4-15-86
Vol. 51 No. 72
Pages 12679-12818

Federal Register

Tuesday
April 15, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Dallas, TX, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Aviation Safety
Federal Aviation Administration

Food Assistance Programs
Food and Nutrition Service

Government Procurement
General Services Administration

Grant Programs—Housing and Community Development
Housing and Urban Development Department

Medicare
Health Care Financing Administration

Motor Carriers
Interstate Commerce Commission

Organization and Functions (Government Agencies)
National Highway Traffic Safety Administration

Radio Broadcasting
Federal Communications Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

Wages
Personnel Management Office

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:

Dallas	214-767-8585
Ft. Worth	817-334-3624
Austin	512-472-5494
Houston	713-229-2552
San Antonio	512-224-4471, for reservations

WASHINGTON, DC

WHEN: May 15; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Laurence Davey 202-523-3517

Contents

Federal Register

Vol. 51, No. 72

Tuesday, April 15, 1986

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 51, No. 72
Tuesday, April 15, 1986

Presidential Documents

Title 3—

The President

Proclamation 5457 of April 10, 1986

Centennial Year of the Gasoline Powered Automobile, 1986

By the President of the United States of America

A Proclamation

In 1885 the world's first successful vehicle powered by a gasoline-fueled internal combustion engine made its appearance in Germany. Shortly thereafter, in January 1886, the United States Patent Office issued its first patent for a motor vehicle powered by such an engine—the forerunner of today's automobile. This year marks the centennial of that patent, an anniversary that well deserves to be recognized.

In the 100 years since that historic patent was issued, the automobile has been the cause or catalyst of an enormous transformation of the American landscape, economy, and society. It has given rise to a vast network of roads and highways that gives access to every region of our land and helps to bind our Nation and its people ever more closely together. The building and improvement of this network has created thousands of jobs, sparked new industries, and provided opportunities for innumerable roadside businesses, large and small.

The invention of the internal combustion engine created the principal market for the oil industry, which was also in its infancy a century ago. One hundred years later, thanks largely to vehicular consumption, the oil industry has become one of the largest and most important in our Nation and in the world. Today, according to industry estimates, more than three-fourths of refined petroleum products are sold to power internal combustion engines, accounting for more than half the revenues of the major producers.

Many of our major industries, such as steel, glass, rubber, and textiles, rely on the auto industry to buy a significant percentage of their output. It is estimated that at least one in five jobs in the United States depends, directly or indirectly, on the automobile industry.

Although challenged in recent decades by strong foreign competition, the American automobile industry has made a dramatic comeback, improving quality and variety as it adjusts to the changing demands of the marketplace.

Except for a brief setback during World War II, the American automobile market has never ceased to expand. Fifty years ago there were only 28.5 million cars on America's roads. Twenty years ago that number was approaching 95 million. Today it is about 175 million—more than one vehicle for every two Americans.

The automobile has given Americans unprecedented mobility—linking farms, towns, cities in a way that was unthinkable before its advent. Indeed, the effects of the automotive age, which began a century ago, have so pervaded every aspect of our lives as to make the automobile a central symbol of twentieth-century civilization in America.

The Congress, by Senate Joint Resolution 231, has designated the period commencing January 1, 1986, and ending December 31, 1986, as the "Centennial Year of the Gasoline Powered Automobile" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the year of 1986 as the Centennial Year of the Gasoline Powered Automobile, and I call upon the people of the United States to observe this year with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-8553
Filed 4-14-86; 11:01 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5458 of April 11, 1986

To Designate Aruba as a Beneficiary Country for Purposes of the Generalized System of Preferences and the Caribbean Basin Economic Recovery Act

By the President of the United States of America

A Proclamation

1. Section 502 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2462), authorizes the President to designate the countries that will be beneficiary developing countries for purposes of the Generalized System of Preferences (GSP) pursuant to Title V of the Trade Act (19 U.S.C. 2461 *et seq.*). Such countries are entitled to duty-free entry of eligible articles imported directly therefrom into the customs territory of the United States. Among the countries previously designated as a GSP beneficiary is the Netherlands Antilles, which was included in the list of non-independent countries and territories eligible for benefits of the GSP. Aruba was a part of the Netherlands Antilles at the time of its designation, but has since become a separate and successor political entity.

2. In light of the independence of Aruba from the Netherlands Antilles, and having due regard for the eligibility criteria set forth in Section 502 of the Trade Act (19 U.S.C. 2462), I hereby designate Aruba as a beneficiary developing country for purposes of the GSP.

3. Section 212 of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2702) authorizes the President to designate the countries, territories, or successor political entities thereto that will be beneficiary countries for purposes of the CBERA (19 U.S.C. 2701 *et seq.*). Such countries are entitled to duty-free entry of eligible articles imported directly therefrom into the customs territory of the United States. Among the countries previously designated as a beneficiary country for purposes of the CBERA is the Netherlands Antilles. Aruba was a part of the Netherlands Antilles at the time of its designation, but has since become a separate and successor political entity.

4. In light of the independence of Aruba from the Netherlands Antilles, and having due regard for the eligibility criteria set forth in Section 212 of the CBERA (19 U.S.C. 2702), I hereby designate Aruba as a beneficiary country for purposes of the CBERA.

5. Section 604 of the Trade Act (19 U.S.C. 2483) confers authority upon the President to embody in the Tariff Schedules of the United States (TSUS) the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Title V and Section 604 of the Trade Act of 1974, and Sections 211 through 213 of the Caribbean Basin Economic Recovery Act, do proclaim that:

(1) General headnote 3(e)(v)(A) to the TSUS, listing those countries and areas eligible for benefits of the GSP, is amended by inserting in alphabetical sequence, in the list of independent countries, "Aruba".

(2) General headnote 3(e)(vii)(A) to the TSUS, listing those countries designated as beneficiary countries for purposes of the CBERA, is modified by inserting in alphabetical sequence "Aruba".

(3) The amendments made by this proclamation shall be effective with respect to articles both: (a) imported on or after January 1, 1976, and (b) entered, or withdrawn from warehouse for consumption, on or after January 1, 1986.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of April in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-8554
Filed 4-14-86; 11:02 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 72
Tuesday, April 15, 1986

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations on pay retention to clarify that pay retention does not apply when there is a statutory reduction in scheduled rates of pay under the General Schedule or a prevailing rate (wage) schedule, including a reduction authorized by a Presidential alternative pay plan effected under 5 U.S.C. 5305(c).

EFFECTIVE DATE: May 15, 1986.

FOR FURTHER INFORMATION CONTACT: Jan. B. Karicher, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the Federal Register on May 16, 1985 (50 FR 20422). The proposed regulations provided a 60-day comment period that ended on July 15, 1985. We received a total of seven comments: three from labor organizations, two from agencies, and two from Federal employees. Our analysis of the major issues and concerns raised in these comments follows:

1. *OPM's authority to regulate.* Two of the labor organizations believe we have exceeded our authority to regulate under 5 U.S.C. 5365. One states that section 5365 gives OPM the authority to prescribe situations other than those specified in law for which pay retention is appropriate. The labor organization doubts that section 5365 gives OPM authority to ". . . prescribe circumstances where pay retention will not be applicable . . .." The other organization believes the proposed rule goes beyond the intent of the pay retention law.

Section 5365(b) does authorize OPM to provide pay retention to employees in situations other than those provided by law. Thus, it also authorizes us to make exceptions to the regulatory provisions we have established. For example, under the current regulations—5 CFR 536.104 (a)(3)—pay retention is generally granted to any employee whose rate of basic pay is reduced as the result of a reduction or elimination of his or her scheduled rate of basic pay. However, the reduction of a scheduled rate resulting from a prevailing rate wage survey is specifically excluded from the general pay retention rule. The proposed regulations represented another specific exception to the general rule.

2. *The need for the proposed change.* Two of the labor organizations also questioned the need for the proposed change in regulations. One pointed out that specific legislation to reduce Federal pay rates could include a provision to except some or all employees from entitlement to pay retention. The other organization suggested that because the proposed rule may be unsettling to employees, it should not be issued until there is an actual reduction in scheduled rates of pay.

We recognize that specific legislation to reduce Federal pay rates might well include special provisions concerning entitlement to pay retention. Nevertheless, we cannot predict what such legislation would provide, and we believe it will be helpful to remove all doubt about what our regulations would require in such a situation. In addition, it is possible that a recommendation by the President's pay agent under 5 U.S.C. 5305(a) or a Presidential alternative plan under 5 U.S.C. 5305(c) could, at some time in the future, result in a reduction in General Schedule pay rates. In these situations, the regulations must be very clear about whether employees would be entitled to pay retention.

There is no immediate need for this change in our regulations because there are no plans for a reduction in General Schedule pay rates in fiscal year 1986. The purpose of this clarification of our regulations is to avoid any possible confusion in the event of a Government-wide reduction in scheduled rates of pay in the future.

3. *Effect on employees with pay retention.* Both Federal agencies agreed with the proposed regulations, but asked what will happen to employees already in receipt of pay retention on the effective date of a reduction in scheduled rates; that is, will those employees have their retained rates of pay reduced?

The current law (5 U.S.C. 5365) provides that an employee on pay retention will receive 50 percent of each increase in the maximum rate of the grade of the position occupied while on pay retention. The law does not authorize a reduction in pay should the maximum rate of an employee's grade be reduced during the period of pay retention. Thus, an overall reduction in scheduled rates of basic pay would have *no effect* on an employee already in receipt of pay retention.

One of the agencies also suggested that we propose a legislative change that would prohibit pay retention for employees whose rates of basic pay are reduced because of the reduction or elimination of a special rate. We will consider this suggestion as we continue to review the Federal grade and pay retention program.

4. *Miscellaneous comments.* A Federal employee expressed concern that the proposed regulations would give the President a "free hand" in reducing General Schedule pay rates. ". . . by eliminating . . . protections . . . under the present salary retention rules." We do not believe the grade and pay retention law was intended to provide pay retention for all employees in the event of a determination by the President or the Congress that a reduction in Federal pay rates is in the national interest.

Finally, although we did not receive any comments concerning this matter, we want to clarify that a reduction in scheduled rates as the result of a recommendation made by the President's pay agent, in accordance with 5 U.S.C. 5305(a), would be considered a statutory reduction. Therefore, the revision of 5 CFR

536.104(a)(3) also would apply to a reduction resulting from the pay agent's recommendation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

List of Subjects in 5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 536 of Title 5, Code of Federal Regulations, as follows:

PART 536—GRADE AND PAY RETENTION

1. The authority citation for Part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366.

2. In § 536.104, paragraph (a)(3) is revised as set forth below, and the introductory language in paragraph (a) is reprinted for the reader's convenience.

§ 536.104 Coverage and applicability of pay retention.

(a) Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced:

* * * * *

(3) As a result of a reduction or elimination of scheduled rates, special schedules, or special rates, but not as a result of—

(i) A statutory reduction in scheduled rates of pay under the General Schedule, including a reduction authorized under section 5305(c) of title 5, United States Code; or

(ii) A statutory reduction in a prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, and Part 532 of this chapter or a reduction in such a schedule that reflects a decrease in the level of prevailing rates, as determined by a wage survey.

[FR Doc. 86–8342 Filed 4–14–86; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 85–ANE–34; Amdt. 39–5277]

Airworthiness Directives; Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that supersedes Telegraphic Airworthiness Directive (TAD) T85–17–51 R1 and requires ongoing inspection of combustion chambers on certain PW JT8D engines. TAD T85–17–51 required inspection of certain part number (P/N) combustion chambers on JT8D–15 engines not being operated under an engine condition monitoring (ECM) program. After issuing TAD T85–17–51, the FAA determined that other engine models of the same type design could develop combustion chamber cracking and distress leading to a possible combustion case rupture which precipitated issuance of the TAD. Therefore, an amended TAD, T85–17–51 R1 was issued that applied to all JT8D–1 through –17AR model engines incorporating any P/N of combustion chamber except P/N's 5001958–02 and 5001959–02. Further investigation has revealed that the compliance requirements of TAD T85–17–51 R1 may not fully preclude combustion chamber failure.

This new AD supersedes the TAD and requires initial and repetitive inspection of combustion chambers on engines operated with or without an ECM program, unlike the TAD where inspection was not required when using ECM. This AD requires inspection of all engines regardless of ECM; however, a higher threshold time before initial inspection is applied to engines using an enhanced ECM system. Additionally, this AD limits future combustion chamber circumferential crack weld repair to maximum single crack and cumulative crack lengths.

DATES: Effective May 19, 1986.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective May 19, 1986.

ADDRESSES: The applicable Service Bulletin (SB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket Number 85–ANE–34, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7121.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1985, TAD T85–17–51 was issued and made applicable to PW JT8D–15 turbofan engines incorporating P/N's 778714 and 778715 combustion chambers, and which were not operated under an ECM program. The TAD required inspection of combustion chambers for cracking, deterioration, and misalignment. The TAD was necessary to preclude uncontained combustion case rupture resulting from combustion chamber distress and subsequent impingement of hot combustion gases on the outer combustion case inner wall, which in one instance resulted in aircraft destruction.

Further investigation since the issuance of TAD T85–17–51 indicated that the condition was likely to exist or develop on other engines of the same type design incorporating certain additional P/N combustion chambers. There had been 8 incidents of combustion chamber distress resulting in fracture of the outer combustion case, and in 4 cases, liberation of combustion section hardware. Consequently, the TAD was amended on September 25, 1985; by TAD T85–17–51 R1, to include all JT8D–1 through –17AR models with any P/N combustion chambers except P/N's 5001958–02 and 50001959–02.

Additional data have been gathered an analyzed since issuance of the amended TAD. The FAA concluded the following:

(a) ECM programs are not sufficient by themselves to preclude significant combustion chamber deterioration.

(b) The rate of deterioration of combustion chambers is dependent on a number of factors such as:

(1) The modification standard of the chamber.

(2) The age of the chamber.

(3) The type and extent of repairs on a chamber.

(4) The operational environment of the chamber which is a function of the engine model, aircraft type, and flight profile.

(c) The radiographic inspection technique referenced in the TAD as an approved alternate means of compliance have proven to be ineffective.

(d) Radiographic inspection methods in general for this application are highly sensitive to the operator's experience level and technique.

As a result of the additional data, a compliance schedule was established to preclude combustion chambers cracking and distress leading to possible outer combustion case rupture. A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring initial and repetitive inspection, and establishing repair criteria of combustion chambers on certain PW JT8D engines was published in the **Federal Register** on November 8, 1985, (50 FR 46444). The proposal was prompted by 8 uncontained failures resulting from combustion chamber distress.

Since this condition is likely to exist or develop in engines of the same type design, this AD supersedes TAD T85-17-51 R1, and is applicable to all JT8D-1 through -17AR model engines incorporating any P/N of combustion chambers except P/N's 5001958-02 and 5001959-02. Although limited, the service experience on the newer reduced emissions combustion chambers, P/N's 5001958-02 and 5001959-02, does not indicate a need to include those P/N's in the AD at this time.

The AD is applicable to engines being operated with or without an ECM program. Experience has shown that certain minimum criteria must be applied to ECM programs to ensure maximum effectiveness. These criteria are defined in the AD and associated PW SB 5639.

This AD requires inspection of combustion chambers in accordance with the procedure of PW SB 5639. This AD prohibits combustion chamber weld repair in any one liner of individual circumferential cracks greater than 3 inches, or cumulative circumferential cracking greater than 4 inches, or cumulative circumferential cracking between 3 and 4 inches with less than 3 inches separation between cracks.

Interested persons have been afforded the opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments received. Thirty-four responses were received concerning the proposed rule.

Discussion of Comments

One commenter stated that the AD violates FAR Part 39 which he quoted as reading "The Agency recognizes that the use of AD's to correct improper or inadequate maintenance on the part of particular persons or organizations would impose an unreasonable burden on the vast majority of persons who comply with the regulations and properly maintain their aircraft. The Agency, accordingly, will not issue AD's as a substitute for enforcing maintenance rules." The FAA has determined that there are occasions when an AD may be necessary to correct maintenance related problems. In 1964, FAR Part 39 was amended and no longer reads as quoted by the commenter. As FAR Part 39 states, whenever an unsafe condition exists and is likely to exist or develop in other products of the same type design, an AD is warranted.

Seven commenters, including the one above, stated that the AD is mandating a maintenance program that conflicts with the operators' right to have their own program in accordance with FAR Part 121. In particular, they cited the training requirements reflected in PW SB 5639 as being unnecessary, restrictive, and in conflict with FAR Part 121.375. The FAA disagrees that the AD conflicts with the FAR's. The AD establishes inspection and repair criteria that are to be applied within the requirements of FAR's. The FAR's require maintenance, preventive maintenance, and alterations to be conducted in accordance with the manufacturer's recommendations. Minor deviations or alterations are permitted in accordance with FAR's when sound technical substantiation is documented. Major deviations or alterations are not permitted without the approval of the Administrator except as provided for major repairs or alterations in Special FAR 36. It should be noted that applicability of this AD is not limited to FAR Part 121 operators. The training requirements are not a mandatory part of the AD, but are the manufacturer's recommendations based on his knowledge of the difficulty of accomplishing the required inspection. It will be the operator's responsibility to establish to his FAA maintenance inspector's satisfaction that proper training has been provided to accomplish the AD.

Seven commenters stated that the AD is too restrictive and is unfair because most operators maintain combustion chambers properly and do not have any problems. They felt that the JT&8D engine has a good history of experience and that the AD is an overreaction to one accident. They requested that recognition be given to proven good procedures and programs that are part of their current FAA approved maintenance programs. The FAA agrees that, for the most part, the experience of the JT&D engine and the operator's maintenance programs have been good. Nevertheless, there have been 8 combustion chamber fractures, resulting in uncontained failures, spread over 6 operators, plus an additional chamber failure and case burn through while this AD was being prepared. Numerous other incidents of severe chamber distress have been reported that either caused engine removal or were found at engine overhaul.

Twelve commenters expressed concern that this AD coupled with other recent and future PW JT&8D AD's will be a severe burden on operators. They would like to combine several AD's into one program to make the compliance schedule more manageable. The FAA is willing to entertain proposals from industry to formulate such a program. The proposal would have to provide an equivalent level of safety to that of the individual AD's.

Eight commenters stated that it was not proper to treat all engine models the same. Four felt that the lower rated engine models should be given higher threshold inspection times. Two stated that the AD should only apply to the JT8D-15 model. One requested that lower rated engine models be exempted until more data can be gathered on their experience. One stated that lower rated models deteriorated faster in his experience than higher rated engines. The FAA agrees that the various engine models do not exhibit the same combustion chamber deterioration rates. However, insufficient data are available at this time to accurately establish the differences. The 9 uncontained failures to date have occurred on JT8D-7 (1), JT8D-9 (2), and JT8D-15 (6) model engines. At present, it appears that quality and technique of repair, and operator's flight profile, and stage length variations can impact chamber deterioration rate as much or more than model ratings. Therefore, the compliance requirements of this AD were established to account for the

present day fleet as a whole. As data are gathered, the FAA will entertain proposals to adjust the compliance by engine model or operator if warranted.

Seven commenters were concerned that the SB contains many items which the FAA had not identified at the industry meetings. They requested that all non-mandatory items be removed from the SB and placed in the appropriate manual. Several of these commenters stated that the AD and SB inspection requirements should only deal with the 2 through 6 liner segments of the combustion chamber, and all other items should be removed from the AD. One commenter also noted that the SB says the requirements are "recommended" even though they are mandatory per this AD. An AD takes precedence over all other related documents but only in those specific areas stated in the AD. The SB contains the manufacturer's recommendations for maintaining the reliability of the engines. Operators must abide by those recommendations unless adequate technical substantiation in accordance with the FAR's justifies a deviation. This AD mandates only those specific portions of the SB which the FAA has determined impact flight safety and require direct FAA engineering scrutiny. The FAA did not address all the items in the SB at the industry meetings because not all of the items are applicable to the AD. The FAA believes that adequate notice has been given on those portions of the SB relevant to the AD.

There commenters requested that a means be provided for timely revisions to the AD and SB without going through the AD rulemaking process. The FAA has provided for approval, by the Manager, Engine Certification Office, New England Region, of equivalent means (methods, equipment, etc.) of compliance or alternate schedules upon submittal of substantiating data to show equivalent safety for individual operators. Revisions that are applicable to all operators will be processed in a timely manner by AD amendment. The FAA recognizes that every combination cannot be provided for in the AD and adjustments will be needed. For instance, 2 commenters requested alternate brands of borescope equipment and training be listed. Another commenter requested that the AD not mandate equipment, and 4 commenters requested an alternate isotope procedure, placing the film on the outer fan duct. The acceptance of these variations, though not appearing in this AD, is provided for by obtaining the appropriate FAA approval for equivalent means noted in the AD.

Twelve commenters stated that the isotope reinspection intervals are too restrictive and should be more in line with borescope reinspection intervals. The FAA agrees. Based on additonal developmental work, by operators and PW, additional credit has been granted for isotope inspection and the reinspection intervals have been extended accordingly.

Eighth commenters felt the isotope inspection crack length determination using the projected length was too restrictive. They proposed using actual crack length as determined by relationship to physical features on the combustion chamber. The FAA agrees and has determined from additional data that the use of actual length, with certain adjustments for blind spots or crack tip fade out, is acceptable. The isotope inspection procedures have been revised to accommodate this proposal.

Eight commenters expressed concern over the unreliability of one of the proposed types of borescope equipment from their experience. The FAA is aware of 3 specific problem areas with one manufacturer's borescope. Corrective action has been identified, and a program is in place to fix those units. The FAA has also had reports of good experience with the same equipment. At least 2 additional manufacturers of comparable equipment have been identified. With the additional suppliers, and the planned changes in design and operating technique, the FAA does not anticipate the reliability or availability of borescope equipment hindering the accomplishment of the AD.

