doc. 01-25422 Filed 10-25-01; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 408

[CMS-4007-P]

RIN 0938-AK42

### Medicare Program; Supplementary Medical Insurance Premium Surcharge Agreements

**AGENCY:** Centers for Medicare &  
Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement legislation contained in section 1839(e) of the Social Security Act, as amended by section 144 of the Social Security Act Amendments of 1994 and section 4582 of the Balanced Budget Act of 1997. That legislation created a new Medicare premium payment arrangement whereby States and local government agencies can enter into an agreement with the Secretary to make periodic lump sum payments for the Supplementary Medical Insurance (SMI) late enrollment premium surcharge amounts due for a designated group of eligible enrollees. Under this proposal, we would define and set out the basic rules for the new SMI premium surcharge billing agreement.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 26, 2001.

**ADDRESSES:** Mail written comments (one original and three copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4007-P, P.O. Box 8013, Baltimore, MD 21244-8013.

If you prefer, you may deliver, by courier, your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443-G, 200 Independence Avenue, SW, Washington, DC 20201, or

Centers for Medicare and Medicaid Services, C5-14-03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS-4007-P on each comment.

Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room C5-12-08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786-7197 to make an appointment to view comments.

**FOR FURTHER INFORMATION CONTACT:**  
Sandy Clarke, (410) 786-7451.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 1839(e) of the Social Security Act (the Act), as amended by section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103-432, October 31, 1994), allows States to enter into agreements with us to pay a lump sum for the Part B premium late enrollment surcharge amounts due for a designated group of eligible enrollees. Section 4582 of the Balanced Budget Act of 1997 (Pub. L. 105-33) (BBA) amended the Act by adding new language that allows local government agencies to also pay the surcharge. Under section 4582 of the BBA, any appropriate State or local government agency specified by the Secretary may enter into a Supplementary Medical Insurance (SMI) premium surcharge agreement.

This legislation was requested to enable State and local government agencies that are discontinuing to offer a health benefits package to their retirees, and requesting that the retirees utilize Medicare for their health insurance, to pay the ensuing SMI premium surcharge on a lump sum basis.

While covered by the State or local government agency health care plans, some retirees, who believed that these health plans were sufficient to cover their health care needs, chose not to enroll in Medicare when they first became eligible, or enrolled and subsequently canceled their Medicare coverage. When these retirees were notified by their State or local

government agency retirement offices that those agencies would no longer offer a health benefit package (and that it therefore would be necessary for the retirees to enroll or reenroll in Medicare) they learned that they were subject to the late enrollment premium surcharge. State and local government agency retirement offices contacted us and requested either a waiver of the surcharge or establishment of a special enrollment period for the affected retirees. We denied these requests and determined that the affected retirees were subject to the late enrollment premium surcharge. This prompted some State and local government agency retirement offices to offer to pay the surcharge portion of the Supplementary Medical Insurance premium on behalf of their affected retirees. It also prompted a request from a local government agency to enter into a special billing and payment arrangement with us in order periodically to receive a single bill and pay a lump sum for the surcharge amounts due from a specified group of its retirees.

Since there was no law or regulation in place that would have allowed us to send a State or local government agency a single bill to pay a lump sum for the SMI premium surcharge portion for a group of enrollees, we initially denied the request. Subsequently, the Congress enacted legislation that allowed States to pay the Secretary, on a quarterly or other periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of Medicare enrollees (section 1839(e) of the Act, section 144 of the Social Security Act Amendments (Pub. L. 103-432)). Section 4582 of the BBA subsequently amended section 1839(e) of the Act by adding language that would also allow any appropriate State or local government agency specified by the Secretary to enter into an agreement to pay the SMI premium surcharges on a periodic lump sum basis. Because the CMS third party billing system, which will be used for billing and payment of these surcharge amounts, was developed to accommodate monthly billing and payments, all SMI premium surcharge amounts would be billed and paid on a monthly basis.