Seventeen commenters expressed the following concerns about the ECM requirements:

(a) The ECM specifications are totally unacceptable and unreasonable.

(b) The FAA is legislating business for PW by specifying ECM–II or equivalent.

(c) Credit should be given for current programs being successfully used by operators under their existing maintenance programs.

(d) ECM is not a reliable tool for monitoring combustion chamber deterioration and must be coupled with flight crew reports and other requirements.

(e) ECM credit for threshold inspections should be increased 500 flight hours or allowed to increase if no flight crew reports are logged.

(f) Data cannot be gathered if the engine pressure ratio (EPR) system or the automatic crew alerting and recording system (ACARS) is inoperative.

(g) Flights on short routes or shuttle operations may not have a stabilized cruise so ECM could not be used.

(h) The 2 calendar day limit for a lapse in data is unrealistic and places an undue burden on flight crews to record enough data to meet the requirement. Several changes were proposed, such as (1) 10 flight cycles, (2) 35 flight hours, or (3) 5 calendar days if no flight crew reports are logged.

(i) If the 2 calendar day data lapse is exceeded and ECM credit is no longer valid, provisions have not been incorporated to allow an operator to get back on to the ECM credit progam. Also, is immediate inspection required if the 2 calendar day data lapse is exceeded and the engine is already over the non-ECM credit threshold? There should be at least a 3 calendar day grace period or more before action after the 2 calendar day lapse.

(j) Data should not have to be read by the analyst on weekends or holiday.

(k) The 72 hour (3 calendar day) limit between data aquisition and taking corrective action on a trend deviation is unrealistic.

(l) The 72 hour (3 calendar day) limit for corrective action should be 72 flight hours or equivalent cycles from identifying the adverse trend rather than 3 calendar days from aquisition of the deviant data.

(m) The requirement for 1 data point a day but not more than 3 data points a day at stabilized cruise is unrealistic especially for operation with ACARS or autothrottle system.

(n) The requirement to stabilize cruise for 3 minutes with fixed throttles is not practical.

The FAA agrees that the ECM specifications are considerably more stringent than the typical ECM progams currently used by most operators. However, experience has shown that strict criteria are necessary to ensure timely response to ECM indications of combusion section distress. The FAA does not agree that the requirements are unreasonable for this application or that the AD mandates business for PW because equivalent ECM programs are permitted. Several changes have been made to the criteria as a result of the above comments. Those changes are as follows:

(a) The restriction of not more than 3 points per day has been dropped.

(b) For data lapses of more than 2 calendar days, which invalidates ECM credit, 10 flight cycles are allowed before the required inspection must be conducted for engines exceeding the threshold inspection requirement for non-ECM operations. If the operator

wishes to get back into the ECM credit category, 1 data point per flight cycle for each of the days of lapse in data must be recorded and processed before reaching the required non-ECM inspection time or cycles.

(c) Provision has been made for not reading trend data over normal 2 calendar day weekends.

(d) The 72 hour (3 calendar day) requirement for corrective action on an ECM deviation has been expanded to 72 hours (3 calendar days), 18 flight cycles, or 20 flight hours, whichever occurs later.

(e) The 48 hour (2 calendar day) limit for an allowable lapse in data has been expanded to 48 hours (2 calendar days), 12 flight cycles, or 14 flight hours, whichever occurs later.

If the airplane is equipped with autothrottles, they should be disengaged before recording the trend data to allow stabilization. The FAA recognizes that ACARS systems record data differently when linked to an autothrottle system, however, the autothrottles should be disengaged when recording with ACARS also. If the EPR system is inoperative, data can still be recorded by stabilizing throttles and low pressure rotor speed. Similarly, if the ACARS system is inoperative, data can still be recorded by hand as is done by most operators.

Three commenters stated that the definitions of combustion chamber categories 1A and 1B were too restrictive because no repairs are allowed on liners 6 through 11. They suggested that repairs on the 6 through 11 liners should be permitted within the limits of the manual. The FAA agrees. The AD did not address repairs on the 6 through 11 liners as did the SB definition of category 1A and 1B. The AD has been revised as requested. It should be noted that the notice of proposed rulemaking (NPRM) defined combustion chamber classifications in terms of "class" whereas the SB uses the terminology of "category". To remain consistent with the SB, the FAA has chosen to also use the term "category" to define chamber classifications.

Six commenters expressed several concerns about the category 3 combustion chamber requirements. Three stated that the threshold inspection limits are too restrictive and should be increased to 5,000 hours or 4,000 cycles. One stated that the category 3 requirements are unjustified since the accident that precipitated this action was not representative of the fleet due to improper maintenance and troubleshooting procedures. Two commented that category 3 chambers should have a higher threshold time if coated with magnesium zirconate. One stated that category 3 should permit welding of cracks up to 6 inches long and not be eliminated by the future repair criteria. One commenter cannot document how he has been repairing combustion chambers, therefore all of this commenter's chambers must be considered category 3, which he feels unfairly increases the burden on his operation. The FAA disagrees with the commenters. Category 3 provides for combustion chambers in the field at this time which may have been repaired beyond acceptable repair limits. The category 3 limits, while restrictive, are sized to provide an adequate level of safety for those chambers which represent the highest risk of failure. Combustion chambers, for which repair documentation verifying other than category 3 status does not exist, must be considered category 3 chambers from a safety standpoint. At the next shop visit repair of the combustion chambers, they must be repaired to meet the repair criteria specified in the AD. Category 3 chambers also exhibit the greatest variability in crack initiation and propagation rates which make it more difficult to accurately establish more lenient inspection requirements.

Four commenters requested that additional credit should be given if an operator is solution heat treating, X-raying the 2–3 seam weld or applying tighter standards at repair of chambers. The FAA disagrees. The inspection intervals were established taking into account proper repair techniques such as solution heat treatment and X-ray of the 2–3 seam which are required by the manual. The FAA agrees that the full benefit which can be gained from proper repair procedures has not yet been defined. Additional field data and development testing will be required before additional credit can be given for such reasons.

Eight commenters stated that insufficient credit was given for magnesium zirconate coating. Two of the 8 commented that patching of the coating should be allowed and that magnesium zirconate coating should be a terminating action for lower rated engine models. The FAA disagrees. There is insufficient documented experience on magnesium zirconate coated chambers to increase the credit at this time. Patch repairs cannot be considered equivalent to fully restored coating since erosion of the coating reduces its effectiveness, and the patched area may not bond as well to the original coating which has become contaminated with use.

Two commenters stated that the limits for cross-over tube misalignment were too restrictive. They reported that build tolerances can result in as much as 0.100 inch misalignment (two-thirds of the limit). The FAA disagrees. The cross-over tube misalignment limits are only applicable to axial displacement. The adverse buildup to tolerances on axial alignment is felt to be considerably less than that on radial alignment. If further field experience reveals any difficulty meeting those limits with no other signs of distress contributing to the misalignment, the FAA will amend the limits accordingly.

Four commenters stated that the SB inspection limits for missing pieces of material and axial cracks were too restrictive or unnecessary. These limits are not mandatory by this AD. However, the FAA considers any deviations from the manufacturer's combustion chamber repair and inspection criteria to require FAA engineering approval except in instances when an operator may approve substantiated changes in accordance with Special FAR 36.

One commenter stated that the seam welds could not be seen with a borescope as required by the SB. The FAA agrees that the seam welds cannot literally be seen. However, cracks in the seam weld areas do become visible before they are long enough to be a concern. The cracks are evidenced by local distortion, lifting, or cracks between cooling holes.

Two commenters suggested that the allowable weld repair of the 2–3 seam weld area should be increased from 3 inches to 6 inches. The FAA disagrees. The integrity of the 2–3 seam is critical to maintaining a uniform flow of cooling air to the more critical third and fourth liners. Additional field data and development testing will be required prior to FAA consideration of increased weld repair limits.

One commenter agreed that the radiographic inspection technique referenced in TAD 85–17–51 R1 was ineffective from his experience. The earlier radiographic inspection technique was not included in the NPRM and is replaced with a modified isotope inspection procedure which has been effectively demonstrated by operators, and PW.

One commenter stated that other things can affect combustion chamber integrity, such as fuel nozzle coking, and should be considered. The FAA agrees. Adherence to the manufacturer's recommendations in manuals and SB's will minimize external influences on combustion chamber health.

One commenter stated that the AD should identify a terminating action at this time. The FAA feels that additional field and developmental data are needed to define the limitations of the current combustion chamber design prior to determining what terminating corrective action is needed.

Seventeen commenters reported a domestic economic impact of $49.53 million the first year and $1.04 million per year thereafter.

One commenter noted that the isotope inspection repetitive interval for a 2 inch crack was different in the AD than the SB. The FAA has determined that the SB figures were in error. However, those limits have been revised to relax the requirements and correct the discrepancy.

One commenter requested additional comment time to review the revisions that would result in the SB from the above comments. The FAA does not feel that additional time to review changes is warranted nor in the public interest. The revisions that have been made are relaxatory in nature. Those changes will only reduce the economic impact previously reported.

Three commenters requested that mapping of combustion chambers should not be mandatory, or that mapping of chambers should not be required unless the distress is beyond the SB limits. The FAA agrees in part. Mapping of chambers is not mandatory per the AD. However, at each inspection, chamber distress must be documented in some manner to sufficiently substantiate compliance. Also, if operators wish relaxations in limits or schedules, combustion chamber mapping correlated to time and cycles, along with other forms of data, would be necessary to substantiate the change.

Three commenters felt that the 1,000 hour/1,000 cycle drawdown for combustion chambers over the threshold times was unreasonably restrictive. They suggested the drawdown should be 2,000 hours/2,000 cycles. The FAA disagrees. Extending the drawdown for combustion chambers with times over the threshold limits would result in an unacceptable level of safety based on past experience and the data analyzed by the FAA.

Thirteen commenters expressed concern that there may be a shortage in supply of both combustion chamber parts and hardware that will be exposed at overhaul. They were also concerned that shop capacity may be limited in light of this and other recent AD's. The FAA realizes that the availability of spare parts is a concern. PW, among others, is evaluating their parts supply situation and adjusting production schedules as needed. It is expected that normal operator planning will take advantage of an engine shop visit to accomplish more than one AD at a time to help minimize the impact on shop capacity and spare parts. Also, under FAR Part 121, operators may obtain approvals from their respective principal maintenance inspector to adjust their maintenance program requirements at shop visit, if (1) the shop visit was forced solely to accomplish the AD, (2) the adjusted items are not affected by an AD, and (3) inspection of any of those exposed areas are within maintenance manual limits. In order to permit efficient utilization of combustion chamber replacement parts, the requirements for future repairs, Paragraph (d) of the AD, have been revised to allow certain previous circumferential weld repairs that have operated 1,000 cycles or more without recracking, to not be included in the crack length assessment for determining repairability. However, previous weld repaired circumferential cracks, regardless of time in operation, must be included when determining combustion chamber category. This in effect will permit continuing limited use of Category 3 chambers, which would have been eliminated by the proposal of the NPRM.

Conclusion

The FAA has determined that this regulation involves 5,750 PW JT8D domestic engines at an approximate first year cost of $56.7 million and an annual cost of $1.5 million thereafter. It has also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which JT8D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent outer combustion case rupture due to cracking and distress of combustion chambers and subsequent impingement of combustion gases on the case inner wall, inspect for circumferential cracking and misalignment, and remove and repair as necessary, any part number (P/N) combustion chambers, except P/N's 5001958-02 and 5001959-02, in accordance with the procedures defined in PW SB 5639, Revision 1, dated March 21, 1986, or FAA approved equivalent, per the following:

All combustion chambers, regardless of their category, must be inspected initially within the next 1,000 hours or 1,000 cycles time in service (TIS), whichever occurs first from the effective date of this AD; or in accordance with their respective threshold requirements of paragraph (a) or (b) below, whichever occurs later. Repetitive inspection is required thereafter at intervals not to exceed those specified in paragraph (c) below.

(a) On engines being operated under an engine condition monitoring (ECM) program, inspect the combustion chambers in accordance with the following intervals:

(1) Category 1A chambers on or before 11,000 hours or 9,000 cycles, whichever occurs first, time since new (TSN) or time since 2 through 6 liner replacement (TSLR).

(2) Category 1B chambers on or before 9,000 hours or 7,500 cycles, whichever occurs first, TSN or TSLR.

(3) Category 2A chambers on or before 8,500 hours or 6,000 cycles time since repair (TSR), whichever occurs first.

(4) Category 2B chambers on or before 7,000 hours or 5,000 cycles TSR, whichever occurs first.

(5) Category 3 chambers on or before 4,500 hours or 3,000 cycles TSR, whichever occurs first.

(6) Remove from service prior to further flight, chambers with cumulative circumferential cracking greater than 8 inches in any 1 liner, or axial misalignment of adjacent cross-over tubes greater than 0.250 inch.

(7) Thereafter, chambers must be reinspected at intervals as specified in paragraph (c) below.

(b) On engines not being operated under an ECM program, inspect the combustion chambers in accordance with the following intervals:

(1) Category 1A chambers on or before 9,000 hours or 6,500 cycles, whichever occurs first, TSN or TSLR.

(2) Category 1B chambers on or before 7,000 hours or 5,000 cycles, whichever occurs first, TSN or TSLR.

(3) Category 2A chambers on or before 6,500 hours or 5,000 cycles TSR, whichever occurs first.

(4) Category 2B chambers on or before 5,000 hours or 4,000 cycles TSR, whichever occurs first.

(5) Category 3 chambers on or before 3,500 hours or 2,000 cycles TSR, whichever occurs first.

(6) Remove from service prior to further flight, chambers with cumulative circumferential cracking greater than 8 inches in any one liner, or axial misalignment of adjacent cross-over tubes greater than 0.250 inch.

(7) Thereafter, chambers must be reinspected at intervals as specified in (c) below.

(c) Reinspect combustion chambers previously inspected per paragraph (a) or (b) above, or the repetitive inspection requirements of this paragraph, in accordance with the following intervals:

(1) If the combustion chamber was inspected by borescope or by removing the outer combustion case and visually inspecting, reinspect as follows:

(i) Any category chamber except category 3, with 3 inches or less cumulative circumferential cracking in any one liner, reinspect within the next 3,000 hours or 2,000 cycles TIS since last inspection, whichever occurs first.

(ii) Category 3 chambers with 3 inches or less cumulative circumferential cracking in any one liner, reinspect within the next 2,000 hours or 1,500 cycles TIS since last inspection, whichever occurs first.

(iii) Any category chamber with greater than 3 inches but less than or equal to 6 inches cumulative circumferential cracking in any one liner, reinspect within the next 1,500 hours or 1,000 cycles TIS since last inspection, whichever occurs first.

(iv) Any category chamber with greater than 6 inches but less than or equal to 8 inches cumulative circumferential cracking in any one liner, reinspect within the next 250 hours or 200 cycles TIS since last inspection, whichever occurs first.

(v) Any category chamber with greater than 8 inches cumulative circumferential cracking in any one liner, remove from service prior to further flight.

(vi) Any category chamber with axial misalignment of adjacent cross-over tubes from 0.150 inch to 0.250 inch, reinspect within the next 50 hours or 50 cycles TIS since last inspection, whichever occurs first.

(vii) Any category chamber with axial misalignment of adjacent cross-over tubes greater than 0.250 inch, remove from service prior to further flight.

(2) If the combustion chamber was inspected using the radioisotope procedure, reinspect as follows:

(i) Any category chamber with indicated 3 inches or less cumulative circumferential cracking in any 1 liner, reinspect within the next 2,000 hours or 1,500 cycles TIS since last inspection, whichever occurs first.

(ii) Any category chamber with indicated greater than 3 inches but less than or equal to 6 inches cumulative circumferential cracking in any one liner, reinspect within the next 1,500 hours or 1,000 cycles TIS since last inspection, whichever occurs first.

(iii) Any category chamber with indicated greater than 6 inches but less than or equal to 8 inches cumulative circumferential cracking in any one liner, reinspect within the next 250 hours or 200 cycles TIS since last inspection, whichever occurs first.

(iv) Any category chamber with indicated greater than 8 inches cumulative circumferential cracking in any one liner, remove from service prior to further flight.

(v) Any category chamber with axial misalignment of adjacent cross-over tubes from 0.150 inch to 0.250 inch, reinspect within the next 50 hours or 50 cycles TIS since last inspection, whichever occurs first.

(vi) Any category chamber with axial misalignment of adjacent cross-over tubes greater than 0.250 inches remove from service prior to further flight.

(d) Combustion chambers removed from service may not have liners weld repaired if any of the following crack indications are present in that liner:

(1) Individual circumferential cracks greater than 3 inches.

(2) Cumulative circumferential cracks greater than 4 inches.

(3) Cumulative circumferential cracks greater than 3 inches but less than or equal to 4 inches and with less than 3 inches circumferential separation between individual cracks.

(4) Liners with circumferential cracks in excess of paragraphs (1) through (3) above must be replaced with new liners.

(5) Previously weld repaired individual circumferential cracks in excess of 3 inches, or previously weld repaired cracks of 3 inches or less in length, which have operated less than 1,000 cycles, or previously weld repaired cracks of which any portion has recracked, must be included in the crack length indications for determining repairability.

(6) Previously weld repaired individual circumferential cracks of 3 inches or less which have operated at least 1,000 cycles without any portion of the repair recracking, do not have to be included in the crack length indications for determining repairability.

Notes:

(1) Classification of the categories of combustion chambers must be supported by repair documentation. Previously weld repaired circumferential cracks are to be considered as cracks for determining combustion chamber category. For the purposes of this AD, notwithstanding the definitions in PW SB 5639, Revision 1, dated March 21, 1986, the combustion chamber categories are defined as follows:

Category 1A—First run chambers or non first run chambers which have had at least the Numbers 2 through 6 liners replaced as described in PW SB 5639 with new materials and do not have any weld repairs on those liner segments. The remaining liners, if repaired, must be repaired in accordance with the requirements of Category 2A and 2B. Category 1A chambers have at least the Numbers 2 through 5 liners coated internally with magnesium zirconate heat resistant coating.

Category 1B—Same as Category 1A except without the magnesium zirconate heat resistant coating.

Category 2A—Non first run chambers incorporating either SB 5192, or SB 5199, or an existing 2 to 3 liner seam with a fusion weld overlay, or a new 2 to 3 liner seam weld without a fusion weld overlay; and with either a patch repair, or repair by liner replacement less than that of Category 1A and 1B, or individual circumferential weld repaired cracks of 3 inches or less or cumulative circumferential weld repaired cracks totaling 4 inches or less in any one liner that are separated by at least 3 inches of uncracked material. Category 2A chambers have at least the Numbers 2 through 5 liners coated internally with magnesium zirconate heat resistant coating.

Category 2B—Same as Category 2A except without the magnesium zirconate heat resistant coating.

Category 3—All chambers with liner repairs that are not documented as Categories 1A, 1B, 2A, or 2B and chambers specifically including individual circumferential weld repaired cracks greater than 3 inches or cumulative circumferential weld repaired cracks totaling more than 4 inches in any one liner.

(2) For the purpose of this AD, an ECM program is defined as PW ECM–I or ECM–II, as described in Appendix A of SB 5639, Revision 1, dated March 21, 1986, or FAA approved equivalent. Should stable cruise data be unavailable for a period exceeding 48 hours (2 calendar days), 12 flight cycles, or 14 flight hours, whichever occurs later; and should the combustion chambers be beyond the non-ECM inspection category hour or cycle limit, the chambers must be inspected within the next 10 cycles in service. In the event that stable cruise data again become available prior to the expiration of the above 10 cycle limit, return to the ECM-inspection category is permitted if the following conditions are met:

(i) The period during which stable cruise data is unavailable does not include any one period of data loss that exceeds 72 hours (3 calendar days), and;

(ii) One stable cruise point is recorded for each day that stable cruise data were unavailable, and that the rate of data acquisition not exceed one data point per cycle, and;

(iii) No maintenance was accomplished on the fuel flow, exhaust gas temperature (EGT), or N1/N2 rotor speed engine instrumentation, and;

(iv) The stable cruise data recorded per paragraph (ii) above be processed by the ECM program and evaluated by a qualified

analyst to confirm that no significant parameter shifts have occurred.

(3) The radiographic inspection technique referenced in Telegraphic Airworthiness Directive (TAD) T85-17-51 R1 as an approved alternate means of compliance, is not considered an equivalent means of compliance with this AD.

(4) Combustion chambers which are removed from service prematurely, inspected in accordance with this AD, and that do not require repair, may be returned to service to continue their run to the appropriate initial inspection threshold or the applicable repetitive inspection interval, whichever is greater.

(5) Magnesium zirconate heat resistant coating is to be applied in accordance with the JT8D Restructured Engine Manual P/N 481762, Chapter 72-41-14, Repair Number 28, or FAA approved equivalent. To meet the requirement for magnesium zirconate in a given combustion chamber category, the coating must have been completely renewed on at least the 2 through 5 liners at that repair rather than locally patched.

(6) PW All Operators Wire Number JT8D/72-41/PSE: 5-8-23-1, dated August 23, 1985, and Flight Operations Engineering Report Number RFT5-8-30-1, dated August 30, 1985, contain further information relevant to combustion chamber distress and the symptoms which mainfest themselves as a result of excessive combustion chamber cracking and misalignment.

Aircraft may be ferried in acordance with the provisions of FAR Parts 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

PW SB 5639, Revision 1, dated March 21, 1986, identified and described in this directive, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 85-ANE-34, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective on May 19, 1986.

This amendment supersedes TAD T85-17-51 R1, issued September 25, 1985.