The election to make lump sum payments of SMI premium surcharges by a State or local government agency under an SMI premium surcharge agreement would be strictly voluntary and would be provided as a convenience to the State or local government agency.

## II. Provisions of the Proposed Regulations

We are proposing rules to implement section 1839(e) of the Act, section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103-432), and section 4582 of the BBA. We would make the following changes in 42 CFR part 408:

We would add a new subpart H to the regulations in part 408 (Premiums for Supplementary Medical Insurance). The new subpart would be entitled Supplementary Medical Insurance Premium Surcharge Agreements.

Within the subpart, we propose to add a section that would contain the authority for allowing States and local government agencies to enter into an agreement with us to pay, on a periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of eligible Medicare enrollees.

Since there are no existing regulations that prescribe or describe the basic rules for making periodic lump sum payments of the SMI premium surcharge under a special billing arrangement, we propose to add sections entitled Definitions, Conditions for participation, Application procedures, Billing and payment procedures, and Termination of SMI premium surcharge agreements. In the Definitions section, we would define SMI premium surcharge and SMI premium surcharge agreement. SMI premium surcharge would be defined as the amount that the standard monthly SMI premium would be increased for late enrollment and for reenrollment as specified in §§ 408.22 through 408.25. SMI premium surcharge agreement would be defined as an agreement entered into between a State or local government agency and us whereby the State or local government agency would periodically pay a lump sum for the premium surcharge amounts due from a specified group of eligible enrollees.

The Conditions for participation section would identify individuals who could be included under an SMI premium surcharge agreement, identify individuals excluded from coverage under an agreement, and state the need to secure the written consent of each enrollee covered under the agreement. This section would also state that as a condition for participation, the State or local government agency would be required to establish an automated data exchange with us to electronically transmit accretion, deletion, and change records and make all monthly SMI premium surcharge payments via electronic funds transfer.

We would identify eligible individuals as those who are currently

enrolled under Medicare Part B (SMI) and are currently billed for SMI base premiums and surcharges either through direct remittance or benefit withholding. Eligible individuals may also be those who receive a Railroad Retirement Board or Civil Service annuity and are having the SMI premium and surcharge withheld.

We would identify individuals excluded from coverage under an SMI premium surcharge agreement as those who are not currently enrolled in SMI, those whose SMI premiums are currently being paid by a State Welfare Agency under a State buy-in agreement, or those whose SMI premiums and surcharges are currently being paid under a group billing agreement.

In the Application procedures section, we would describe how the State or local government agency may contact its regional office, obtain an application, and return it for approval.

The Billing and payment section would state that the State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is accreted and continuing through the month the State or local government agency notifies us to delete the enrollee, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

In the Termination of SMI premium surcharge agreement section, we would say that a State or local government agency may voluntarily terminate an SMI premium surcharge agreement by notifying us, in writing, at least 30 days before the termination date.

We would also state that we may terminate an SMI premium surcharge agreement with 30 days notice if the State or local government agency fails to comply with the terms of the agreement, is delinquent in payment 60 days or more three times in any calendar year, or fails to comply with regulations or instructions the Secretary may prescribe.

## III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 1995), we are required to provide 60 days notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA 1995

requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- The minimization of the information collection burden on the affected public, including automated collection techniques.

We are seeking comments on these issues for the provisions discussed below:

### *Section 408.202 Conditions for Participation*

Under this section, a State or local government agency must secure from each enrollee a written signed, written authorization statement that contains authorizations for us to send billing notices directly to the State or local government agency and for the release to us of information required under the SMI premium surcharge agreement. The burden associated with this requirement is the time and effort for the enrollee to sign the required authorization statement. It is anticipated that for the two States affected by this requirement, each State will be required to obtain an average of 1,175 authorizations per State. Since this requirement will be standardized and incorporated into the enrollment process, we anticipate that it will take each enrollee 5 minutes to provide the necessary authorization. Therefore, the total burden associated with this requirement is 196 hours (5 minutes  $\times$  1,175 enrollees  $\times$  2 entities = 196 total hours).