Issued in Burlington, Massachusetts, on March 27, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-8305 Filed 4-10-86; 12:39 pm]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 85-ANE-46; Amdt. 39-5287]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR Turbofan Engines

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires eddy current inspection and subsequent replacement of high pressure compressor (HPC) removable sleeve spacers with HPC integral sleeve spacers on certain PW JT8D engines. The AD is needed to prevent failure of the HPC removable sleeve spacers which could result in inflight engine shutdowns, engine cowl penetrations, and airframe damage.

DATES: Effective May 27, 1986.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on May 27, 1986.

ADDRESSES: The applicable alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the ASB is contained in Rules Docket Number 85-ANE-46, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7121.

SUPPLEMENTARY INFORMATION:

Background

A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring inspection and replacement of removeable sleeve HPC spacers on certain PW JT8D engines was published in the **Federal Register** on January 2, 1986 (51 FR 37).

The proposal was prompted by 46 removeable sleeve HPC spacer fractures, of which eight penetrated the cowling and eight penetrated the engine case but not the cowling. These failures have resulted in engine and, on occasion, airframe damage. Cowling penetration events have been limited to stages 7-8 and 9-10 spacer fractures. Other stages have been found cracked or failed but were contained within the engine core or the engine fan duct. HPC spacer cracks have occurred at knife edge seals, bleed holes, and flanges. Crack initiation has resulted from corrosion pitting, cadmium embrittlement, improper weld repairs, or knife edge seal wear and distress.

This AD requires on-wing, one time, eddy current inspection of HPC removeable sleeve spacers stages 7-8 and 9-10 in accordance with the procedures of PW ASB 5649, dated January 15, 1986. This AD also requires replacement of HPC removeable sleeve spacers stages 7-8 and 9-10 with integral sleeve spacers at the next HPC rotor disassembly, but not to exceed 2 years or 4,000 flight cycles, whichever occurs later; and replacement of stages 8-9, 10-11, 11-12, and 12-13 removeable sleeve spacers with integral sleeve spacers at the next HPC rotor disassembly.

This AD also requires reporting of the inspection results to the FAA. Those findings will be evaluated to determine if they are consistent with the past experience upon which the AD is founded, or whether further inspections or other action is needed. Information collection requirements contained in this amendment to § 39.13 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-1156.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Twenty-one responses were received concerning the proposed rule.

Discussion of Comments

A number of comments were received concerning which stages of removeable sleeve spacers should or should not be included in the different compliance groups within the proposal. Those comments were as follows:

(a) Two commenters proposed including the stage 8–9 within stages 7–8 and 9–10 for on-wing inspection and removal.

(b) One commenter stated that he will inspect stage 8–9 spacers on-wing per the ASB even though not required by the AD.

(c) Two commenters stated that all stages 7–8 through 12–13 should be removed within a determinate period such as 2 years or 4,000 cycles rather than permitting some stages to operate until the next engine shop visit or HPC rotor disassembly.

(d) Two commenters proposed that the stage 8–9 spacer should not be included in the on-wing inspection and early removal as in the ASB, and requested that the ASB be revised to agree with the notice of proposed rulemaking (NPRM).

(e) One commenter stated that the stages 8–9 and 9–10 should not be included in the on-wing inspection or removal within the 2 years or 4,000 cycles. Only the stage 7–8 was of concern to the commenter.

(f) Two commenters stated that stage 7–8 spacers used with the single overhung standard of stage eight compressor hub should not be included in the AD since there have been no failures in service of that configuration.

(g) One commenter stated that only those engines with stage 9–10 removable sleeve spacers should be inspected on-wing as a sample to determine if further inspection is necessary.

The FAA has reevaluated the data and analysis relative to the criticality of the various stages of removable sleeve spacers. There have been six fractures of stage 7–8 of which four penetrated the engine cowlings. There have been 27 fractures of stage 9–10 of which four penetrated the engine cowling. Experience and analysis still indicate the need to retain stages 7–8 and 9–10 requirements as proposed in the NPRM. Also, the FAA does not agree that a sampling inspection program of only the stage 9–10 provides an adequate level of safety in light of the field experience.

There have been four fractures of stage 8–9, none of which penetrated the engine cowls. However, analysis shows that the stage 8–9 is subject to the same stress levels and environment as stages 7–8 and 9–10. The potential energy of the stage 8–9 spacer imparted by the rotational velocity of the HPC rotor, is comparable to the stage 7–8 spacer. Also, analysis of the containment capability of the surrounding cases does not indicate that a stage 8–9 spacer failure is any more likely to be contained than a stage 7–8 or 9–10 spacer failure. Nevertheless, the FAA has determined that addition of the stage 8–9 spacer in the on-wing inspection and early removal requirements is beyond the scope of this AD, based on the published proposal. An NPRM proposing an amendment to this AD to add the stage 8–9 spacer to the compliance category with stages 7–8 and 9–10, will be forthcoming.

Reanalysis of the stages 10–11, 11–12, and 12–13 spacers confirms that there is no need at this time to require a stricter compliance than that proposed.

With regard to stage 7–8 spacers assembled wtih the single overhung standard of stage eight compressor hubs, analysis, and test data indicate that the same potential for failure exists as with the double overhung configuration. Therefore, the FAA does not agree that those spacers in the single overhung configuration should be exempt from the AD.

Several comments were received regarding the spacer replacement compliance schedule as follows:

(a) One commenter stated that the 2 year or 2,800 cycle (sic) replacement will cause five unplanned engine removals.

(b) One commenter stated that all stages should be replaced at the next engine shop visit but not later than 4,000 cycles.

(c) Two commenters felt that the NPRM requirement of next HPC disassembly should read next engine shop visit as in the ASB.

(d) One commenter proposed a 3 year replacement program rather than 2 years with no cyclic equivalent or on-wing inspection.

(e) One commenter stated that the 2 year or 4,000 cycle requirement should be 3 years or 6,300 to 6,600 cycles to allow replacement to coincide with routine maintenance. To compensate, the commenter proposed to do one additional on-wing inspection after 2 years.

The FAA established the 2 year or 4,000 cycle requirement to provide an adequate level of safety while maintaining a replacement program that was applied equitably to all operators. Requiring replacement in 4,000 cycles without the 2 year equivalent would adversely and unfairly impact many operators. However, to increase the compliance to 3 years, or more than 4,000 cycles, would adversely impact safety requirements.

The use of HPC disassembly in the NPRM rather than engine shop visit as in the ASB is deemed necessary and adequate for two reasons. First, for a 2 year or 4,000 cycle replacement program, the replacement rate would still have to closely parallel a shop visit rate to meet the compliance end date. Secondly, HPC disassembly allows the operator more latitude in planning and scheduling the replacements. For a period of time the engine shop visit rate is, and will be, artificially inflated over that used to establish the compliance of the ASB due to the number of AD's currently affecting the JT8D engine. It would be an unnecessary burden on operators to require every engine visiting the shop to have the spacers replaced at that time.

Several commenters had the following comments concerning the on-wing inspection threshold and drawdown times:

(a) One commenter proposed that the threshold and drawdown times should be reversed; i.e., inspect prior to accumulating 1,000 cycles since inspection or within the next 1,700 cycles, whichever occurs later.

(b) One commenter proposed to inspect prior to accumulating 2,000 cycles since inspection or within the next 1,500 cycles, whichever occurs later.

(c) Two commenters stated that the NPRM inspection threshold and drawdown times do not match the ASB and should be revised to that of the ASB.

(d) Two commenters stated that the threshold and drawdown times in the AD were specified in terms of "since spacer installation" and did not agree with the ASB which states "since last in-shop fluorescent penetrant or ultrasonic inspection".

The FAA does not agree that the inspection threshold and drawdown times should be changed from those proposed. Those times were established from an analysis of field experience data. The results of the on-wing inspection will be monitored by the FAA under the reporting requirements of the AD to determine if further action is needed. The FAA disagrees that the times should be relaxed to agree with those in the ASB. The ASB would allow spacers with less than 1,700 cycles since inspection to accumulate an additional 2,700 cycles which could, in certain cases, allow a spacer in that category to operate as long as 4,399 cycles before an inspection. That would be inconsistent with the safety analysis conducted for this AD.

When defining the threshold and drawdown times as "since spacer installation", the FAA assumed operators were properly inspecting their spacers prior to installation in accordance with the PW JT8D engine manual requirements. Since the commenters indicate that this may not be a valid assumption, and it was the

intent of the FAA that "since installation" and "since last inspection" be synonymous, the AD will be revised to adopt the ASB terminology.

Four commenters stated that this AD plus other recently issued JT8D AD's created an undue burden on operators causing spare parts shortages, shop capacity problems, and increased maintenance costs. They requested an extension to reduce the economic impact of the AD. One of those commenters also proposed a task force be formed to establish a program to combine all of the JT8D AD's into one program with a more manageable compliance schedule. The FAA is willing to entertain proposals from industry to formulate such a program to combine AD's. The proposal would have to provide an equivalent level of safety to that of the individual AD's. The FAA realizes that shop capacity and the availability of spare parts are concerns. PW is evaluating parts availability and adjusting production schedules as needed. The FAA expects that normal operator planning will take advantage of an engine shop visit to accomplish more than one AD at a time to help minimize the impact on shop capacity and spare parts. Also, under FAR Part 121, operators may obtain approvals from their respective principal maintenance inspector to adjust their maintenance program requirements at shop visit, if: (1) The shop visit was forced solely to accomplish the AD, (2) the adjusted items are not affected by an AD, and (3) inspection of any of those exposed areas are within maintenance manual limits. Also, the FAA does not agree that the compliance can be relaxed and still maintain an adequate level of safety.

One commenter requested a 2 week extenstion to the comment period to submit additional data. The FAA has accommodated that commenter by considering his additional data during the preparation of this rule.

One commenter stated that the AD should not be less severe than the ASB which he felt was, in itself, not stringent enough. Another commenter took exception to that commenter's statement that the AD should be more stringent like the ASB. The only areas where the proposed AD was less stringent than the ASB were: (1) The stage 8–9 spacer was not included with the stages 7–8 and 9–10, and (2) the AD requirements would be effective at a later date than January 15, 1986, as in the ASB. As previously mentioned, the differences of "HPC rotor disassembly" and "since spacer installation" in the AD, versus "engine shop visit" and "since last inspection" in the ASB are not considered to be noticeably different for the purposes of this rule.

Three commenters stated that the AD should not reference ASB 5649 because there are a number of differences between the two, and the ASB does not reflect the discussions of the December 19, 1985, FAA and industry meeting. An AD takes precedence over all other related documents but only in those specific areas stated in the AD. The ASB contains the manufacturer's recommendations for maintaining the reliability of the engines. Operators must abide by those recommendations unless they can provide adequate technical substantiation in accordance with the FAR to justify a deviation or they are directed to do otherwise by an AD. This AD mandates only those specific portions of the ASB which the FAA has determined impact flight safety and require direct FAA engineering scrutiny. Therefore, the AD will retain the reference to ASB 5649.

Two commenters noted that the AD calls for replacement of the spacers per SB's 5187 and 3749 rather than ASB 5649. They proposed referencing ASB 5649 which superseded the other two SB's. The FAA agrees and has revised the AD accordingly.

One commenter rejected the manufacturer's assumptions that airline shop inspection programs are ineffective. The commenter stated that the FAA should consider that from 1971 to 1979, the field experience was 3.8 spacer fractures per year. In 1980, the manufacturer revised the engine manual procedures and issued All Operators Wires that were adopted by the airlines. From 1980 onward the experience has averaged 1.2 fractures per year. The commenter stated that this reduction in fractures reflects the airlines' ability to control the problem. The FAA disagrees with the commenter. The experience of 1980 to the present has actually averaged in excess of two fractures per year. Even a fracture rate of 1.2 per year is unacceptable considering the proportion of those which could be uncontained. Also, in 1984 and 1985, the experience has risen to three fractures per year. Due to this recent rise in fracture rate, the FAA will monitor the results of on-wing inspections through the reporting requirements of the AD to determine if further action is needed.

Ten commenters reported a combined economic impact of $35.9 million for the proposed rule.

Three commenters stated that the on-wing inspection method in the ASB has not been proven reliable. One of those commenters stated that the equipment is unreliable and gives false indications due to scale and dirt on the spacers.

Another of the commenters was concerned that the required equipment is non-standard and availability is limited. They also stated that the inspection could create more problems than it solved. The FAA has investigated these areas of concern, and has not found adequate substantiation for the comments. As with any similar program, there have been normal developmental problems, but these are not expected to have an adverse impact on the program.

One commenter requested that the FAA mandate special training for the inspection requirements. The FAA disagrees. The training requirements of the ASB are not a mandatory part of the AD, but are the manufacturer's recommendations based on his knowledge of the difficulty of accomplishing the required inspection. It will be the operator's responsibility to establish, to their respective FAA principal maintenance inspector's satisfaction, that proper training to accomplish the AD has been provided in accordance with the FAR.

One commenter stated that the definition of engine shop visit in the ASB did not agree with the definition used in a previous ASB and AD relating to JT8D stage 2 low turbine disks. The commenter requested that the same definition be used in the spacer ASB. While the FAA agrees that the definitions should be consistent, the concern has no impact on this AD for two reasons. First, the use of shop visit has been removed from the JT8D stage 2 low turbine disk AD by Amendment 39–5168, effective December 26, 1985. Secondly, this AD is using HPC rotor disassembly in lieu of engine shop visit.

One commenter was in agreement with the NPRM but stated that the spacer problem was indicative of an overall problem reflecting the limitations of current state-of-the-art materials, maintenance, and design technology. The commenter stated that continuing action was needed in all areas of engine maintenance and monitoring of service difficulties to preclude future similar problems in this as well as other engine types. The FAA concurs and is reviewing current programs and instituting new programs to address the concerns expressed by the commenter.

Conclusion

The FAA has determined that this regulation involves approximately 1,840 engines (domestic fleet) at an approximate cost of 43 million dollars. It has also been determined that few, if

any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which JT8D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be examined by contacting the person identified under the caption: **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent crack propagation and subsequent high pressure compressor (HPC) removeable sleeve spacer rupture, perform a one time, eddy current inspection of HPC removeable sleeve spacers stages 7–8 and 9–10 for cracks, and replace all stages of HPC removeable sleeve spacers with the respective HPC integral sleeve spacers, in accordance with the procedures of PW Alert Service Bulletin (ASB) 5649, dated January 15, 1986, or FAA approved equivalent, per the following schedule:

(a) For HPC removeable sleeve spacers stages 7–8 and 9–10:

(1) Inspect spacers within the next 1,000 cycles in service from the effective date of this AD, or prior to reaching 1,700 cycles since the last in-shop fluorescent penetrant or ultrasonic inspection, whichever occurs later.

(2) Remove cracked spacers from service prior to further flight.

(3) Report the following information in writing for each inspection within 30 days of the inspection to the Manager, Engine Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, (Telex No. 949301 FAANE BURL) (Reporting approved by the Office of Management and Budget (OMB) under OMB Number 2120–1156).

(i) Engine serial number
(ii) Inspection date
(iii) Spacer part number and serial number
(iv) Spacer total time and cycles
(v) Spacer time and cycles since last inspection
(iv) Spacer disposition (crack indication, no crack indication)
(vii) If a crack indication is present, report confirmation of location and crack size within 30 days after engine disassembly.

(b) Replace HPC removeable sleeve spacers stages 7–8 and 9–10 with the integral sleeve spacers at the next HPC rotor disassembly, but not to exceed 2 calendar years or 4,000 cycles in service, whichever occurs later from the effective date of this AD.

(c) Replace HPC removeable sleeve spacers stages 8–9, 10–11, 11–12, and 12–13 with the integral sleeve spacers at the next HPC rotor disassembly.

Notes: (1) For the purposes of this AD, HPC rotor disassembly is defined as removal of any disk, spacer, or hub from the HPC rotor.

(2) For the purposes of this AD, the last in-shop fluorescent penetrant or ultrasonic inspection is that conducted in accordance with the procedures identified and described in the PW JT8D Restructured Engine Manual Part Number 481672 or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR Parts 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

PW ASB 5649, dated January 15, 1986, identified and described in this directive, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain a copy upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 85–ANE–46, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effectve on May 27, 1986.

Issued in Burlington, Massachusetts, on April 4, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–8306 Filed 4–10–86; 2:42 pm]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 86–AGL–1]

Alteration of Transition Area; West Branch, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the West Branch, Michigan, transition area to accommodate a new VOR Runway 27 Standard Instrument Approach Procedure (SIAP) to West Branch Community Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operationg under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, February 14, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 17) to alter the West Branch Michigan transition area (51 FR 5545).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the West Branch, Michigan transition area

to accommodate a new VOR Runway 27 SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

West Branch, MI—[Amended]

That airspace extending upward from 700 feet above the surface, within a 6.5 mile radius of the West Branch Community Airport (lat. 44°14'36"N., long. 84°10'58"W.) and within 3 miles each side of the 087° bearing from the airport, extending from the 6.5 mile radius area to 13 miles east of the airport and within 3 miles each side of the West Branch VOR 083 radial, extending from the 6.5 mile radius area to 7.5 miles east of the airport.

Issued in Des Plaines, Illinois, on April 2, 1986.

Kenneth C. Patterson,

Manager, Air Traffic Division.

[FR Doc. 86–8311 Filed 4–14–86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 24963; Amdt. No. 329]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8277.

SUPPLEMENTARY INFORMATION: .

This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on March 13, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 Gmt:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 329 EFFECTIVE DATE, MARCH 13, 1986

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO DELETE		
GROPE NJ FIX	MC GUIRE NJ VORTAC	1700
§95.6002 VOR FEDERAL AIRWAY 2		
IS AMENDED TO READ IN PART		
HELENA MT VORTAC	VESTS MT FIX	10000
BUFFALO NY VORTAC	CLUNG NY FIX	2600
CLUNG NY FIX	MONCK NY FIX	*6000
*2000 MOCA		
MONCK NY FIX	ROCHESTER NY VORTAC	6000
ROCHESTER NY VORTAC	LORTH NY FIX	2200
LORTH NY FIX	MAGEN NY FIX	*3500
*1700 MOCA		
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
CARMEL NY VORTAC	RACEY CT FIX	2100
§95.6004 VOR FEDERAL AIRWAY 4		
IS AMENDED TO READ IN PART		
LAMME IN FIX	*APALO IN FIX	**3000
*7000 MRA		
**1800 MOCA		
§95.6005 VOR FEDERAL AIRWAY 5		
IS AMENDED BY ADDING		
WIREGRASS, AL VORTAC	ALBANY GA VORTAC	*2500
*1800 MOCA		
ALBANY GA VORTAC	VIENNA, GA VORTAC	2000
VIENNA, GA VORTAC	DUBLIN GA VORTAC	2000
IS AMENDED TO READ IN PART		
NASHVILLE, TN VORTAC	*TANDS TN FIX	2700
*3000 MRA		
§95.6020 VOR FEDERAL AIRWAY 20		
IS AMENDED TO READ IN PART		
CHECK NC FIX	MOPED NC FIX	3800
§95.6031 VOR FEDERAL AIRWAY 31		
IS AMENDED TO READ IN PART		
BEEPS NY FIX	FAULT NY FIX	*6000
*2100 MOCA		

FROM	TO	MEA
§95.6031 VOR FEDERAL AIRWAY 31—Continued		
ROCHESTER NY VORTAC	BULGE NY FIX	6000
§95.6034 VOR FEDERAL AIRWAY 34		
IS AMENDED TO READ IN PART		
FAULT NY FIX	BEEPS NY FIX	*6000
*2100 MOCA		
§95.6037 VOR FEDERAL AIRWAY 37		
IS AMENDED TO READ IN PART		
OWALT NC FIX	ROCKS NC FIX	*6000
*3500 MOCA		
ROCKS NC FIX	DOILY VA FIX	*7000
*5100 MOCA		
§95.6047 VOR FEDERAL AIRWAY 47		
IS AMENDED TO READ IN PART		
HOLAN, IN FIX	SACKO IN FIX	*3500
*2000 MOCA		
§95.6049 VOR FEDERAL AIRWAY 49		
IS AMENDED TO READ IN PART		
NASHVILLE TN VORTAC	*TANDS, TN FIX	2700
*3000 MRA		
§95.6074 VOR FEDERAL AIRWAY 74		
IS AMENDED TO READ IN PART		
PINE BLUFF AR VORTAC	GREENVILLE MS VOR/DME	2000
§95.6119 VOR FEDERAL AIRWAY 119		
IS AMENDED TO READ IN PART		
CLARION PA VORTAC	BRADFORD PA VORTAC	4000
§95.6139 VOR FEDERAL AIRWAY 139		
IS AMENDED TO READ IN PART		
MANTA NJ FIX	PLUME NJ FIX	*7000
*2000 MOCA		
PLUME NJ FIX	BEADS NY FIX	*4000
*3000 MOCA		