This section also requires that the States maintain the authorization statement for each enrollee in the State or local government agency files for so long as the enrollee is covered by the agreement. Given that this requirement affects only two States, it is not subject to the PRA under 5 CFR 1320.3(c).

Lastly, this section requires a State or local government agency to certify to us, in writing, that an authorization statement is on file for each enrollee covered under the SMI premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees. Given that this requirement affects only two States, it is not subject to the PRA under 5 CFR 1320.3(c).

### *Section 408.205 Application Procedures*

Under this section, a State interested in entering into an agreement must return to the Regional Office (RO) two

copies of the signed agreement, the third party information form, and a description of the enrollees who will be covered by the agreement, showing that they meet the conditions for participation described in § 408.202(a).

We estimate that two States/agencies will apply for an agreement. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

#### *Section 408.207 Billing and Payment Procedures*

Under paragraph (a), *Accreting and deleting enrollees*, of this section, the State or local government agency must electronically transmit an input file to us containing accretion and deletion records at least once each calendar month, but may transmit this information as often as once a day.

We estimate that two States/agencies will apply for an agreement and be subject to this requirement. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Under paragraph (d) of this section, if a State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify us as required under this section. Given that this activity is conducted as part of an administrative action, audit, and/or investigation, this requirement is exempt from the PRA under 5 CFR 1320.4.

#### *Section 408.210 Termination of SMI Premium Surcharge Agreement*

Under paragraph (a) *Termination by the State or local government agency*, if the State or local government agency voluntarily terminates its agreement with us, it must notify us, in writing, at least 30 days before the effective date of the termination.

We estimate that two States/agencies will be subject to the provisions of this section. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirement in § 408.202. This requirement is not effective until it has been approved by the OMB.

If you have any comments on any of these information collection and recordkeeping requirements, please mail one original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Room N2-14-26, Baltimore, MD

21244-1850, Attn: Julie Brown, CMS 4007-P.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

#### **IV. Response to Comments**

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

#### **V. Regulatory Impact Statement**

##### *A. Overall Impact*

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually). This is not a major rule. It would have no economic impact, on either costs or savings, because either the enrollee or the State or local government agency would remit the same amount to us whether or not there is an SMI premium surcharge agreement in effect. The only difference is that under this proposed rule, the State or local government agency would be allowed to voluntarily elect to remit SMI premium surcharge amounts in a lump sum payment on behalf of eligible Medicare enrollees.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$5 million or less annually. Individuals

and States are not included in the definition of small entities. Therefore, we have determined, and we certify, that this proposed regulation would not result in a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 50 beds. This rule would have no impact on any small rural hospitals. Therefore, we have determined, and we certify, that this proposed regulation would not have a significant effect on the operations of a substantial number of small rural hospitals.

##### *B. The Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. This proposed rule would have no effect on the annual expenditures of any State, local, or tribal government, or the private sector. Participation in an SMI premium surcharge agreement is strictly voluntary and would not change the total amount of SMI premium surcharges paid by a State or local government agency. Therefore, we have determined, and we certify, that this proposed regulation would not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million.

##### *C. Federalism*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. Participation is strictly voluntary and would not change the total amount of SMI premium surcharges paid by a State or local government agency.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget. This proposed rule is not a major rule as defined at 5 USC 804(2).

#### List of Subjects in 42 CFR Part 408

Medicare.

Accordingly, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 408 as follows:

#### PART 408—PREMIUMS FOR SUPPLEMENTAL MEDICAL INSURANCE

1. The authority citation for part 408 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Add a new subpart H, consisting of §§ 408.200 through 408.210, to part 408 to read as follows:

##### Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

Sec.	
408.200	Statutory basis.
408.201	Definitions.
408.202	Conditions for participation.
408.205	Application procedures.
408.207	Billing and payment procedures.
408.210	Termination of SMI premium surcharge agreement.

##### Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

#### § 408.200 Statutory basis.

This subpart implements provisions of section 1839(e) of the Social Security Act (the Act) as amended by section 4582 of the Balanced Budget Act of 1997 (BBA). Section 1839(e) of the Act, as amended, allows State or local government agencies to enter into an agreement with the Secretary to pay, on a quarterly or other periodic basis, a lump sum for the total of the Supplementary Medical Insurance (SMI) premium late enrollment surcharge amounts due for a group of eligible enrollees.

#### § 408.201 Definitions.

For purposes of this subpart, the following definitions apply:

*SMI premium surcharge* means the amount that the standard monthly SMI premium is increased for late enrollment and for reenrollment as specified in §§ 408.22 through 408.25.

*SMI premium surcharge agreement* means a written arrangement between the Secretary and a State or local government agency to pay, on a quarterly, monthly, or other periodic

basis, a lump sum for the SMI premium surcharge amounts due for a designated group of eligible enrollees.

#### § 408.202 Conditions for participation.

(a) A State or local government agency may apply to CMS to enter into an SMI premium surcharge agreement if the following conditions are met:

(1) Each individual designated for coverage under the agreement must be currently enrolled in Medicare Part B at the time the individual is accreted.

(2) Each enrollee designated for coverage under the agreement must be paying the base premium and surcharge through direct remittance or benefit withholding from social security or railroad retirement benefits or a civil service annuity at the time of accretion.

(3) Each enrollee designated for coverage under the agreement must not have premiums currently paid by a State Welfare Agency under a State buy-in agreement as described in § 407.40 of this chapter or under a group billing arrangement as described in § 408.80.

(b) The State or local government agency must secure from each enrollee a signed, written authorization statement that must contain authorization for CMS to send billing notices directly to the State or local government agency and for the release to CMS of information required under the SMI premium surcharge agreement.

(c) The authorization statement for each enrollee must be retained in the State or local government agency files for so long as the enrollee is covered by the agreement. These authorization statements need not be forwarded to CMS.

(d) The State or local government agency must certify to CMS, in writing, that an authorization statement is on file for each enrollee covered under the SMI premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees.

(e) A State or local government agency must establish an automated data exchange with CMS using the Third Party Premium Collection System, in order to electronically transmit an input file that will be used to accrete or delete enrollees from the billing system.

#### § 408.205 Application procedures.

(a) A State or local government agency must contact its CMS regional office (RO) to request an information packet, consisting of the Premium Surcharge Payment Handbook, the Agreement, and the Third Party Agency Information Form.

(b) If interested in entering into an agreement, the State or local government agency must return to the

RO two copies of the signed Agreement, two completed copies of the Third Party Information Form, and two copies of a description of the enrollees who will be covered by the agreement, showing that they meet the conditions for participation described in § 408.202(a).

(c) CMS reviews the application documents, and, when approved, sends the State or local government agency, and the RO, a signed copy of the agreement and instructions for initiating the electronic funds transfer process.

#### § 408.207 Billing and payment procedures.

(a) *Accreting and deleting enrollees.*

The State or local government agency must electronically transmit an input file to CMS containing accretion and deletion records as follows:

(1) Input files must be transmitted at least once each calendar month, but may be transmitted as often as once a day.

(2) With the exception of a deletion because of the death of an enrollee, CMS will not accrete or delete enrollees retroactively.

(3) The State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is accreted and continuing through the month the State or local government agency notifies CMS to delete the enrollee, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

(b) *Payment and grace period.* Payment must be made to CMS as follows:

(1) Payment to CMS must be received by CMS by the 1st day of each month.

(2) There is a 25-day grace period for receipt of payment.

(3) Payment must be made to CMS via electronic funds transfer.