FROM	TO	MEA
§95.6154 VOR FEDERAL AIRWAY 154		
IS AMENDED TO READ IN PART		
OCONE GA FIX	LOTTS GA FIX	*3000
*1600 MOCA		
LOTTS, GA FIX	SAVANNAH GA VORTAC	*2000
*1500 MOCA		
§95.6159 VOR FEDERAL AIRWAY 159		
IS AMENDED TO READ IN PART		
HOLLY SPRINGS MS VORTAC	GILMORE AR VOR/DME	2500
§95.6198 VOR FEDERAL AIRWAY 198		
IS AMENDED TO READ IN PART		
BROOKLEY AL VORTAC	CRESTVIEW FL VORTAC	3000
§95.6218 VOR FEDERAL AIRWAY 218		
IS AMENDED TO READ IN PART		
GOPHER MN VORTAC	CHATS MN FIX	*4800
*3200 MOCA		
§95.6241 VOR FEDERAL AIRWAY 241		
IS AMENDED TO READ IN PART		
SEMMES AL VORTAC	CRESTVIEW FL VORTAC	3000
§95.6266 VOR FEDERAL AIRWAY 266		
IS AMENDED BY ADDING		
FRANKLIN, VA VORTAC	SUNNS NC FIX	*2000
*1400 MOCA		
SUNNS, NC FIX	ELIZABETH CITY NC VOR/DME	*2000
*1300 MOCA		
ELIZABETH CITY NC VOR/DME	WRIGHT BROTHERS NC VOR/DME	*2000
*1300 MOCA		
§95.6286 VOR FEDERAL AIRWAY 286		
IS AMENDED TO READ IN PART		
GWYNN VA FIX	CAPE CHARLES VA VORTAC	*2000
*1300 MOCA		
§95.6290 VOR FEDERAL AIRWAY 290		
IS AMENDED TO DELETE		
FRANKLIN VA VORTAC	SUNNS NC FIX	*2000
*1400 MOCA		
SUNNS NC FIX	ELIZABETH CITY NC VOR/DME	*2000
*1300 MOCA		

FROM	TO	MEA
§95.6290 VOR FEDERAL AIRWAY 290—Continued		
ELIZABETH CITY NC VOR/DME	WRIGHT BROTHERS NC VOR/DME	2000
§95.6292 VOR FEDERAL AIRWAY 292		
IS AMENDED TO READ IN PART		
CARMEL NY VORTAC	RACEY CT FIX	2100
§95.6308 VOR FEDERAL AIRWAY 308		
IS AMENDED TO READ IN PART		
MANTA NJ FIX	PLUME NJ FIX	*7000
*2000 MOCA		
PLUME NJ FIX	BEADS NY FIX	*4000
*3000 MOCA		
§95.6362 VOR FEDERAL AIRWAY 362		
IS AMENDED BY ADDING		
BRUNSWICK GA VORTAC	ALMA GA VORTAC	2000
IS AMENDED TO READ IN PART		
ALMA GA VORTAC	VIENNA GA VORTAC	2000
IS AMENDED TO DELETE		
NELLO GA FIX	*HOCHE GA FIX	5600
*4000 - MCA HOCHE FIX SE BND		
HOCHE GA FIX	CHATTANOOGA TN VORTAC	3000
§95.6365 VOR FEDERAL AIRWAY 365		
IS AMENDED TO READ IN PART		
VESTS MT FIX	HELENA MT VORTAC	10000
§95.6483 VOR FEDERAL AIRWAY 483		
IS AMENDED TO READ IN PART		
SODUS NY FIX	ROCHESTER NY VORTAC	6000
§95.6510 VOR FEDERAL AIRWAY 510		

FROM	TO	MEA
§95.6510 VOR FEDERAL AIRWAY 510—Continued		
IS AMENDED TO READ IN PART		
BUFFALO, NY VORTAC	EHMAN, NY FIX	2500
EHMAN, NY FIX	ROCHESTER, NY VORTAC	6000
§95.6512 VOR FEDERAL AIRWAY 512		
IS AMENDED TO READ IN PART		
HOLAN, IN FIX	SACKO, IN FIX	*3500
*2000—MOCA		
§95.6537 VOR FEDERAL AIRWAY 537		
IS AMENDED BY ADDING		
GREENVILLE, FL VORTAC	MOULTRIE, GA VOR/DME	*2000
*1500—MOCA		

FROM	TO	MEA
§95.6537 VOR FEDERAL AIRWAY 537—Continued		
MOULTRIE, GA VOR/DME	MACON, GA VORTAC	*6000
*2400—MOCA		
§95.6578 VOR FEDERAL AIRWAY 578		
IS ADDED TO READ		
ALBANY, GA VORTAC	TIFT MYERS, GA VOR	2500
TIFT MYERS, GA VOR	ALMA, GA VORTAC	2000
§95.6579 VOR FEDERAL AIRWAY 579		
IS AMENDED BY ADDING		
CROSS CITY, FL VORTAC	VALDOSTA, GA VOR/DME	*6000
*1500—MOCA		
VALDOSTA, GA VOR/DME	TIFT MYERS, GA VOR	4000
TIFT MYERS, GA VOR	VIENNA, GA VORTAC	2000

FROM	TO	MEA	MAA
§95.7040 JET ROUTE NO. 40			
IS AMENDED TO READ IN PART			
WILMINGTON, NC VORTAC	TAR RIVER, NC VORTAC	18000	45000
TAR RIVER, NC VORTAC	RICHMOND, VA VORTAC	18000	45000
§95.7174 JET ROUTE NO. 174			
IS AMENDED BY ADDING			
JACKSONVILLE, FL VORTAC	CHARLESTON, SC VORTAC	18000	45000
CHARLESTON, SC VORTAC	WILMINGTON, NC VORTAC	18000	45000
WILMINGTON, NC VORTAC	NORFOLK, VA VORTAC	18000	45000
NORFOLK, VA VORTAC	SNOW HILL, MD VORTAC	18000	45000
§95.7191 JET ROUTE NO. 191			
IS ADDED TO READ			
WILMINGTON, NC VORTAC	TAR RIVER, NC VORTAC	18000	45000
TAR RIVER, NC VORTAC	HOPEWELL, VA VORTAC	18000	45000
HOPEWELL, VA VORTAC	PATUXENT, MD VORTAC	18000	45000
PATUXENT, MD VORTAC	KENTON, DE VORTAC	18000	45000
KENTON, DE VORTAC	COYLE, NJ VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-2		
	IS AMENDED BY ADDING		
BUFFALO, NY VORTAC	ROCHESTER, NY VORTAC	34	BUFFALO
ROCHESTER, NY VORTAC	SYRACUSE, NY VORTAC	15	ROCHESTER
	V-37		
	IS AMENDED BY ADDING		
CHARLOTTE, NC VOR/DME	PULASKI, VA VORTAC	74	CHARLOTTE
	V-119		
	IS AMENDED TO READ IN PART		
CLARION, PA VORTAC	BRADFORD, PA VORTAC	40	CLARION
	V-174		
	IS AMENDED TO READ IN PART		
ELKINS, WV VORTAC	SHAWNEE, VA VORTAC	52	ELKINS
	V-578		
	IS AMENDED BY ADDING		
TIFT MYERS, GA VOR	ALMA, GA VORTAC	26	TIFT MYERS

[FR Doc. 86–8310 Filed 4–14–86; 8:45 am]

BILLING CODE 4910–13–C

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-73		
	IS AMENDED BY ADDING		
TERRE HAUTE, IN VORTAC	NORTHBROOK, IL VORTAC	59	TERRE HAUTE
	J-191		
	IS AMENDED BY ADDING		
HOPEWELL, VA VORTAC	PATUXENT, MD VORTAC	15	HOPEWELL

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 32

Commodity Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing banks located in the United States to grant options on foreign currencies traded on the Montreal Exchange as principals for business-related purposes. This order is issued pursuant to Commission rule 32.4(b), which authorizes the Commission to exempt any person from the provisions of Part 32 of the Commission's regulations relating to commodity option transactions.

EFFECTIVE DATE: April 15, 1986.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, or Robert H. Rosenfeld, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following order:

Commodity Futures Trading Commission

Order Authorizing Banks Located in the United States To Grant Options Traded on Foreign Currencies on the Montreal Exchange

I. Background of Request for Relief

By letter dated March 25, 1985, to the Commission's Division of Trading and Markets ("Division"), the Montreal Exchange ("Exchange") requested that the staff adopt a no-action position such that the staff would not recommend any enforcement action by the Commission against any bank or other financial institution located in the United States that grants options on foreign currencies traded on the Exchange in violation of the provisions of section 4c(c) of the Commodity Exchange Act ("Act"). Because this request raised significant policy issues with respect to the extent to which option transactions on a foreign exchange are permitted under section 4c(c) of the Act and the regulations thereunder, the Division referred this request to the Commission for consideration. Upon careful review of this matter and, in particular, in consideration of the representations set forth below, the Commission has determined to issue an order pursuant to Commission rule 32.4(b), 17 CFR 32.4(b) (1985), authorizing banks located in the United States acting as principals to grant options on foreign currencies traded on the Montreal Exchange for business-related purposes. The Commission has further determined not to authorize financial institutions other than banks to grant such options at this time, however.[1]

In a letter dated February 22, 1984, to the Exchange, the Division had confirmed that banks engaged in some commercial use of the underlying currency could, pursuant to the trade option exemption of section 4c(c) of the Act,[2] purchase and offset put and call options on foreign currencies that are traded on a commodity exchange located outside of the United States.[3] The Division, however, also stated that the trade option exemption did not authorize banks or any other person to grant options on a foreign exchange.[4]

This position was based primarily on the statutory language in section 4c(c) of the Commodity Exchange Act ("Act") and Commission rule 32.4(a) which exempt from the general ban on commodity option transactions only those transactions in which the purchaser is known to be a commercial user of the underlying commodity (*i.e.*, trade options); neither of these provisions addresses the status of the option grantor. Indeed, the administrative and legislative history of the trade option exemption indicates that the exemption was described consistently as a mechanism to permit commercials to purchase options notwithstanding the general ban on all option transactions set forth in section 4c(c) of the Act without regard to writing.[5] Since the mechanics of exchange trading ordinarily preclude privity between writers and purchasers of options, an option grantor would have no basis to identify a particular purchaser as a member of the exempt offeree class as required by section 4c(c) of the Act and rule 32.4. Thus, the granting of options on a foreign exchange is not contemplated by the express terms of the trade option exemption.

Nonetheless, the Commission notes that the scope and nature of the international markets for financial-based instruments has changed significantly since 1978. In this regard, the Commission has recognized that the current scheme of regulating options essentially reflects a Congressional and administrative response to fraud in the offer and sale of options to the public that occurred in the 1970's and currently may not fully address the needs of different classes of commercial and institutional entities.[6] Thus, the Commission invited comment on the need to revise its regulations concerning, *inter alia*, the commercial use of options not traded or executed on a domestic contract market.[7] In addition, the Commission has proposed regulations to govern the domestic offer and sale of options traded or executed on a foreign board of trade.[8] This proposal would exclude from the special protections of such regulatory scheme a commercial entity that, acting as a principal, enters into option transactions on a foreign board of trade of purposes related to its business. The proposed exclusion is based upon a belief that any person who has determined to use transactions on foreign exchanges in

[1] Commission rule 32.4(b), 17 CFR 32.4(b) (1985), expressly provides that:

The Commission may, by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of this Part, other than §§ 32.2, 32.8 and 32.9, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

[2] The trade option exemption in section 4c(c) of the Act provides that the prohibition on commodity options set forth in that section—

shall not apply to any transaction expressly permitted under rules or regulations prescribed by the Commission, before or after the date of enactment of the Futures Trading Act of 1978, to be offered to be entered into, entered into, or confirmed, in which the purchaser is a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or byproducts thereof.

[3] Interpretative Letter No. 84-7, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,025 (February 22, 1984). In concluding that the trade option exemption applied to the purchase of foreign exchange-traded options, the Division of Trading and Markets noted that the Commission had expressly described "foreign commodity options" to mean ". . . options on physical commodities or on commodities futures contracts which originate on or through the facilities of foreign exchanges" and that such ". . . foreign options may be offered under the trade option exemption." 43 FR 16153, 16157 (April 17, 1978).

[4] *Id.* n.12 at p. 28,595 (CCH).

[5] "The purpose of § 32.4(a) is to exempt the acquisition of a commodity option for a non-speculative purpose by a commercial enterprise engaged in transactions in physical commodities. . . ." 46 FR 23469, 23476 (April 27, 1981). The Commission recognized that the exemption solely addressed the status of the purchaser and thus would not prevent a person who is not engaged in commercial activity from offering an option to a person who is. 42 FR 18246, 18252 (April 5, 1977). Moreover, the Commission has thus far retained rule 32.4(a) in its original form (*i.e.*, a *purchaser* exemption) notwithstanding the receipt of public comment in 1978 which urged the Commission to broaden the scope of the trade option exemption in order to permit commercial interests more flexibility to engage in option activity. 43 FR 16153, 16160 (April 17, 1978).

[6] 50 FR 10786 (March 18, 1985).

[7] *Id.*

[8] 51 FR 12104 (April 8, 1986).

connection with its business has taken the time to investigate those markets and the brokers with which such person will be dealing. Moreover, this proposed exclusion recognizes that many commercial entities that deal in world commodities have established trade relationships in connection with transactions on foreign futures exchanges during a period of no substantive regulation by the Commission and that it is not necessary to affect these relationships through a comprehensive regulatory scheme.

Prior to promulgation of final rules in this area, the Commission believes that it is appropriate to grant relief on a case-by-case basis on behalf of certain commercial entities whose use of commodity options does not place public customer funds at risk and does not constitute part of a scheme to offer or sell options to the general public. The Commission believes that such relief would be consistent with the options ban (which essentially was concerned with the prohibition of option sales abuses to the public) and with the general purpose of the trade option exemption (which essentially reflects a Congressional and Commission intent that the use of options by a commercial entity in connection with its business should be permitted).

II. Conditions for Relief

To support its request for relief, the Exchange represents that the Exchange will take steps to ensure that options transactions on foreign currencies entered into by banks located in the United States will be limited to those contemplated to be entered into by "bona fide hedgers," as defined by Exchange rule 18003.[9]

Specifically, in a letter dated September 16, 1985, the Exchange has stated that:

> Foreign currency options transactions executed on the Exchange are cleared through the International Options Clearing Corporation ("IOCC"), which maintains a fully operational clearing center at the Exchange. All foreign currency options transactions, therefore, are subject to the rules of IOCC. Section 16.3 of the IOCC rules establishes a procedure for IOCC clearing members to open hedge accounts for customers, including specific documentation that must be filed for that purpose.
>
> In addition, the Exchange itself maintains at Rule 18003 a definition of bona fide hedging as well as procedures that must be followed to establish a recognized hedge account.
>
> Status as a hedger under IOCC and Exchange rules is closely monitored because it has significant financial implications. Specifically, hedge accounts receive more favorable treatment than speculative accounts for purposes of margins, clearing fees and Exchange transaction charges. Both IOCC and the Exchange are on guard against attempts to circumvent speculative margin levels or to escape fees under a false "hedger" designation.
>
> The Exchange and the IOCC office on its premises retain the documentation called for in their hedge account rules. Thus, if a U.S. bank or other U.S.-located financial institution were to open an account in Exchange foreign currency options, the records maintained by IOCC and the Exchange would readily disclose whether the account is for hedging purposes. The Exchange hereby represents to the Commission that it would confirm whether the account of a U.S.-located bank or financial institution has hedge status and, upon request, would share with the Commission such documentation as it holds with respect to that issue.

Furthermore, in a telephone conversation with Commission staff, the Exchange's Director of the International Options Market confirmed that, in addition to making available to the Commission information reasonably requested (in furtherance of its surveillance and enforcement responsibilities in the United States) concerning the status of United States-located traders under Exchange rule 18003, the Exchange also will endeavor to make available the option positions entered into by such persons who execute option transactions on the Exchange pursuant to the trade option exemption. Finally, the Commission has received assurances of cooperation by the Commission des Valeurs Mobilieres du Quebec with respect to the sharing of information with the Commission as needed in connection with the Exchange's request.

The Commission believes that based upon the above representations and, in particular, the Exchange's representation that it will disclose to the Commission upon request certain records with respect to United States entities, and the cooperative information-sharing agreement with the Commission des Valeurs Mobilieres du Quebec, it would not be contrary to the public interest to grant the requested relief.

III. Conclusion and Order

Accordingly, pursuant to the authority of Commission rule 32.4(b), 17 CFR 32.4(b) (1985), the Commission hereby exempts from Part 32 of the Commission's regulations (except other than rules 32.2, 32.3 and 32.9, 17 CFR 32.2, 32.3 and 32.9 (1985)), any bank subject to regulation by the United States or any State, which grants options on foreign currencies traded on the Montreal Exchange, subject to the condition that such transactions:

(1) Are entered into by the bank on its own behalf solely for business-related purposes and in conformity with Exchange rule 18003;

(2) Are not entered as part of a scheme to offer or sell such options to any other person or entity; and

(3) Do not constitute the use of public customer funds for trading in commodity options.

The Commission's Order applies solely to banks entering transactions as principals for business-related purposes. Therefore, any advertising or solicitation to the general public will be inconsistent with this Order and prohibited by the Act.

Futures commission merchants ("FCMs") should be aware that Commission rule 1.19, 17 CFR 1.19 (1985), prohibits any FCM from assuming financial responsibility for any commodity option other than options traded on a contract market. Thus, an FCM could participate in the above-described transactions only as an agent of a bank and not as a principal. Moreover, in order for an FCM to avoid assuming financial responsibility for an option transaction, the FCM must collect the entire amount of the premium or other costs associated with the purchase or sale of Exchange currency options at the time the option is entered into.[10]

Issued by the Commission on April 9, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-8304 Filed 4-14-86; 8:45 am]

BILLING CODE 6351-01-M

[9] The term "bona fide hedger" under Exchange rule 18003 is defined as a person who purchases or sells options "for the purpose of minimizing a price risk or of facilitating the customary or normal conduct of business." Thus, although the types of transactions that are contemplated under this rule extend beyond "bona fide hedging transactions" as defined in Commission rule 1.3(z), they are comparable to the types of transactions permitted under the trade option exemption.

[10] Letter dated August 15, 1985 issued by the Office of the General Counsel to Michael S. Sackheim, Esq., Dean Witter Reynolds, Inc. The Commission also notes that the history of the trade option exemption makes clear that FCMs (and floor traders) do not qualify as purchasers of options under the trade option exemption solely on the basis of their status as such. See, e.g., Division of Trading and Markets letter dated July 18, 1983 to FCMs may participate in trade option transactions and in option transactions subject to this no-action letter solely as agents.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-86-1278; FR-2185]

Rental Rehabilitation Program: Reallocation of Rental Rehabilitation Grant Amounts

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule increases the maximum amount that HUD may reallocate to a rental rehabilitation grantee in fiscal year 1986. Currently HUD, in any fiscal year, may make a reallocation of grant amounts to a grantee that would not result in an allocation that exceeds 130 percent of the amount intially obligated to the grantee for that year. This final rule permits a reallocation to a grantee in fiscal year 1986 that would not result in a cumulative allocation that exceeds 160 percent of the total amount initially obligated to the grantee for fiscal years 1984, 1985 and 1986. There is no change in the 130 percent limitation for fiscal years after fiscal year 1986.

EFFECTIVE DATE: May 16, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Ann Kolesar, Rental Rehabilitation Division, Office of Urban Rehabilitation, Room 7164, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 17 of the United States Housing Act of 1937 (the 1937 Act), 42 U.S.C. 1437o, established the Rental Rehabilitation Program. This Program provides grants to States and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. The program is designed to increase the supply of standard housing units affordable to lower income families. This objective is achieved by: (1) Providing government funds to assist in the rehabilitation of existing units, and (2) authorizing the use of rental housing assistance, provided under section 8 of the 1937 Act, to lower income families to help them afford the rent for units in projects assisted with program funds, or to find alternative housing.

Under section 17(b)(3) of the 1937 Act, the Secretary, after allocating rehabilitation grant amounts, may reallocate these amounts to grantees based on an assessment of the progress of grantees in carrying out rehabilitation grant activities in accordance with their specified schedules. Reallocations are intended to encourage expeditious use of these resources, consistent with the sound development and administration of the grantee's programs.

Section 511.33 of the regulations sets out the conditions under which HUD deobligates and reallocates grant amounts. Paragraph (b) of § 511.33 concerns reallocations within a fiscal year and provides that HUD will not reallocate rehabilitation grant amounts to any grantee that would result in an allocation (*i.e.*, a total grant amount) that exceeds 130 percent of the amount initially obligated to the grantee in that fiscal year.

This rule revises § 511.33(b) to permit a reallocation in fiscal year 1986 that results in a cumulative grant amount for fiscal years 1984, 1985, and 1986 that does not exceed 160 percent of the total amount initially obligated to a grantee in fiscal years 1984, 1985, and 1986. This revision applies only to reallocations made in fiscal year 1986.

In the initial years of this program, grantees have developed their ability to use funds at different rates. Fund use among grantees has been uneven, with certain grantees using significant amounts while other grantees have substantial grant balances remaining. Many of the grantees most able to produce rehabilitated rental units have already received and committed the additional 30 percent reallocation for both fiscal years 1984 and 1985. The current 130 percent of initial obligation limit on reallocation currently is interfering with the commitment of grant funds in a timely manner. As more and more grantees develop the capacity to use their grant amounts in a timely manner, the 130 percent limitation for reallocations should be appropriate. To alleviate the immediate problem, this rule makes the above-described revision to § 511.33(b) for grant amounts reallocated in fiscal year 1986.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States and the rental rehabilitation grant amounts to be made available to any grantee are relatively small in relation to other sources of Federal funding for State and local government and in relation to private investment in rental housing.

The subject matter of this rulemaking action relates to grants and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions with such subject matter to public comment either before or after effectiveness of the action, notwithstanding the statutory exemption.

The Secretary has determined that notice and prior public procedure are impracticable and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible because publication of this rule for earliest practicable effect is needed to prevent delays in the commitment of grant amounts during fiscal year 1986 that would be caused by applying the maximum limit on reallocation of grant amounts in the current rule.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29,

1985, (50 FR 44166) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.230.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Rental rehabilitation grants, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR 511.33 as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The citation of authority for Part 511 continues to read as follows:

Authority: Sec. 17, U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 511.33, paragraph (b) is revised to read as follows:

§ 511.33 Reallocation of rental rehabilitation grant amounts.

* * * * *

(b) *Reallocation of rental rehabilitation grant amounts within the fiscal year.* Except for end of fiscal year reallocations as provided in paragraph (d) of this section, HUD will reallocate rental rehabilitation grant amounts that are available in any fiscal year to such grantee or grantees as HUD deems appropriate to promote the expeditious use of grant amounts, consistent with the sound development and administration of grantees' rental rehabilitation programs. For fiscal year 1986, HUD will not reallocate rental rehabilitation grant amounts to any grantee that would result in a cumulative allocation to that grantee for fiscal years 1984, 1985, and 1986 that exceeds 160 percent of the total amount initially obligated to it for those years. For later fiscal years, HUD will not reallocate rental rehabilitation grant amounts to any grantee that would result in an allocation to the grantee that exceeds 130 percent of the amount initially obligated to it for the year involved.

* * * * *

Dated: April 4, 1986.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 86-8363 Filed 4-14-86; 8:45 am]

BILLING CODE 4210-29-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616, 2617, and 2623

Single-Employer Plan Termination Under the Single-Employer Pension Plan Amendments Act of 1986

Correction

In FR Doc. 86-8185 beginning on page 12491 in the issue of Thursday, April 10, 1986, make the following corrections:

1. On page 12493, in the second column, in footnote 3, in the first line, "the" should read "under".

2. On page 12495, in the second column, in the 19th line, "PBHG's" should read "PBGC's".

3. On the same page, in the same column, in the second complete paragraph, in the 19th line, "commitments of" should read "commitments or".

BILLING CODE 1505-01-M

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning May 1, 1986. The interest rates and factors are to be used to value benefits provided under terminating single-employer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after May 1, 1986, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-956-5050 (202-956-5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on the valuation of plan benefits in single-employer plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1985), sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1982), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1985 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through at least July 31, 1985. The July 1985 rates and factors continued in effect until the PBGC published new rates and factors for plans terminating during the months of October 1985 through December 1985 (50 FR 37354), January 1986 (50 FR 50899), February 1986 and March 1986 (51 FR 1788), and April 1986 (51 FR 8821).

Changes in the financial and annuity markets now require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after May 1, 1986, which set reflects a decrease of ¼ percent in the interest rate to 7¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment

are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after May 1, 1986, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(l), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 62 of Appendix B is revised and Rate Set 63 of Appendix B is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_v" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date—		Immediate annuity rate (percent)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*	*	
62	Apr. 1, 1986	May 1, 1986	8.00	1.0725	1.0600	1.0400	7	8
63	May 1, 1986		7.75	1.0760	1.0575	1.0400	7	8

Royal S. Dellinger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–8301 Filed 4–14–86; 8:45 am]

BILLING CODE 7708-01-M

VETERANS ADMINISTRATION

38 CFR Parts 18, 18a, and 18b

Nondiscrimination in Federally Assisted Programs, Technical Amendments; Correction

AGENCY: Veterans Administration.

ACTION: Corrections to final regulation amendments.

SUMMARY: The Veterans Administration published final technical amendments to 38 CFR Parts 18, 18a and 18b in the Federal Register of March 26, 1986 on pages 10383 to 10387 (FR Document 86–6569). Minor administrative errors occurred in the publication of this document and a correction notice is herein published.

EFFECTIVE DATE: These corrections are effective March 26, 1986.

FOR FURTHER INFORMATION CONTACT: Celia Winter, (202) 389–2340.

List of Subjects in 38 CFR Parts 18, 18a and 18b

Administrative practice and procedure, Age discrimination, Authority delegations, Civil rights, Handicapped.

Dated: April 10, 1986.

Celia Winter,

Acting Chief, Directives Management Division.

FR Document 86–6569, published in the Federal Register of March 26, 1986 on pages 10383 to 10387 is corrected as follows:

1. Instruction line number 12 is corrected to read: In § 18.433, paragraph (c)(1) is amended by changing the words "or to his or her" to ","; paragraphs (c)(2) and (3) are amended by changing the words "or his or her" to ","; and by changing "his or her" to "a" in paragraph (c)(2).

2. Instruction line number 13 is corrected to read: Section 18.454 is amended by changing the cite "§ 18.403(d)" to "§ 18.433(b)".

3. Instruction line number 14 is corrected to read' Appendix A to Part 18, Subpart D is amended by revising provisions 3, 10, 11 and 12 and . . .

4. Instruction line number 42 should be disregarded.

[FR Doc. 86–8346 Filed 4–14–86; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

Interpretation Letter; FCC, NARUC Joint Separations Manual

AGENCY: Federal Communications Commission.

ACTION: Interpretation Letter.

SUMMARY: Under delegated authority the Common Carrier Bureau in response to a request by GVNW INC./MANAGEMENT has provided an interpretation of the *FCC. NARUC Joint Separations Manual*, Part 67 of the FCC Rules and Regulations. The issue concerns the proper application of the formula used to test the decrease of certain specified categories in the interstate allocation from year to year. The interpretation is intended to clarify the procedures in § 67.124(d)(7), governing the limit on change in the interstate allocation.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sanford Margolin, Common Carrier Bureau, (202) 632–7500.

Federal Communications Commission.

William J. Tricarico,

Secretary.

April 2, 1986.

Mr. K.T. Burchett,

GVNW, Inc./Management, P.O. Box 303, 9450 S.W. Commerce Circle, Wilsonville, OR 97070.

Dear Mr. Burchett: This is in response to your letter of February 5, 1986, to Mike Wilson requesting clarification of the procedures to be used to limit the change in the interstate allocation as described in § 67.124(d)(7), of our Rules and Regulations.

Your first question concerns the procedures to be followed to ensure that the interstate allocation for inside wire, OSP Category 1.33,

and COE Category 8.13 plant investment as well as associated maintenance and depreciation expense will not decrease more than five percentage points from one year to the next.

You supplied several possibilities to explain the test for the five percentage point decrease. Your suggested solution (a) is closest to the procedure as defined in § 67.124(d)(7)(ii), which states that the percentage decrease in the interstate allocation shall be calculated by dividing the interstate allocation for each of the two years as calculated pursuant to § 67.124(d)(7)(iv) by the total unseparated investment for the corresponding year as calculated pursuant to § 67.124(d)(7)(v). Then the two percentages are compared to determine whether the percentage interstate allocation for the more recent year is more than five percentage points less than the allocation for the earlier year. In applying this test, you should follow the formula set out in the Rules.

You also request clarification of the method to be employed in adjusting the interstate allocation when the reduction in the more recent year is greater than five percentage points. This procedure is explained in § 67.124(d)(7)(iii), which provides that if the percentage decrease is greater than five percentage points, the decrease in the interstate allocation for the more recent year shall be reduced *pro rata* for plant investment, maintenance and depreciation so that the difference between the two percentages does not equal more than five percentage points.

Your letter also inquired about the inclusion of closed end WATS access lines in OSP Category 1.33, as well as the inclusion of Category 8.1 COE and inside wire associated with closed end WATS access lines for the purpose of § 67.124(d)(7). The treatment of closed end WATS access lines and the associated Category 8.1 COE and inside wire was modified in our Decision and Order, in CC Docket Nos. 78–72 and 80–286, FCC 85–655 released January 7, 1986 (copy enclosed), to reflect the direct assignment of these loops to the appropriate jurisdiction, as is the case with private line loops. For periods prior to the effective date of this change, closed end WATS access lines and associated category 8.1 COE and inside wire should be included. Our recent decision amended § 67.124(d)(7)(ii) to state the WATS closed end access lines were to be included in OSP Category 1.33 when comparing the interstate allocation for 1985 and 1986, and that these lines were to be excluded when comparing the interstate allocation for 1986 and 1987. The associated Category 8.1 COE and inside wire are to be treated in a similar fashion. Thereafter, closed end WATS access lines and the associated Category 8.1 COE and inside wire are to be excluded in calculating the change in the interstate allocation.

Finally, we appreciate your calling to our attention a missing segment in our formulas in § 67.124(d)(7)(iv) and (v). Based on Sections 67.124(d)(7)(i) and (ii), it is clear that the Commission intended to include Category 8.13 in determining the change in the interstate allocation. Therefore, § 67.124(d)(7)(iv) and (v) should be interpreted as including Category 8.13 investment and associated maintenance and depreciation. This investment and the associated expenses would be treated in the same manner as inside wire.

If you have any further questions, please contact Sanford Margolin, Depreciation and Cost Analysis Branch, on (202) 632–7500.

Sincerely,

N. Robin Holmes,

Chief, Accounting and Audits Division.

[FR Doc. 86–8332 Filed 4–14–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–221; RM–4893]

TV Broadcast Station in Keyser, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Contemporary Communications, Inc., substitutes noncommercial educational UHF TV Channel *30 for Channel *48 at Keyser, West Virginia. This action enables Contemporary, permittee of Channel 52, Cumberland, Maryland, to locate its transmitter site at an "antenna farm."

EFFECTIVE DATE: May 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307; 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order

(Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Keyser, West Virginia); MM Docket No. 85–221, RM–4893.

Adopted: March 28, 1986.

Released: April 8, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 30978, published July 31, 1985, proposing the substitution of noncommercial educational UHF TV Channel *30 for Channel *48 (currently unoccupied and unapplied for) at Keyser, West Virginia. The *Notice* was adopted in response to a petition filed by Contemporary Communications, Inc., ("Contemporary") permittee of a new television station on Channel 52 at Cumberland, Maryland. Contemporary seeks to utilize as its transmitter site an "antenna farm" southwest of Cumberland in order to better serve its community. The site is short-spaced to Channel *48 at Keyser. However, the site meets the Commission's minimum distance separation requirements to Channel *30. Contemporary submitted supporting comments reiterating its interest in the preferred site. West Virginia Educational Broadcasting Authority ("WVEBA"), licensee of several television translator stations including Channel *48 at Keyser filed an opposition to the proposal, to which Contemporary responded.

2. WVEBA, in its opposition states that the substitution will clearly disrupt an important television service provided by Station WNPB–TV, Morgantown, West Virginia, as a translator service on Channel *48 at Keyser, to the people of the eastern panhandle of West Virginia. WVEBA asserts that the public interest benefits of retaining WNPB–TV's service on Channel *48 far outweigh any advantages which might result to Contemporary.

3. In its reply comments, Contemporary states that translator stations can operate on any channel as long as they will not interfere with full-service stations, and there is no requirement that WVEBA's Channel 48 translator must change to Channel 30 if the instant proposal is adopted. Further, it states that it is possible that the translator could continue to operate on Channel 48 provided that no interference is caused to Contemporary's operation on Channel 52. Contemporary cites § 74.702(3)(b) of the Commission's Rules which permits changes of this nature without regard to existing or proposed low power TV or TV translator stations in support of its proposal.

4. Channel *30 can be substituted at Keyser in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 miles west of the community to avoid short spacing to unused Channel *44 at Martinsburg, West Virginia. Since Keyser is located within 250 miles of the common U.S.-Canadian border, the concurrence of the Canadian government has been obtained.

5. We believe the public interest would be served by the substitution of the noncommercial educational channel

at Keyser, West Virginia, which could permit an earlier inauguration of service to Cumberland, Maryland, on Channel 52. We find no valid argument against the substitution as translator stations are a secondaray service not protected from a full service station. See, 47 CFR 74.1203(a). In this instance the translator station on Channel *48 may benefit from action taken herein. The distance between the desired location of Channel 52, Cumberland and the Channel 48 translator should allow the translator to stay in operation. Furthermore, the deletion of Channel *48 from Keyser would eliminate the possibility of a full service station operating on that channel at Keyser.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered, That effective May 15, 1986, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with regard to the following community:

City	Channel No.
Keyser, West Virginia	*30+

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–8337 Filed 4–14–86; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 513 and 553

[GSAR AC–86–4]

Revised Procedures for Use of the GSA Form 300, Order for Supplies and Services

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends sections 513.505–2(a), 513.7001(a), 553.272(a), 553.273 and 553.370–300 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to implement a change in the procedures for processing orders for supplies or services placed on the GSA Form 300. The intended effect is to provide instructions to GSA contracting activities pending a revision to the regulation.

DATES: Effective Date April 4, 1986. Expiration Date: October 1, 1986, unless canceled earlier.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations, Washington, DC 20405, (202) 523–4765.

SUPPLEMENTARY INFORMATION: This temporary rule was not published for public comment because it does not have a significant effect beyond the internal operating procedures of the agency or have a cost or administrative impact on contractors or offerors. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule provides detailed instructions for GSA contracting officers on the use of GSA Form 300, Order for Supplies and Services, and establishes a simplified process for small dollar value purchases ($2,000 or less) designed to expedite payments and to reduce the administrative cost and time associated with making such purchases. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 513 and 553

Government procurement.

1. The authority citation for 48 CFR Parts 513 and 553 continue to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 513 and 553 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular (AC–86–4)

April 4, 1986.

To: All GSA contracting activities.

Subject: Revised procedures for use of the GSA Form 300, Order for Supplies and Services

1. *Purpose.* This Acquisition Circular is issued to implement a change in the procedures for processing orders for supplies or services placed on the GSA Form 300, pending a formal revision to the General Services Administration Acquisition Regulation (GSAR).

2. *Background.* The Comptroller of GSA requested that the GSAR be revised to encourage use of the certified invoice procedures at GSAR 513.7001 for open market purchases of $2,000 or less, to provide detailed instructions on the use of the GSA Form 300, Order for Supplies and Services, to emphasize the need for contracting officers to provide "remit to" addresses when submitting purchase orders and contracts to the appropriate Finance Division, and to revise ordering procedures for small dollar value ($2,000 or less) purchases which require written orders by providing for invoices to be submitted to the ordering activity rather than the Finance Division. The change in procedures will simplify and expedite payments and eliminate the administrative time and cost associated with preparing receiving reports.

3. *Effective date.* April 4, 1986.

4. *Expiration date.* This Acquisition Circular expires October 1, 1986, unless canceled earlier or extended.

5. *Reference to regulations.* Sections 513.505–2(a), 513.7001(a), 553.272(a), 553.273 and 553.370–300 of the GSAR.

6. *Instructions/procedures.*

(a) Section 513.505–2 is amended by revising paragraph (a) to read as follows:

513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Unless another form is prescribed, the GSA Form 300, Order for Supplies and Services, must be used instead of the OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and Reporting (NEAR) System. The GSA Form 300 must be prepared and processed in accordance with the instructions at § 553.370–300–I.

* * * * *

(b) Section 513.7001 is amended by revising paragraph (a) to read as follows:

513.7001 Certified invoice procedure.

(a) Contracting officers are encouraged to use certified invoice procedures to the maximum extent practicable to acquire supplies or services on the open market from local suppliers at the site of the work or use point. Certified invoice procedures may not be used to place orders under established contracts unless specific

authorization for their use is included in the contract document.

* * * * *

(c) Section 553.272 is amended by revising paragraph (a) to read as follows:

553.272 Purchase/Delivery orders.

* * * * *

(a) The GSA Form 300, Order for Supplies and Services, is used in accordance with the instructions at § 553.370–300–I for making purchases payable through the National Electronic Accounting and Reporting (NEAR) System. This form may also be used in other situations, unless a specific form is prescribed for use. GSA Form 300–A, Order for Supplies and Services (Continuation), is available for use with the GSA Form 300.

* * * * *

(d) Section 553.273 is revised to read as follows:

553.273 Receiving reports.

GSA Form 3025, Receiving Reports, must be used in conjunction with the GSA Form 300, Order for Supplies and Services, when required by the instructions for use of the GSA–300 at § 553.370–300–I. The GSA Form 3025 may also be used when prescribed in GSA handbooks or other directives.

(e) Section 553.370–300–I is added to read as follows:

553.370–300–I Instructions for using the GSA Form 300, Order for Supplies and Services.

(a) *Completing the form.* (1) *Block 1, Date of Order.* Enter the date the order is signed by the contracting/ordering officer.

(2) *Block 2, Order Number.* If an order is being placed against an established contract, assign an order number in accordance with the procedures in GSAR 504.7001–3. This block does not apply to open market purchases/contracts.

(3) *Block 3, Contract Number.* If an order is being placed against an established contract, insert the contract number of the contract that the order is being placed against. If an open market purchase/contract is involved, assign a contract number in accordance with the procedures in GSAR 504.7001–2.

(4) *Block 4, Paying Number.* Assign an Accounting Control Transaction (ACT) number in accordance with NEAR system procedures. If the purchase is charged to the Federal Supply Fund (255X), contemplates periodic billing or is for an amount that exceeds $2,000 place the gummed label containing the ACT number on copy 2, the "Paying Office" copy. The gummed label will be placed on the invoice for other purchases. See paragraph (c). NOTE: In some organizations, the "paying office" copy is forwarded to a Budget or Finance office within the service or staff office where the gummed label is affixed to the copy and forwarded to the appropriate Finance Division.

(5) *Block 5, Accounting Classification.* Enter the accounting information in accordance with the procedures contained in the Accounting Classification Handbook (PFM P 4240.1B.) The following blocks are mandatory and must be completed for each order: "FUND," "ORG CODE," "B/A CODE," "O/C CODE," "FUNC CODE," "C/E CODE," and "PPA." The "PPA" block refers to whether the Prompt Payment Act applies and should be completed by entering "yes" or "no" in the space provided.

(6) *Block 6, Finance Division.* To be completed by the Finance Division.

(7) *Block 7, TO: Contractor.* Enter the contractor's name and address, including zip code.

(8) *Block 8, Type of Order.* Check "block A" when making an open market purchase/contract and refer to the date of the contractor's oral or written quotation in the space following "REFERENCE YOUR." Pending revision of the April 1984 edition of the GSA Form 300, block 8A of the form may be revised to delete the sentence which reads as follows: "This purchase is negotiated under the authority of:"

Check "block B" when placing orders against established contracts.

(9) *Block 9, Employer's Identification Number.* This block does not apply when placing orders against established contracts. When making open market purchases of services from firms or individuals that are not incorporated, obtain the firm's or individual's Employer Identification Number and insert it in the space provided. This requirement does not apply to supply purchases/contracts. See GSAR 504.671.

(10) *Block 10, Issuing Office.* Enter the name and address, including zip code, of the office making the purchase/contract.

(11) *Block 11, Remittance Address.* Ask the contractor for the address that it would like the payment for the supplies or services to be mailed. If the address is different than the address in block 7 of the GSA Form 300, insert it in block 11. The Finance Division can only make payments to the address indicated on the order. Therefore, in order for payments to be processed in a timely manner the contracting officer must ask the contractor for a remittance address and include it in block 11. If the contractor's invoice requests payment be made to a different address than the one on the order, the Finance Division will request the contracting officer amend the order within 5 days to provide the proper "remit to" address.

(12) *Block 12, Ship to.* Enter the consignees address including zip code.

(13) *Block 13, Place of Inspection and Acceptance.* Enter the location where inspection and acceptance will occur.

(14) *Block 14, Requisition office.* Enter the name and correspondence symbol of the office that requested the supplies or services be purchased.

(15) *Block 15, f.o.b. point.* Enter the appropriate f.o.b. point. See FAR 47.302 and 47.303.

(16) *Block 16, Government B/L No.* When supplies are shipped using a Government bill of lading (GBL), enter the GBL number.

(17) *Block 17, Delivery f.o.b. point on or before.* Enter the date when supplies or services are to be delivered.

(18) *Block 18, Payment/Discount Terms.* Enter the prompt payment discount terms provided for in the contract, when placing an order against an established contract or the discount terms offered if purchasing on the open market.

(19) *Block 19, Schedule.* Enter a complete description of the supplies or services being procured, including quantity, unit of measure, unit price, and total price.

When a GSA Form 300 is used to amend/modify another GSA Form 300, insert "MODIFICATION NO. " in block 19 and then describe in detail what is being modified, e.g., number of units from to , delivery date from to , etc.

(20) *Block 20, Classification.* Check the block that indicates the classification of the contractor. Definitions of "Small Business," "Disadvantaged Business" and "Women-owned Business" can be found at FAR 19.001 and 52.219–3.

(21) *Block 21, Shipping point.* When the Government is paying the transportation cost or reimbursing the contractor for transportation cost, enter the shipping point for the supplies being purchased. This information should be obtained from the seller.

(22) *Block 22, Gross Shipping Weight.* When the Government is paying the transportation cost or reimbursing the contractor for transportation cost, enter the total shipping weight for the supplies being purchased. This information can usually be obtained from the seller.

(23) *Block 23, Invoice Number.* Enter the invoice number for transportation charges. This is the invoice supplied by the seller.

(24) *Block 24, Mail Invoice To.* Enter the address of the ordering office (same as block 10) or other designated program office within the service or region for purchases which do not exceed $2,000 except for procurements charged to the Federal Supply Fund (255X) and procurements that anticipate periodic billings, e.g., utility contracts, recurring building service contracts, equipment rentals, etc. For all other purchases enter the address of the appropriate Finance Division.

(25) *Block 25.* If block 24 provides for the invoice to be submitted to the ordering office or other designated program office within the service or region, enter the name and telephone number of an individual in that office. If block 24 provides for the invoice to be submitted directly to the appropriate Finance Division enter the Director of the Finance Division in block A and his/her telephone number in block B.

(26) *Block 26.* Enter the name of the contracting/ordering officer in block A and his/her telephone number in block b. The name of the contracting/ordering officer typed in block b must correspond with the signature in block c. Obligating documents cannot be signed for a contracting/ordering officer.

(b) *Distribution.* (1) The distribution for orders (GSA 300's) that do not exceed $2,000 except those orders charged to the Federal Supply Fund (255X) or those which anticipate periodic billing will be as follows:

Copy 1—The Contractor
Copy 2—Retain in the contract file or send to the program office within the service or region responsible for preparing receiving documents. DO NOT send to the paying office.
Copy 3—The Purchase Office
Copy 4—The Purchase Office
Copy 5—The Consignee
Copy 6—Memorandum copy for any additional distribution as may be necessary.