(c) *Late payment penalties.* CMS will assess interest for any payment it does not receive by the 1st day of the month as follows:

(1) Interest will be assessed at the Supplementary Medical Insurance trust fund rate as computed for new investments in accordance with section 1841(c) of the Social Security Act.

(2) Interest will be waived if the full payment is received by the 25th day of the month in which it is due.

(3) Interest will be calculated and assessed in 30-day increments.

(4) Interest will be assessed on the balance of the amount billed that remains unpaid at the expiration of the grace period and unpaid balances from prior periods.

(5) Interest will continue to accrue on unpaid amounts until the balance is paid in full.

(d) *Disagreement over billing amounts or interest.* If the State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify CMS as follows:

(1) The State or local government agency must provide evidence suitable to CMS to substantiate its claim.

(2) The State or local government agency must continue to make full payment while CMS evaluates the evidence provided.

(3) Credit for payment amounts or interest that CMS determines to be due to the State or local government agency will be reflected as an adjustment in subsequent bills, effective on the date the corrected amount would have been due.

#### **§ 408.210 Termination of SMI premium surcharge agreement.**

(a) *Termination by the State or local government agency.* The State or local government agency may voluntarily terminate its agreement with CMS as follows:

(1) The State or local government agency must notify CMS, in writing, at least 30 days before the effective date of the termination.

(2) The State or local government agency must pay any unpaid premium surcharge amounts and interest due within 30 days after the effective date of the termination.

(3) Interest will continue to accrue until all amounts due are paid in full.

(b) *Termination by CMS.* CMS may terminate the agreement with a State or local government agency as follows:

(1) If CMS finds that the State or local government agency is not acting in the best interest of the enrollees, or CMS, or for any other reason, the arrangement may be terminated at any time.

(2) If a State or local government agency's payments are delinquent 60 days or more, 3 times in any calendar year, CMS may terminate the agreement with 30 days advance notice.

(3) If the State or local government agency fails to comply with the terms of the agreement and/or procedures promulgated by CMS, CMS may terminate the agreement with 30 days advance notice.

(4) The State or local government agency must pay all outstanding premium surcharge and interest amounts due within 30 days after the effective date of the termination.

(5) Interest will continue to accrue until all amounts due are paid in full.

(6) After the agreement is terminated, CMS will resume collection of the

premium surcharge from the enrollees covered under the terminated agreement.

(7) If an agreement is terminated by CMS, the State or local government agency must wait 3 years from the effective date of the termination before it can request to enter into another SMI premium surcharge agreement.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: September 21, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: October 24, 2001.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 01-27120 Filed 10-25-01; 8:45 am]

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[DA 01-2437, MM Docket No. 01-301, RM-10207]

#### **Digital Television Broadcast Service; Mississippi State, MS**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by the Mississippi Authority for Educational Television, licensee of noncommercial station WMAB-TV, NTSC channel \*2, Mississippi State, Mississippi, requesting the substitution of DTV \*10 for station WMAB-TV's assigned DTV channel \*38. DTV Channel \*10 can be allotted to Mississippi State, Mississippi, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (33-21-14 N. and 89-09-00 W.). As requested, we propose to allot DTV Channel \*10 to Mississippi State with a power of 6.5 and a height above average terrain (HAAT) of 349 meters.

**DATES:** Comments must be filed on or before December 14, 2001, and reply comments on or before December 31, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, or its counsel or consultant, as follows: Robert A. Woods, Schwartz, Woods & Miller, Suite 300, 1350 Connecticut Avenue, NW, Washington, DC 20036-1717 (Counsel for the Mississippi Authority for Educational Television).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-301, adopted October 18, 2001, and released October 23, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### **List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### **PART 73—TELEVISION BROADCAST SERVICES**

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

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

##### **§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Mississippi is amended by removing DTV Channel “\*38” and adding DTV Channel “\*10” at Mississippi State.