(2) The distribution for orders (GSA–300's) that exceed $2,000, are charged to the Federal Supply Fund (255X), or that anticipate periodic billing will be as follows:

Copy 1—The Contractor
Copy 2—The Paying Office
Copy 3—The Purchase Office
Copy 4—The Purchase Office
Copy 5—The Consignee
Copy 6—Memorandum copy for any additional distribution as may be necessary.

(c) *Certifying receipt and processing payments.* (1) When invoices are received by ordering offices or other designated program office, they must be time stamped to indicate the date of receipt, checked to verify the arithmetic accuracy of the invoiced amount, and forwarded to the appropriate Finance Division for payment within 5 days. Receipt of supplies or services will be acknowledged and payment approved by placing the following statement on the contractor's invoice along with the gummed ACT label and appropriate accounting information:

"I certify that these goods and/or services were received on (date) and accepted on (date)."

Signature

Date

Note.—Public Buildings Service procedures require two signatures on invoices certifying receipt. The individual who actually received the supplies or inspected the services should certify the invoice or certify receipt on a packing slip or inspection report which may be attached to the invoice. The contracting/ordering officer should also sign the invoice certifying receipt.

(2) When invoices are submitted directly to the appropriate Finance Office, ordering offices or other designated program offices will acknowledge receipt of supplies or services by completing and submitting a GSA Form 3025, Receiving Report, to the appropriate Finance Division. See GSAR 553.370–3025.)

(3) Authorization for payment wil be processed by forwarding the contractor's invoice, certified in accordance with paragraph (c)(1) above, or the GSA–3025, Receiving Report, to the appropriate Finance Division responsible for making payments in accordance with NEAR system procedures.

Richard H. Hope, III,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 86–8297 Filed 4–14–86; 8:45 am]

BILLING CODE 6820–61–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 752

[AIDAR Notice 86–1]

Miscellaneous Changes to the Acquisition Regulation

Correction

In FR Doc. 86–7335 beginning on page 11449 in the issue of Thursday, April 3, 1986, make the following corrections:

1. On page 11450, in the second column, in the last line of amendatory instruction 7, "persona" should read "personal".

2. In the third column, the first section heading should read:

752.7002 [Amended]

3. In the same column, the second section heading should read:

752.7028 Differential and allowances.

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

Organization and Delegation of Powers and Duties

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This document amends regulations concerning the National Highway Traffic Safety Administration's organization to reflect the reorganization of powers and duties that went into effect on August 28, 1985. The reorganization was designed to improve NHTSA's organizational structure and functional alignment by enhancing management support functions and reducing unnecessary layers of supervision.

EFFECTIVE DATE: August 28, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond T. Johnson, Office of Management and Data Systems, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC 20590 (202–426–4811).

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration is responsible for the administration of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), and the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.). On August 28, 1985, the Secretary approved the Administrator's reorganization of some powers and duties of the agency's offices. The principal effect of the reorganization established a Managing Director position in the Administrator's Office for the coordination of the agency's mission support programs, and transferred the international harmonization and budgetary programs and controls activities to other elements within the Agency. As reorganized, the Managing Director will provide executive direction over the Associate Administrators for

Plans and Policy, Research and Development, and Administration. This change will enhance the agency's mission support programs by ensuring a coordinated approach to providing support services to NHTSA's program offices. The reorganization also transferred the function of coordination of activities and the formulation of strategies involved in the international harmonization of U.S. motor vehicle safety standards and regulations from the Associate Administrator for Rulemaking to the Office of the Deputy Administrator. In addition, budget formulation was transferred from the Associate Administrator for Administration to the Associate Administrator for Plans and Policy. This change enhances the NHTSA's planning process by integrating the planning and budget functions and provides closer coordination. In addition, it allows improved analysis and evaluation of NHTSA's planning and resource decisions. The reorganization abolished and elevated to office level the divisions of former offices, thus eliminating a layer of supervision and improving program management by shortening the lines of communication.

The amendments to Part 501, set forth below, relate solely to the organization and procedures of the National Highway Traffic Safety Administration and thus are not covered by Executive Order 12291 and the Department of Transportation's regulatory policies and procedures. Because the amendments concern only agency policies and procedures, they may be made effective without notice and opportunity for comment. The reorganization became effective August 28, 1985.

List of Subjects in 49 CFR Part 501

Authority delegations (government agencies), Organization and functions (government agencies).

In consideration of the foregoing, Part 501 in title 49, Code of Federal Regulations is revised as set forth below.

Issued on: April 4, 1986.

Diane K. Steed,

Administrator.

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Sec.

Authority: 49 U.S.C. 105; Delegation of authority at 49 CFR 1.50.

§ 501.1 Purpose.

This part describes the organization of the National Highway Traffic Safety Administration (NHTSA) through Associate Administrator and Staff Office Director levels and provides for the performance of duties imposed on, and the exercise of powers vested in the Administrator of the NHTSA (hereafter referred to as the "Administrator").

§ 501.2 General.

The Administrator is delegated authority by the Secretary of Transportation (49 CFR 1.50) to:

(a) Carry out the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.).

(b) Carry out the Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.) except for highway safety programs, research, and development relating to highway design, construction and maintenance, traffice control devices, identification, and highway-related aspects of pedestrian and bicycle safety.

(c) Exercise the authority vested in the Secretary by section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7546(b)).

(d) Exercise the authority vested in the Secretary by section 204(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 433(b)) with respect to the laws administered by the National Highway Traffic Safety Administration pertaining to highway, traffic, and motor vehicle safety.

(e) Carry out the Act of July 14, 1960, as amended (23 U.S.C. 313 note) and the National Driver Register Act of 1982 (23 U.S.C. 401 note).

(f) Carry out the functions vested in the Secretary by the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.) except section 512.

(g) Administer the following sections of Title 23, U.S.C., with the concurrence of the Federal Highway Administrator:

(1) 141, as it relates to certification of the enforcement of speed limits; and

(2) 154 (a), (b), (d), (e), (f), (g) and (h); and

(3) 158.

(h) Carry out the functions vested in the Secretary by section 1(a) of Executive Order 11912.

§ 501.3 Organization and general responsibilities.

The National Highway Traffic Safety Administration consists of a headquarters organization located in Washington, DC, and a unified field organization consisting of ten geographic regions. The organization of, and general spheres of responsibility within the NHTSA, through the levels of the immediate Office of the Administrator (which includes the Deputy Administrator; Managing Director; Director of International Harmonization; Director of Regional Operations; Director, Executive Secretariat); Staff Offices (which include the Director, Office of Public and Consumer Affairs and the Director, Office of Civil Rights); the Chief Counsel and the offices of the Associate Administrators, are as follows:

(a) Office of the Administrator-(1) Administrator.

(i) Represents the Department and is the principal advisor to the Secretary in all matters relating to the National Traffic and Motor Vehicle Safety Act of 1966, as amended; the Highway Safety Act of 1966, as amended, and consumer information functions under the Motor Vehicle Information and Cost Savings Act, as amended; and such other authorities as are delegated by the Secretary of Transportation (49 CFR 1.50);

(ii) Establishes NHTSA program policies, objectives, and priorities and directs development of action plans to accomplish the NHTSA mission;

(iii) Directs, controls, and evaluates the organization, program activities, performance of NHTSA staff, program, and field offices;

(iv) Approves broad legislative, budgetary, fiscal and program proposals and plans; and

(v) Takes management actions of major significance, such as those relating to changes in basic organization pattern, appointment of key personnel, allocation of resources, and matters of special political or public interest or sensitivity.

(2) Deputy Administrator. Assists the Administrator in the discharge of his/her responsibilities and is responsible for: directing and coordinating the Administration's management and operational programs as well as the related policies and procedures at headquarters and in the field; and general policy direction of the Regional Administrators.

(3) Managing Director. Acts as the principal advisor to the Administrator and Deputy Administrator on internal management and mission support programs. Provides executive direction and supervision to the Associate Administrators for Plans and Policy,

Research and Development, and Administration.

(4) Director of International Harmonization. Coordinates and develops strategies for the international harmonization of U.S. motor vehicle safety standards and regulations with those of foreign countries.

(5) Director of Regional Operations. Provides day-to-day supervision of and liaison with the Regional Administrators.

(6) Director, Executive Secretariat. Provides a central facilitative staff that administers an executive correspondence program and maintains policy files for the Administrator and Deputy Administrator and services and support to the National Highway Safety Advisory Committee and such other committees as designated by the Administrator.

(7) Director, Office of Public and Consumer Affairs. Acts as principal staff advisor to the Administrator on public affairs and consumer programs, and provides comprehensive programs for public information and public affairs covering all NHTSA activities.

(8) Director, Office of Civil Rights. As principal staff advisor to the Administrator and Deputy Administrator on all matters pertaining to civil rights; acts as Director of Equal Employment Opportunity, Contracts Compliance Officer and Title VI (Civil Rights Act of 1964) Coordinator; assures Administration-wide compliance with related laws, Executive Orders, regulations, and policies; and provides assistance to the Office of the Secretary in investigating and adjudicating formal complaints of discrimination.

(b) Chief Counsel. As chief legal officer, the Chief Counsel provides legal services for the Administrator and the Administration; prepares litigation for the Administration; effects rulemaking actions; and serves as coordinator on legislative affairs.

(c) Associate Administrators—(1) Associate Administrator for Rulemaking. As the principal advisor to the Administrator on all matters as they relate to the setting of standards and regulations, administers the programs of the Administration to develop and issue Federal standards and regulations dealing with motor vehicle safety, fuel economy, theft prevention, and consumer information and regulations dealing with the following characteristics of motor vehicles: damage susceptibility, crashworthiness, and ease of diagnosis and repair.

(2) Associate Administrator for Enforcement. As the principal advisor to the Administrator on all matters as they relate to the enforcement of standards and regulations, directs and administers programs to ensure compliance with Federal laws, standards and regulations relating to motor vehicle safety, fuel economy, theft prevention, damageability, consumer information and odometer fraud.

(3) Associate Administrator for Traffic Safety Programs. As the principal advisor to the Administrator on all matters as they relate to State and community uniform traffic safety performance standards, including financial and technical assistance to States and traffic safety programs and national programs on traffic safety, including the reduction of alcohol and drug use by drivers and the encouragement of safety belt use.

(4) Associate Administrator for Research and Development. As the principal advisor to the Administrator on all matters as they relate to research and development, accident investigation and information collection, analysis and dissemination, and facilities requirements to support NHTSA research and development efforts.

(5) Associate Administrator for Plans and Policy. Acts as the principal advisor to the Administrator on all matters involving NHTSA policies, objectives, budget, programs, and plans and their effectiveness in carrying out the goals and missions of the Administration.

(6) Associate Administrator for Administration. Acts as the principal advisor to the Administrator on all administrative and managerial matters as they relate to NHTSA missions, programs, and objectives; organization and delegations of authority; management studies; personnel management; training; logistics and procurement; financial management; accounting and data systems design; paperwork management; investigations and security; audits; defense readiness; and administrative support services.

§ 501.4 Succession to Administrator.

The following officials in the order indicated, shall act as Administrator of the National Highway Traffic Safety Administration, in the case of the absence or disability or in the case of a vacancy in the office of the Administrator, until a successor is appointed:

(a) Deputy Administrator,

(b) Managing Director,

(c) Chief Counsel,

(d) Associate Administrator for Rulemaking,

(e) Associate Administrator for Enforcement,

(f) Associate Administrator for Traffic Safety Programs,

(g) Associate Administrator for Plans and Policy,

(h) Associate Administrator for Research and Development, and

(i) Associate Administrator for Administration.

§ 501.5 Exercise of authority.

(a) In exercising the powers and performing the duties delegated by this part, officers of the NHTSA and their delegates are governed by applicable laws, executive orders, regulations, and other directives, and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on behalf of the Secretary of Transportation, the Administrator and Deputy Administrator, or, with respect to matters under their jurisdictions, by or on behalf of the Associate Administrators, and Directors of Staff Offices.

(b) Each officer to whom authority is delegated by this part may redelegate and authorize successive redelegations of that authority subject to any conditions the officer prescribes. Redelegations of authority shall be in written form and shall be published in the **Federal Register** when they affect the public.

(c) Each officer to whom authority is delegated will administer and perform the functions described in the officer's respective functional statements.

§ 501.6 Secretary's reservations of authority.

The authorities reserved to the Secretary of Transportation are set forth in 1.44 of Part 1 and in Part 95 of the regulations of the Office of the Secretary of Transportation in subtitle A of this Title (49 CFR Parts 1 and 95).

§ 501.7 Administrator's reservations of authority.

The delegations of authority in this part do not extend to the following authority which is reserved to the Administrator and, in those instances when the office of the Administrator is vacant due to death or resignation, to the Deputy Administrator:

(a) The authority under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, to: (1) Establish, amend, or revoke final new and used motor vehicle safety standards;

(2) Make final determinations concerning violations of the Act and regulations issued thereunder.

(b) The authority under the Highway Safety Act of 1966, as amended, to: (1) Apportion authorization amounts and distribute obligation limitations for State

and community highway safety programs;

(2) Approve the awarding of incentive grants to the States authorized under 23 U.S.C. 408.

(3) Promulgate uniform State and community highway safety standards;

(4) Fix the rate of compensation for non-government members of the National Highway Safety Advisory Committee.

(c) The authority under the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), to:

(1) Issue final rules and regulations developed under the Act;

(2) Establish, amend, revoke, or grant exemptions from final motor vehicle and fuel economy standards issued under the Act;

(3) Make final determinations concerning violations of the Act and regulations thereunder;

(4) Assess civil penalties and grant credits to manufacturers under section 508.

(d) The authority under section 141, section 154 and section 158 of Title 23 of the U.S.C., with the concurrence of the Federal Highway Administrator, to disapprove any State certification or to impose any sanction on a State for violations of the National Maximum Speed Limit or the National Minimum Drinking Age.

§ 501.8 Delegations.

(a) Deputy Administrator. The Deputy Administrator is delegated authority to act for the Administrator, except where specifically limited by law, order, regulation, reservation, or instructions of the Administrator.

(b) Managing Director. The Managing Director is delegated line authority for executive direction over the Associate Administrators for Plans and Policy, Research and Development, and Administration.

(c) Director, Executive Secretariat. The Director, Executive Secretariat is delegated authority to issue subpoenas, at the request of the Assistant Chief Counsel for Litigation and after notice to the Administrator, for the attendance of witnesses and production of documents pursuant to the National Traffic and Motor Vehicle Safety Act and the Motor Vehicle Information and Cost Savings Act.

(d) Director, Office of Civil Rights. The Director, Office of Civil Rights is delegated authority to:

(1) Act as the NHTSA Director of Equal Employment Opportunity.

(2) Act as NHTSA Contracts Compliance Officer.

(3) Act as NHTSA coordinator for matters under Title VI of the Civil Rights Act of 1964, Executive Order 11247, and regulations of the Department of Justice.

(e) Chief Counsel. The Chief Counsel is delegated authority to:

(1) Exercise the powers and perform the duties of the Administrator with respect to the setting of odometer regulations authorized under Title IV of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1981 et seq.).

(2) Establish the legal sufficiency of all investigations conducted under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and under the authority of Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), and to compromise any civil penalty or monetary settlement in an amount of $5,000 or less resulting from a violation of either of those Acts.

(3) Exercise the powers of the Administrator, other than subpoena powers, under the following paragraphs of subsection 112(c) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401(c)), at such stage in each investigation as the Administrator may determine that the preliminary data indicate a need for full inquiry: paragraph (1), paragraph (3) with respect to requiring reports and answers to be given under oath, paragraph (4) and paragraph (5).

(f) Associate Administrator for Plans and Policy. The Associate Administrator for Plans and Policy is delegated authority to direct the NHTSA planning and evaluation system in conjunction with Departmental requirements and planning goals; coordinate the development of the Administrator's plans, policies, budget, and programs, the analyses of their expected impact, and their evaluation in terms of the degree of goal achievement; and perform independent analyses of proposed Administration regulatory, grant, legislative, and program activities.

(g) Associate Administrator for Rulemaking. Except for those portions that have been reserved to the Administrator, the Associate Administrator for Rulemaking is delegated authority to exercise the powers and perform the duties of the Administrator with respect to the setting of motor vehicle safety and theft prevention standards, average fuel economy standards, procedural regulations, and the development of consumer information and regulations authorized under:

(1) The National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and

(2) Titles I, II, V and VI of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(h) Associate Administrator for Enforcement. Except for those portions that have been reserved to the Administrator, delegated to the Chief Counsel, or delegated to the Director, Executive Secretariat, the Associated Administrator for Enforcement is delegated authority to exercise the powers and perform the duties of the Administrator with respect to administering the NHTSA enforcement program for all laws, standards, and regulations pertinent to vehicle safety, fuel economy, theft prevention, damageability, consumer information and odometer fraud, authorized under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and the Motor Vehicle Information and Cost Saving Act, as amended (15 U.S.C. 1901 et seq.).

(i) Associate Administrator for Traffic Safety Programs. Except for those portions that have been reserved to the Administrator, the Associate Administrator for Traffic Safety Program is delegated authority to exercise the powers and perform the duties of the Administrator with respect to: The Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.); the authority vested by section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7546(b)), the authority vested by section 204 (b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 433 (b)), with respect to the laws administered by the Administrator pertaining to highway traffic, and motor vehicle safety; and the carrying out of the Act of July 14, 1960, as amended (23 U.S.C. 313 note) and the National Driver Register Act of 1982 (23 U.S.C. 401 note); the authority vested by sections 141, as it relates to certification of the enforcement of speed limits, and 154(a), (b), (d), (e), (f), (g) and (h) and 158 of Title 23 U.S.C., with the concurrence of the Federal Highway Administrator.

(j) Associate Administrator for Research and Development. The Associate Administrator for Research and Development is delegated authority to:

(1) Develop and conduct research and development programs and projects necessary to support the purposes of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Highway Safety Act of 1966, and the Motor Vehicle Information and Cost Savings Act, as amended, in coordination with the appropriate Associated Administrators and the Chief Counsel.

(2) Conduct safety research, either independently or in cooperation with other public or private organizations, to improve the total state-of-the-art of motor vehicle and highway traffic safety.

(k) Associate Administrator for Administration. The Associate Administrator for Administration is delegated authority to:

(1) Exercise procurement authority with respect to requirements of the NHTSA;

(2) Administer and conduct personnel management activities of the NHTSA;

(3) Administer NHTSA fiscal management programs, including systems of funds control and accounts of all financial transactions; and

(4) Conduct administrative management services in support of NHTSA missions and programs.

(l) Regional Administrators. Each Regional Administrator is delegated authority to:

(1) Approve or disapprove State Highway Safety Plans, including the initial agreement, any changes thereto, and approval of final vouchers, in accordance with the procedural requirements of the Administration (jointly with the delegate of the Federal Highway Administrator, except for highway safety programs administered on Indian Reservations by the Secretary of the Interior under 23 U.S.C. 402(i));

(2) Administer the operational phases as the Contracting Officer's Technical Representative for any projects that have been or may be delegated for regional administration.

[FR Doc. 86-8196 Filed 4-14-86; 8:45 am]
BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC-100 (Sub-No. 5)]

Amendment to the Standards for Operations of Interstate Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: Under 49 U.S.C. 11506, the Commission is prescribing amendments to 49 CFR Part 1023. The amendments, certified to the Commission by the National Association of Regulatory Utility Commissioners, will simplify the transfer of records with respect to motor carrier name changes, and will eliminate the requirement for filing vehicle identification lists with state commissions. The NARUC is authorized to determine and officially certify standards to the Commission for evidencing the lawfulness of interstate operations of motor carriers, and the Commission is required to prescribe and maintain such standards.

EFFECTIVE DATE: The amendments will be effective April 15, 1986.

FOR FURTHER INFORMATION CONTACT:
Jasneth C. Metz, (202) 275-7974
or
Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1023

Motor carriers, Insurance, and Surety bonds.

Decided: March 28, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, Lamboley.

James H. Bayne,

Secretary.

Appendix

Part 1023 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 1023—[AMENDED]

1. The authority citation for 49 CFR Part 1023 is revised to read as follows:

Authority: 49 U.S.C. 11506

2. Subpart B is amended by adding a new § 1023.15 to read as follows:

§ 1023.15 Motor carrier name changes.

A motor carrier holding authority which has been registered with a state commission as required in § 1023.11 and which has had a name change approved by the ICC, shall file in duplicate such approval with the state commission on the Form A referred to in § 1023.12. The Form shall be clearly marked in the upper right-hand corner "Name Change Only" and shall be accompanied by the fee, if any, prescribed by the law of such state; *provided, however,* that such fee shall not exceed $10.00.

§ 1023.32 [Amended]

3. Section 1023.32 is amended by removing paragraph (d) and by redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

4. Section 1023.40 is amended by adding a new paragraph (c) to read as follows:

§ 1023.40 Destruction of cab cards; transfer.

* * * * *

(c) A motor carrier filing an application with a state commission pursuant to § 1023.15 shall thereafter reflect its new name on each of its cab cards by compliance with the following procedure:

(1) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify its new name and the vehicle, and shall enter the appropriate expiration date in the space provided below such certificate;

(2) Such motor carrier shall indicate the date it changed its name by entering same in the space provided for an early expiration date which appears below the certificate of the cab card in the former name and prepared for such vehicle; and

(3) Such motor carrier shall affix the cab card in the new name to the front of the cab card in the former name by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards, and thereupon, each identification stamp or number appearing on the back of the card in the former name shall be deemed to apply to the operation of the vehicle in the new name.

[FR Doc. 86-8319 Filed 4-14-86; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 72
Tuesday, April 15, 1986

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Reviews of Sponsoring Organizations of Day Care Homes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Child Care Food Program (CCFP) regulations to require States to conduct biennial reviews of institutions which sponsor large numbers of day care homes and to conduct reviews of sponsors when they initially exceed the levels of 50, 200 and 1,000 homes. The rule also proposes to reduce the number of facilities which States must review as part of the overall sponsor review of sponsors with more than 200 homes. Finally, in the interest of clarity, this rule also proposes to revise and reorganize the section of the CCFP regulations which sets out State agencies' responsibilities for monitoring institutions' performance. This regulation will enhance accountability in the CCFP.

DATE: To be assured of consideration, comments must be postmarked on or before June 16, 1986.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities because the burden falls on State agencies which are not "small entities" as defined under the Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting of recordkeeping requirements that are included in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval. They are not effective until OMB approval has been obtained.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

(7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983)

Background

Under § 226.6(k) of the current CCFP regulations, State agencies are required to review every participating institution, including sponsors of day care homes, at least once every four years. In addition, when States review sponsors of homes, they must also review a sample of no fewer than 10 percent of the first 1,000 homes and 5 percent of all homes over 1,000 administered by the sponsor. In general, this review schedule provides adequate coverage of institutions' operations, enabling State agencies to lend technical assistance and ensure proper accountability. The Department is concerned, however, that the current review requirement is not sufficient for institutions which sponsor large numbers of day care homes.

In recent years, the number of family day care homes participating in the CCFP has increased dramatically, and much of this increase has been due to the growth of existing sponsors. As the size of these sponsors has grown, so have the complexity of their operations and the resulting potential for program losses and abuse. However, once a sponsor has been reviewed, the State agency could wait for as long as four years before performing another review, regardless of how large that sponsor may become in the meantime. While the Department considers that the majority of sponsors operate their programs responsibly, there have been instances in which larger sponsors have been seriously deficient in their operations and have caused significant losses both for the program and for their providers. In view of this potential for significant abuse, the Department considers that large sponsors should be reviewed more frequently than other institutions. Therefore, the Department is proposing to modify the review requirements for day care home sponsors in the following ways.

First, the Department proposes to require State agencies to conduct biennial reviews of all sponsors which administer more than 200 day care homes. The Department considers that biennial reviews of these sponsors will increase the ability of State agencies to identify deficiencies before they become uncorrectable. As a result, appropriate corrective action can be undertaken, and significant losses and abuse can be avoided.

Second, the Department is proposing to require State agencies to conduct administrative reviews whenever any sponsor adds enough homes to move into a different tier for calculating maximum administrative reimbursement. (Under the CCFP regulations, sponsors can earn maximum reimbursement at one level for the first 50 homes, another level for the next 150 homes, a third level for the next 800 homes, and a final level for every home over 1,000 which they administer.) Currently, a sponsor could add a significant number of homes, enabling it to generate a substantially higher amount of maximum administrative reimbursement, without a review by the State agency. The proposed rule, therefore, would mandate a review of any sponsor when it expands within that State beyond each of the levels of 50, 200 or 1,000 homes. This review would occur within 30 days of the date that the sponsor moves into a

higher tier. The Department realizes that State agencies exercise a certain amount of control over sponsors' growth through the budget approval process (i.e., sponsors seeking to expand must submit amended budgets to the State agency). Nevertheless, this process does not entail an onsite review of the sponsors' operations, nor do State agencies necessarily visit the sponsors' homes to ensure that the sponsors are fulfilling their responsibilities. consequently, the proposed rule would improve the oversight of growing sponsors by ensuring that they have sufficient capability to administer the CCFP before they are permitted to expand significantly.

The Department recognizes that the increased review activity proposed in this rule can entail an increase in administrative burden for some State agencies. The Department notes, however, that currently, fewer than 90 sponsors throughout the program operate more than 200 homes. Therefore, the actual increase in sponsor reviews will not be large. Moreover, the proposed rule would also reduce the number of homes which are required to be visited as part of the review of sponsoring organizations. Currently, State agencies are required to review 10 percent of the first 1,000 homes administered by a sponsor and 5 percent of all homes in excess of 1,000. The proposed rule would continue to require State agencies to visit 10 percent of a sponsor's homes if the sponsor operates 200 or fewer homes. For sponsors of more than 200 homes, however, the proposed rule would require States to visit 5 percent of the first 1,000 homes and 2.5 percent of all homes over 1,000. This review requirement will result in the same number of homes being visited over a 4 year period as is currently the case but will avoid increasing State agency burden with respect to home visits. Consequently, States should not experience any substantial increase in the total amount of staff time expended on sponsor reviews.

Finally, the Department is proposing to reorganize § 226.6(k) of the CCFP regulations to incorporate these new requirements and to simplify and clarify the overall review requirements for the CCFP. Since the reorganization does not involve changes to the review requirements other than those discussed above, the Department is not soliciting comments on this aspect of the proposed rule.

List of Subjects in 7 CFR Part 226

Day care, Food and Nutrition Service, Food assistance progams, Grant programs-Health, Infants and children, Surplus agricultural commodities.

Accordingly for the reasons set out in the preamble, the Department is proposing to amend 7 CFR Part 226 as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The Authority citation for Part 226 continues to read as follows:

Authority: Secs. 803, 810 and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. Section 226.6(k) is amended by removing the last three sentences, adding two new sentences to the end of the paragraph, and adding new paragraphs (k)(1) through (k)(4) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(k) *Program assistance.* * * * State agencies shall annually review 33.3 percent of all institutions. State agencies shall also ensure that each institution is reviewed according to the following schedule.

(1) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 homes shall be reviewed at least once every four years. Reviews of sponsoring organizations shall include reviews of 15 percent of their child care and outside-school-hours care centers and 10 percent of their day care homes.

(2) Sponsoring organizations with more than 200 homes shall be reviewed at least once every two years. Reviews of such sponsoring organizations shall include reviews of 5 percent of the first 1,000 homes and 2.5 percent of all homes in excess of 1,000.

(3) Reviews shall be conducted for newly participating sponsoring organizations with five or more child care facilities within the first 90 days of program operations.

(4) Reviews shall be conducted for sponsoring organizations of day care homes whenever the number of their homes initially exceeds the levels of 50, 200 or 1,000. Such reviews shall be conducted within 30 days of the date the sponsoring organization first exceeds each level and shall include reviews of the number of homes required as part of a sponsor review under § 226.6(k) (1) and (2).

* * * * *

Dated: April 10, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–8353 Filed 4–14–86; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Supplemental Solicitation of Comments Regarding Tariff Classification of Prefinished Hardboard Siding

AGENCY: Customs Service, Treasury.

ACTION: Supplemental Solicitation of Comments.

SUMMARY: By notice published in the **Federal Register** on March 11, 1986 (51 FR 8338), the public was informed that Customs is reviewing its position regarding the tariff classification of certain imported prefinished hardboard lap siding. Although the merchandise was accurately described in the notice, we believe it is advisable to supplement that description in order to clarify the precise issue in a case remanded to Customs for further review by the Court of International Trade. Therefore, this notice provides a revised description of the merchandise subject to review.

DATE: Comments (preferably in triplicate) must be received on or before April 25, 1986.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Jeremy N. Baskin, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on March 11, 1986 (51 FR 8338), the public was informed that Customs is reviewing its position regarding the tariff classification of certain imported prefinished hardboard siding. Although the merchandise was accurately described in the notice, because of the

technical issue being considered by the Court, the Department of Justice recommends that we supplement the prior notice in order to clarify the description and avoid any possible doubt regarding the precise merchandise under consideration.

The product in question is a plank of hardboard, 7/16-inch thick, and either 9 or 12 inches wide. Approximately 1-inch from the bottom, a hard plastic locking strip or "spline" is fixed into a groove in the back of each plank. The top edge of each plank is machined to form a groove or "rabbet", which fits the spline in the plank above. The planks are prefinished at the time of importation. Part of the prefinishing process involves the application of a newsprint paper face to the wet wood fiber mat, which mat has a water content of 70 percent. This occurs prior to compression and heat treatment which forms the hardboard planks, and prior to the sawing and finishing operations which form the prefinished siding. Acrylic latex paint is also applied to the planks prior to importation.

As fully discussed in the March 11, 1986, notice, because of the short deadline imposed upon Customs by the Court to report on our decision, Customs must quickly resolve this classification issue. Therefore, comments must be received within 10 days from the date of publication of this notice.

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: April 9, 1986.

William von Raab,

Commissioner of Customs.

[FR Doc. 86-8347 Filed 4-14-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 84P-0387]

The American Society of Artificial Internal Organs Petition To Amend Investigational Device Exemption Regulations; Request for Comment

Correction

In FR Doc. 86-7083 beginning on page 11266 in the issue of Tuesday, April 1, 1986, make the following corrections:

1. On page 11267, in the second column, in the first paragraph, in the fourth line from the bottom, "IDF" should read "IDE"; in the last paragraph, in the eleventh line, "tailed" should read "tailored".

2. On page 11269, in the third column, in the first complete paragraph, in the seventh line, "appropriations" should read "appropriateness"; the second line from the bottom of the page should read "and (c). These regulations establish abbreviated requirements for some investigations and identify conditions under which certain other investigations will be exempt altogether from the IDE process. The present proposal is essentially a hybrid of these variations from the full IDE process,".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Proposed Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Arkansas Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a proposed amendment submitted by the State of Arkansas as a modification to its permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revised regulations which would partially replace those now implementing the Arkansas Surface Coal Mining and Reclamation Act (ASCMRA) of 1979 (Act 134 of 1979, as amended by Act 647 of 1979).

This notice sets forth the times and locations that the Arkansas program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on May 15, 1986 will not necessarily be considered in the decision process. If requested, a public hearing on the proposed amendment will be held at 10:00 a.m. on April 28, 1986, in room 229 of the U.S. Post Office and Courthouse at South 6th and Rogers Avenue, Fort Smith, Arkansas. Any person interested in making an oral or written presentation at the hearing should contact Mr. James Moncrief at the OSMRE Tulsa Field Office by 4:00 p.m. on May 5, 1986. If no one expresses an interest in participating in the hearing by this date, a hearing will not be held. If only one person has so contracted Mr. Moncrief, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the Arkansas administrative record.

ADDRESS: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

Copies of the Arkansas program, the proposed modifications to the program, and the administrative record of the Arkansas program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745-7927

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315A, Washington, D.C. 20240, Telephone: (202) 343-4855

Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209, Telephone: (501) 371-2130

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745–7927.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Arkansas program on November 21, 1980. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submissions, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** (45 FR 77003–77017). Subsequent actions concerning the approval and program amendments are identified at 30 CFR 904.10, 904.15 and 904.16.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17 (d) through (f), on April 17, 1985, OSMRE notified Arkansas of the changes necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations, as revised since November 21, 1980, when the program was originally approved. To comply with this letter, the State of Arkansas completed a partial rewrite of the affected regulations governing its permanent regulatory program.

By letter of March 10, 1986, Arkansas submitted these regulations to OSMRE as a program amendment (Administrative Record No. AR–302). The proposed regulations, consisting of parts 701.5, 761, 762.5, 764, 771.23(c)(4), 772.2, 776, 779, 780, 784.20, 785, 786, 788.18(d), 795, 800, 805, 806.11(b), 807.11(d)(2)(v), 808.14, 815.15(a), 816, 819.11(c) (1) & (2), 823, 826.12(c), 827.11, 842.16(a), 843.11(a) (2) & (3) and 845.12(b) would replace the currently approved regulations.

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If the amendments are found to be in accordance with SMCRA and consistent with the Federal regulations, they will be approved and the amendment will become part of the Arkansas permanent regulatory program.

III. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 8, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86–8325 Filed 4–14–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HSQ–115–P]

Medicare Program; End Stage Renal Disease Program: Redesignation of Networks and Reorganization of Network Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Consistent with section 9214 of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), this proposed rule would revise the requirements in current regulations pertaining to the End-Stage Renal Disease (ESRD) networks and organizations and establish provisions for new, more efficient network organizations. The proposal would remove the criteria that define existing networks, remove the requirement that HCFA change designations of ESRD networks through rulemaking, and remove the list of currently-designated networks that now appears in regulations. These amendments would increase the efficiency and effectiveness of the ESRD program by instituting a faster process for changing network designations and organizations as program needs arise. These amendments would also permit the reduction of the number of existing networks to possibly as few as 14. We intend to implement the consolidation of current networks and organizations immediately upon adopting the final rule.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on May 15, 1986.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–115–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–H Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC., or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ–115–P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone (202) 245–7890).

FOR FURTHER INFORMATION, CONTACT: Spencer Colburn, (301) 594–3413.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end-stage renal disease (ESRD) who require dialysis or transplantation. At that time, the broad array of professionals and facilities involved in the treatment of persons with ESRD indicated the need

for a system to promote effective coordination. We believed that the integration of hospitals and other health facilities into organized networks was the most effective way to assure the delivery of needed ESRD care. Therefore, on July 1, 1975, we published proposed regulations (40 FR 27782) and final regulations on June 3, 1976 (41 FR 22502) that included provisions for implementing the existing ESRD networks.

Those regulations, which are still in effect, require that ESRD facilities be organized into coordinated systems ("networks") for the delivery of ESRD care (§ 405.2110); that the "networks" organize themselves through the establishment of a network coordinating council for each network area, with representation from all ESRD facilities in each network (§ 405.2111); and that each network coordinating council appoint a medical review board to review the appropriateness of ESRD patient care and services (§ 405.2111). Section 405.2112 requires that a network and its coordinating council act as liaison between the Federal government and the available community resources, with the coordinating council supplying to the Secretary information which the Secretary may use to make determinations; and make recommendations to member facilities as needed to achieve the objectives of the network. Section 405.2113 specifies the membership requirements and responsibilities of medical review boards. Section 405.2114 provides for a relationship between networks and health care review organizations and health service planning organizations. Sections 405.2120 through 405.2124 discuss the establishment of minimal utilization rates and the requirements for approval of facilities with respect to such rates. Sections 405.2130 through 405.2171 discuss general requirements for all facilities furnishing ESRD services. The Appendix to 42 CFR Part 405, Subpart U contains a list of designated network areas.

Subsequently, the End-Stage Renal Disease Amendments of 1978 (Pub. L. 95-292), amended title XVIII of the Social Security Act (the Act) by adding section 1881; section 1881(c) statutorily authorizes the establishment of ESRD network areas and network organizations, consistent with criteria the Secretary finds appropriate to assure the effective and efficient administration of ESRD program benefits.

With respect to ESRD networks, section 1881(c) of the Act requires the Secretary to—

- Establish ESRD network areas and organizations;
- Prescribe in regulations requirements with respect to membership in network organizations by individuals having financial or control relationships with ESRD providers and facilities;
- Take into account the network goals and performance in determining whether to certify new or expanded facilities in the network area and to terminate or withhold certification of a facility for failure to cooperate with network goals; and
- Provide guidelines for the planning and delivery of services as necessary to assist the network organizations in developing their goals to promote the use of self-dialysis and transplantation.

Section 1881(c) further requires the Secretary to establish a national ESRD medical information system to assure the effective and efficient administration of Medicare benefits. (Currently, the existing networks have been receiving copies of the national medical information forms from ESRD facilities prior to submitting the forms to us. In the future, ESRD facilities would be instructed to send their ESRD forms directly to us for incorporation into the national ESRD medical information system.)

Section 1881(c) of the Act also specifies that the network organizations for each area—

- Include a coordinating council, an executive committee, and a medical review board;
- Include at least one patient as a member on each coordinating council and executive committee;
- Encourage the use of treatment settings most compatible with the successful rehabilitation of the patient;
- Develop criteria and standards relating to the quality and appropriateness of patient care;
- Develop network goals for the placement of patients in self-care settings and for transplantation;
- Evaluate the procedures used in the network to assess the appropriateness of patients for proposed treatment modalities;
- Identify those network members that are not cooperating with network goals and assist those facilities to develop appropriate plans of correction; and
- Submit an annual report that includes the network goals, data on the network's performance in meeting its goals (including data on the comparative performance of network members), identification of facilities that have consistently failed to cooperate with network goals and recommendations with respect to the need for additional or alternative services in the network area including self-dialysis training, transplantation and organ procurement facilities.

In summary, the amendments made to section 1881(c) of the Act did not include all of the provisions related to networks which had been included in the regulations at 42 CFR 405.2110 through 405.2171. The current regulations are, thus, more prescriptive than the statute. The requirements contained in regulations that are not statutorily required include the following:

- Specific criteria for designating network areas (§ 405.2110).
- Representation from all ESRD facilities on each network coordinating council (§ 405.2111).
- Review of the appropriateness of ESRD patient care and service by medical review boards (§ 405.2111).
- Membership of network coordinating councils by professional disciplines (§ 405.2111).
- Specific initial functions of network coordinating councils (§ 405.2111).
- Specific ongoing functions of network coordinating councils and network executive committees (§ 405.2112).
- Relationship of network coordinating councils with the Federal government and the available community resources (§ 405.2112).
- Membership requirements of specific disciplines for medical review boards (§ 405.2113).
- Current responsibilities of medical review boards (§ 405.2113).
- Reporting requirements of medical review boards (§ 405.2113).
- Relationship of ESRD networks to health care review organizations and health service planning organizations (§ 405.2114).

II. Problems Under the Current Regulations

The statute specifies that network organizations develop criteria and standards to evaluate the quality and appropriateness of care, evaluate the procedures used in placing patients in appropriate treatment settings, encourage the use of treatment settings that enhance patient rehabilitation, and make recommendations with respect to additional or alternative services needed to achieve network goals. However, because the curent regulations were implemented prior to the adoption of the statute that authorizes networks, the regulations impose requirements and burdens that are not required by law and have posed certain problems. In addition, the evolution of the ESRD delivery system has been dramatic, and

the regulations for the ESRD network organizations have become obsolete.

For example, the network area criteria in current regulations (§ 405.2110), such as minimum population base served by a network area and minimum number of transplant centers included in each area, were appropriate during the early development of the ESRD program but are no longer needed due to the rapid growth of ESRD facilities and nearly universal access to required ESRD services. There were 606 facilities when the ESRD program began on July 1, 1973. Currently, there are approximately 1,400 certified renal facilities. Additional examples of problems that arise from the current regulations follow:

When the existing networks were established, health planning agencies and Professional Standards Review Organizations (PSROs) were not fully operational and were not equipped to address the issues concerning ESRD treatment resources. We believed that networks could contribute to assuring an adequate, equitable growth of scarce but costly resources and help to assure patient access to quality care in the most appropriate treatment modality. Therefore, § 405.2132, Fulfillment of Service Needs in the Networks, was published to address this health planning issue. However, the existing network organizations proved unequal to this task of evaluating and planning for the growth of ESRD services. Since the large majority of network members were facility representatives, there was considerable potential for conflicts of interest in the planning process, and we received numerous complaints about this role of the networks. To alleviate this problem, we removed the existing network organizations from an active role in the planning process and limited them to providing patient demographic data to the authorized health planning agencies.

Currently, review of ESRD services is provided by Utilization and Quality Control Peer Review Organizations (PROs), State survey agencies, and medical review boards. PROs are responsible for reviewing inpatient care provided to ESRD beneficiaries, State survey agencies assure compliance with standards that protect patient health and safety, and medical review boards are expected to assure the quality and appropriateness of care provided to patients treated at ESRD facilities or at home. The regulations require the networks and medical review boards to develop criteria to evaluate the quality of care provided in the facilities. Many of the existing network organizations have failed to develop and adopt measurable criteria that evaluate the quality and appropriateness of care; instead they focus on factors that define utilization of ESRD services. (For example, duplicative review of patient care plans.) Rather than evaluating and improving the procedures used in placing patients for treatment, the present organizations have tended to review requirements contained in the regulations on the conditions for coverage (for example, § 405.2137(a)), thus duplicating the efforts of State survey agencies. While there has been an increase in home dialysis and transplantation rates, we believe that these improvements in patient rehabilitation are a result of technological advances (for example, continuous ambulatory peritoneal dialysis and cyclosporine therapy), proliferation of treatment resources and the implementation of a prospective reimbursement mechanism that provides incentives for treatment in less intensive settings, rather than as a result of the efforts of existing network organizations.

The 32 current networks vary in geographic size, facility membership, and number of patients. Escalating administrative costs and an emphasis on data collection and verification have resulted in the networks' focusing less attention on quality assurance initiatives. Funding for the existing network organizations, including the network coordinating councils and medical review boards, is provided through our grants. For calendar year 1984, 88 percent of the networks' total funding was used to meet fixed costs (for example, salaries and fringe benefits, office rental, supplies). This has resulted in only minimal resources being available to address quality assurance activities. While we recognize that some of these fixed costs are necessary and contribute to an organization's ability to meet its objectives, maintaining the 32 current network organizations consumes available resources unproductively. The 32 networks are simpley unable to achieve the economic advantages that can be realized by funding fewer organizations.

Furthermore, among the existing networks, there are substantial and unjustified variations in the quality of performance and in the cost effectiveness of the different networks in meeting their statutory reponsibilities. Presently, there are 32 different sets of objectives pursued by the existing networks in meeting their goals, resulting in a fragmented and inconsistent approach to quality assurance issues. For example, the existing 32 networks set their own specific goals for placing patients in the various treatment modalities, resulting in 32 distinct goals for this objective. In addition, each network develops its own data bases and computer processing programs, which cannot be used across network boundaries, preventing network analysis of program data on a national scale. These individual data systems frequently cannot support the existing networks' own quality assurance activities. Finally, because there are 32 networks, many are too small to have adequate data bases to permit meaningful demographic and statistical analysis on a broad basis or to maintain surveillance of quality of care indicators.

III. How to Improve Network Performance

Our program experience clearly demonstrates that 32 distinct network organizations are no longer necessary. We, therefore, propose to redesignate networks and specify new requirements that will result in a considerably smaller number of network organizations. We believe the new organizational structure will provide economies of scale to greatly increase network efficiency and improve performance in relation to available resources. By maintaining fewer network organizations, the percentage of available funds used simply to maintain offices, staff, equipment, etc., will be greatly reduced. This would be a more prudent and effective use of funds.

When the final rule becomes effective, we intend to consolidate the existing networks into the smallest practicable number of new networks, but not less than 14 as required by COBRA. We will consult with the Public Health Service on issues of health care quality and access in establishing any new network designations, which will provide for equal (or nearly equal) distributions of types and numbers of facilities and patients.

The new network organizations would address only the statutory requirements for network organizations, and we intend that these new organizations be organized in a manner that would allow better monitoring and control of network performance and improved administration of resources.

Each ESRD network would consist of all Medicare-approved ESRD facilities in a specific geographic area that we designate.

Each new network would be operated by a network organization which would be the administrative governing body to

the network and liaison to the Federal government. We would designate this organization through a competitive contracting process. Each network organization would be required to appoint a network coordinating council, a network executive committee, and a medical review board. The network organization would be responsible for fulfilling the statutory requirements. These include the following:

- Developing network goals for placing patients in settings for self-care and transplantation.
- Encouraging the use of medically appropriate treatment settings most compatible with patient rehabilitation.
- Evaluating the procedures used by network facilities in assessing patients for placement in appropriate treatment modalities.
- Making recommendations to member facilities as needed to achieve network goals.
- Submitting to the Secretary an annual report by July 1 of each year.
- Evaluating and resolving patient grievances.
- Appointing a network coordinating council, executive committee, each including at least one patient representative, and a medical review board, and supporting and coordinating the activities of each.

The network coordinating council, executive committee, and medical review board are organizations that currently exist in each network. Requirements for membership on these bodies and specified functions of each are contained in the current regulations. We would remove these specific requirements and instead include a general requirement that each new network organization appoint these panels and support and coordinate the activities of each. We do not believe it is necessary to specify membership requirements or specific duties for these organizations in regulations. The statutory requirement that the network coordinating council and executive committee each include at least one patient representative is retained in this proposed rule. We would also include in the regulations requirements regarding the general qualifications for members of the medical review board and retain restrictions regarding the review of cases in which board members have had a professional or financial interest.

Based on our experience with both the PSRO and PRO programs, and the advantage of administering the PRO system through competitive contracts rather than grants, we intend to fund the new network organizations on a competitive contract basis. We believe that operational considerations, such as the membership requirements and functions of these three panels, are more appropriately addressed in the contracting process than in regulation. It is anticipated that the prospective contractors, in submitting their proposals, would demonstrate a wide array of innovative approaches to address the statutory requirements for networks as well as other quality assurance issues that relate to end stage renal disease. We do not believe it is necessary or desirable to hinder this initiative through unnecessary and restrictive regulations. Rather, we would assure, through our request for proposals and through negotiations, that the new network organizations meet both the statutory requirements for networks and our requirements for efficient and effective program administration.

The new network organizations would not be bound to replicate the past functions, composition or practices with respect to the network coordinating council, executive committee or medical review board. Instead, these three panels would be expected to fill specific and appropriate roles in relation to the new network organizations.

While we do not intend to specify functional requirements for the network coordinating council, executive committee and medical review board, we will briefly discuss what we expect may be suitable. In a system where the number of networks would be substantially reduced, direct representation from every facility on these panels would not be a viable or desirable arrangement. The network coordinating council could address this situation by serving as a liaison between the facility membership and the network organization. Similarly, the executive committee could serve to advise both the network coordinating council and the network organization in assessing the progress of network member facilities in meeting network goals. The medical review board could advise the network organization on medical matters, such as the development of criteria and standards to evaluate the quality and appropriateness of care.

We intend to give the existing networks 90 days to phase out their operations after this rule is final. We believe it is appropriate to provide adequate time and money to assure a smooth and orderly transition from the existing networks to the new organizations. We intend to solicit proposals from prospective contractors to act as network organizations in managing the new networks under a competitive contract arrangement. We would also change the network funding cycle from the current calendar year term to one that coincides more closely with the Federal fiscal year. The existing networks would cease operations and the new organizations would begin operations on the same date to avoid any lapse in network services.

With respect to the specific statutory functions the networks are expected to fulfill, we believe that the new network organizations would be better equipped to meet these objectives. With fewer organizations, network goals would be more uniform. Fewer organizations should be better able to evaluate the methods used to place patients in the various treatment settings. Larger networks would be able to act as more effective clearinghouses for information on treatment advances and new patient management techniques.

In addition, evaluating patient placement on a broad scale would create a more complete picture of treatment practices and provide a more valid basis for comparison. Fewer networks would be better able to resolve patient grievances that cannot be settled at the facility, since the larger number of people involved in each network would assure that these issues would be evaluated by clearly unbiased parties. Finally, the range and quantity of expertise found in the larger networks would assure a continual source of involved and qualified candidates for appointment to the network coordinating council, network executive committee, and medical review board.

IV. Proposed Regulation Changes

Establishment and Requirements of ESRD Networks

We would revise § 405.2100(a) concerning the scope of Subpart U to correct the statutory citations regarding the establishment of minimal utilization rates and the requirements of ESRD networks. We would also delete the reference to PSROs, as they no longer exist. In § 405.2100(b), which describes the content of the subpart, we would reflect the new network organizational requirements.

Definitions

In § 405.2102, we would revise the definition of "Network, ESRD", remove the definition of "Network Coordinating Council", and add a new definition for "Network Organization" to reflect an organizational structure that would be less burdensome to ESRD providers and suppliers than the current structure.

We would redefine "Network, ESRD" as all Medicare-approved ESRD facilities in a geographic area that we designate. We would define "Network Organization" as the administrative governing body to the network and liaison to the Federal government.

Designation of ESRD Networks

In § 405.2110, we propose to delete the requirements for publishing network designations in regulations, and remove the criteria for designating networks. While the statute specifies that the Secretary establish renal disease networks in accordance with such criteria as the Secretary finds appropriate, it does not require publication of the criteria in regulations. We believe that it is unnecessary to retain these criteria in regulations.

The proposal to delete the requirement for designating networks through rulemaking would expedite the ESRD network designation process. This method is well within the broad authority given to the Secretary by the Act. We will consult with the Public Health Service on issues of health care quality and access in establishing any new network designations.

Reducing the number of network organizations to a minimum number (but not less than 14) would make them more efficient, facilitate our monitoring and evaluation of network performance, and achieve greater uniformity of network services. We expect this consolidation of functions would enhance network productivity and effectiveness relative to the resources provided.

By reducing administrative costs (for example, salary and fringe benefits, rent, furniture, office supplies) through funding fewer network organizations, limited resources would be better utilized in meeting statutory requirements. We intend to further maximize available monies by funding network organizations on a competituve contract basis.

Designation of Network Coordinating Councils

Section 405.2111 provides specific membership requirements for the network coordinating council that go beyond the statutory requirements. We would delete § 405.2111 and include requirements for new network organizations in § 405.2112. We believe deletion of these specific requirements would greatly reduce provider and network burden and encourage responsible and committed participation in network activities. By revising the definition of the "ESRD, Network" in § 405.2102, we would include all Medicare-approved ESRD facilities in a designated geographic area.

ESRD Network Organizations

In § 405.2112, we would specify the duties, responsibilities and functions of the new network organizations. The new network organizations would be responsible for performing the statutory functions of the network organizations, preparing an annual report to the Secretary, evaluating patient grievances, and appointing a network coordinating council, executive committee, and medical review board. We believe the new network organizations, as administrative governing bodies of the networks, would provide for more effective and efficient administration of network activities. We would designate the network organizations through the contracting process.

Medical Review Board

We have deleted the requirements in § 405.2113 for specific professional medical and social service personnel to be members of the medical review board. We have also deleted the stringent functions required of the medical review board. Medical review boards, under current requirements, have been unable to perform these functions effectively. Members of the medical review boards are volunteers, and the board functions, as currently specified in regulations, are time consuming, making it difficult for members to successfully complete the required activities. We believe deletion of these requirements would relieve this burden. In the new network organization, the medical review board would serve as an advisory panel, providing medical advice concerning specific patient grievances and in other instances when the network organization may request medical assistance (for example, in developing criteria and standards for evaluating the quality and appropriateness of care). We have also specified, as required by statute, that members of the medical review board may not review cases in which they have been involved or have a direct or indirect financial interest.

Relationship of ESRD Networks to Health Care Review Organizations and Health Service Planning Organizations

Currently under § 405.2114, the existing network coordinating councils are required to enter into working arrangements with health care review organizations and health service planning organizations. We propose to remove these requirements because they go beyond the statutory requirements and are no longer needed. The intent of these arrangements was to assure that these health planning organizations receive appropriate professional advice concerning the need for ESRD facilities and services. Our program experience has shown that this activity has not succeeded. Recommendations based on need in the network were often challenged as involving conflicts of interest. Eventually, we administratively barred the networks from preparing recommendations and limited them to providing data for State and local planning agencies. We would remove the requirements for the medical review board to enter into arrangements with PSROs (no longer in existence) located in the designated network area. The network structure to be established under this proposed rule would provide for the medical review board as an advisory committee to the network organization. This relationship would preclude the medical review board from making independent arrangements with other medical review entities. However, removal of requirement would not prevent organizations from entering into working arrangements with the various Peer Review Organizations within the networks for the exchange of data and information.

Minimal Utilization Rates: General

In § 405.2120, we would correct the statutory citation regarding the establishment of minimal utilization rates.

Basis for Determining Minimal Utilization Rates

At § 405.2121, which concerns the basis for determining minimal utilization rates, we would delete paragraph (a). This paragraph requires that information obtained from network coordinating councils be used in the utilization rate determination. Since this information is now obtained directly from the suppliers of ESRD services, through the State survey agencies, it is unnecessary to burden the new network organizations with this activity.

Condition: Fulfillment of Service Needs in Network

We would delete § 405.2132 in its entirety. This requirement is no longer necessary. Implementation of a prospective reimbursement system for outpatient dialysis services permits determination of total program payments without regard to the number of facilities. In addition, technological advances in the treatment of end-stage renal disease has obviated the need to limit the number of ESRD treatment facilities from either a network or

Federal perspective. Most ESRD treatment facilities now provide a full range of treatment settings and modalities for the dialysis patient. We also believe that the Medicare survey and certification process adequately assures that quality care is provided to the beneficiaries.

Condition: Membership in a Network

We would revise § 405.2134 to remove the requirements in regulations for membership and representation in the network. The proposed regulations would confer network membership on every Medicare-approved ESRD facility and obligate the facilities to participate in network activities. We would revise the section title to more accurately reflect the proposed change.

The current regulations impose a burden on each facility to enter into a specific agreement and provide representation to the network coordinating council. The proposed regulations would relieve this burden by not requiring participation by facility representatives on the network organizations. Participation on the network coordinating council, the network executive committee and the medical review board would be voluntary. Facilities would still be bound to participate in network activities and pursue network goals. However, we believe that the new networks would impose a lesser burden on the facilities, as the networks would pursue only the statutory requirements.

Condition: Governing Body and Management

We would revise § 405.2136, which specifies certain requirements for the governing body and management of an ESRD facility. We would revise the introductory paragraph of § 405.2136 to state that the governing body of an ESRD facility would be required to act upon recommendations from the network organization rather than from the medical review board and the network coordinating council. We would remove the requirement in § 405.2136(b)(5) that specifies that a facility must have a written requirement that its governing body receives and acts upon all recommendations and communications from the medical review board and the network coordinating council. Because we have specified that the governing body would act on recommendations made by the network organization, this provision is no longer necessary in regulations. In paragraph (c) of § 405.2136, we would delete the references to the medical review board because this requirement would no longer be needed. Finally, in § 405.2136(c)(3)(vi), which requires the chief executive officer to participate in the development and implementation of agreements, we would delete the reference to network agreements because the agreements would no longer be required.

Condition: Patients' Rights and Responsibilities

In § 405.2138(e), concerning an ESRD facility's grievance mechanism for patients, we propose to replace the reference to the network coordinating council with a reference to the network organization. Thus, the standard would provide that grievances could be addressed to the network organization.

Conditions for Coverage of Special Purpose Renal Dialysis Facilities

In § 405.2164(a), which contains conditions for coverage of special purpose renal dialysis facilities, we would delete the reference to § 405.2132, since we have proposed to delete that section. That section is currently listed as one whose requirements a special purpose facility does not have to meet.

Removal of List of Area Designations

We would delete the Appendix to Subpart U that provides the list of designated ESRD networks. We would make any future redesignations of ESRD networks administratively. The list of networks would also be published as a notice in the **Federal Register**. We would notify facilities of changes in network designations through issuances that amend the End-Stage Renal Disease Facility Manual and the Provider Reimbursement Manual, and we would require facilities to notify patients. We would also notify patient advocacy groups (for example, The National Association of Patients on Hemodialysis and Transplantation, and The Kidney Patients Association) directly.

Technical Revisions

In addition to the revisions discussed above, we would update cross references within 42 CFR Subpart U to appropriately correspond to the removal of paragraph designations for the definitions in § 405.2102.

V. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any "major rule" that is likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, government agencies or geographic regions, or meet other threshold criteria that are specified in that order. In addition, consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–12), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities.

Because ESRD networks are such a small activity, with a total FY 1986 budget of less than $5 million, these changes would not meet any of the criteria for a major rule under Executive Order 12291, and a regulatory impact analysis is not required. However, the planned reductions in numbers of network areas and organizations would clearly affect all or almost all existing network organizations. Since these organizations are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are not the kind of small entities to which the Regulatory Flexibility Act is usually considered to apply. Nonetheless, they are small organizations, and a substantial number of them would experience a significant adverse economic effect as a result of our planned changes. Therefore, the following discussion, in combination with the other sections of the preamble of this proposed rule, serves as a voluntary regulatory flexibility analysis.

As previously noted, this proposal would expedite the ESRD network designation or redesignation process by eliminating the requirement that such designation be accomplished through rulemaking. This proposal would also delete the network criteria from the current regulations and provide for the reorganization of network organizations in each designated network. These procedural changes would not have any economic impact in themselves.

Existing network organizations would be affected only when we actually redesignate networks and make arrangements with new network organizations. We do not expect this redesignation to have an adverse effect on ESRD facilities or beneficiaries. Rather, to the extent that network performance relative to available resources is enhanced, the entire ESRD program would benefit.

We intend to replace existing network organizations with a more effective and efficient system. We believe that at this time there is no need for a narrow geographic focus and that essential functions may be best accomplished by the smallest number of entities. The health care delivery system generally is capable of accomplishing operational coordination of the delivery of needed services without reliance on special

additional organizations such as the ESRD networks. As a desirable by-product, these changes would reduce the regulatory burden on the suppliers of ESRD services, while continuing to assure the health and safety of Medicare beneficiaries.

In conclusion, we believe that the adverse economic impact of our planned reductions would be limited to the affected entities and their immediate employees. Such adverse consequences as may be anticipated would not be of sufficient magnitude to offset the advantages to be gained by anticipated improvements in efficiency, effectiveness, and economy.

VI. Information Collection Requirements

Section 405.2112(e) of this proposed rule contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). A notice will appear in the **Federal Register** when approval is obtained.

Organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the "Address" section of this preamble.

VII. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or repond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV would be amended as set forth below:

Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 405 Subpart U is revised to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. The table of contents for Subpart U is amended by removing the section numbers and titles for §§ 405.2111, 405.2114 and 405.2132; revising the titles of §§ 405.2112 and 405.2134 to read "ESRD network organizations." and "Condition: Participation in network activities.", respectively; and removing the reference to the APPENDIX.

3. Section 405.2100 is revised to correct the statutory reference in paragraph (a) and to remove references to ESRD networks and coordinating councils as follows:

§ 405.2100 Scope of subpart.

(a) The regulations in this subpart prescribe the role which End-Stage Renal Disease (ESRD) networks have in the ESRD program, establish the mechanism by which minimal utilization rates are promulgated and applied, under section 1881(b)(1) of the Act, and describe the health and safety requirements that facilities furnishing ESRD care to beneficiaries must meet. These regulations further prescribe the role of ESRD networks in meeting the requirements of section 1881(c) of the Act.

(b) The general objectives of the ESRD program are contained in § 405.2101, and general definitions are contained in §405.2102. The provisions of §§ 405.2110 through 405.2110, 405.2112 and 405.2113 discuss the establishment and activities of ESRD networks, network organizations and membership requirements and restrictions for members of the medical review boards. Sections 405.2120 through 405.2124 discuss the establishment of minimal utilization rates and the requirements for approval of facilities with respect to such rates. Sections 405.2130 through 405.2140 discuss general requirements for, and description of, all facilities furnishing ESRD services. Sections 405.2160 through 405.2164 discuss specific requirements for facilities which furnish ESRD dialysis services. Sections 405.2170 and 405.2171 discuss specific requirements for facilities which furnish ESRD transplantation services.

4. Section 405.2102 is amended by removing the lower-case, lettered paragraph designations, revising the definitions of "Network, ESRD" and removing the definition of "Network Coordinating Council", and adding, in alphabetical order, a definition of "Network Organization" to read as follows:

§ 405.2102 Definitions.

* * * * *

Network, ESRD. All Medicare-approved ESRD facilities in a designated geographic area specified by HCFA.

Network Organization. The administrative governing body to the network and liaison to the Federal government.

* * * * *

5. Section 405.2110 is revised to read as follows:

§ 405.2110 Designation of ESRD networks.

HCFA designates ESRD networks in which the approved ESRD facilities collectively provide the necessary care for ESRD patients.

(a) *Effective on patient choice of facility.* The designation of networks does not require an ESRD patient to seek care only through the facilities in the designated network where the patient resides, nor does the designation of networks limit patient choice of physicians or facilities, or preclude patient referral by physicians to a facility in another designated network.

(b) *Redesignation of networks.* HCFA will redesignate networks, as needed, to ensure that the designations are consistent with ESRD program experience, consistent with the ESRD program objectives specified in § 405.2101, and compatible with efficient program administration.

§ 405.2111 [Removed]

6. Section 405.2111 is removed.

7. Section 405.2112 is revised to read as follows:

§ 405.2112 ESRD network organizations.

HCFA will designate an administrative governing body (network organization) for each network. The functions of a network organization include but are not limited to the following:

(a) Developing network goals for placing patients in settings for self-care and transplantation.

(b) Encouraging the use of medically appropriate treatment settings most compatible with patient rehabilitation.

(c) Evaluating the procedures used by facilities in the network in assessing patients for placement in appropriate treatment modalities.

(d) Making recommendations to member facilities as needed to achieve network goals.

(e) On or before July 1 of each year, submitting to HCFA an annual report that contains the following information:

(1) A statement of the network goals.

(2) The comparative performance of facilities regarding the placement of patients in appropriate settings for—

(i) Self-care; and

(ii) Transplantation.

(3) Identification of those facilities that consistently fail to cooperate with

the goals specified under paragraph (e)(1) of this section.

(4) Recommendations with respect to the need for additional or alternative services in the network including self-dialysis training, transplantation and organ procurement.

(f) Evaluating and resolving patient grievances.

(g) Appointing a network coordinating council, executive committee (each including at least one patient representative), and a medical review board, and supporting and coordinating the activities of each.

8. Section 405.2113 is revised to read as follows:

§ 405.2113 Medical review board.

(a) *General.* The medical review board must be composed of individuals qualified to evaluate the quality and appropriateness of care delivered to ESRD patients.

(b) *Restrictions on medical review board members.*

(1) A medical review board member must not review or provide advice with respect to any case in which he or she has, or had, any professional involvement, received reimbursement or supplied goods.

(2) A medical review board member must not review the ESRD services of a facility in which he or she has a direct or indirect financial interest (as described in section 1126(a)(1) of the Act).

§ 405.2114 [Removed]

9. Section 405.2114 is removed.

§ 405.2120 [Amended]

10. Section 405.2120 is amended by removing the reference "Section 226(g) of the Social Security Act (42 U.S.C. 426(g))" and inserting in its place, the correct reference "Section 1881(b)(1) of the Social Security Act (42 U.S.C. 1395rr(b)(1))".

§ 405.2121 [Amended]

11. Section 405.2121 is amended by removing paragraph (a) and redesignating paragraphs (b), (c) and (d) as (a), (b) and (c), respectively.

§ 405.2122 [Amended]

12. Section 405.2122(b)(2)(ii) is amended by removing the reference "§ 405.2102(r)(7)" and inserting, in its place, the reference "§ 405.2102".

§ 405.2132 [Removed]

13. Section 405.2132 is removed.

14. Section 405.2134 is revised to read as follows:

§ 405.2134 Condition: Participation in network activities.

Each facility must participate in network activities and pursue network goals.

15. Section 405.2136 is amended by revising the introductory paragraph, removing paragraph (b)(5), and revising paragraph (c), reprinting paragraph (c)(3) introductory text unchanged for the convenience of the reader, and revising paragraphs (c)(3)(v), (c)(3)(vi), and (h) to read as follows:

§ 405.2136 Condition: governing body and management.

The ESRD facility is under the control of an identifiable governing body, or designated person(s) so functioning, with full legal authority and responsibility for the governance and operation of the facility. The governing body adopts and enforces rules and regulations relative to its own governance and to the health care and safety of patients, to the protection of the patients' personal and property rights, and to the general operation of the facility. The governing body receives and acts upon recommendations from the network organization. The governing body appoints a chief executive officer who is responsible for the overall management of the facility.

* * * * *

(b) *Standard: operational objectives.*

* * * * *

(c) Standard: chief executive officer. The governing body appoints a qualified chief executive officer who, as the ESRD facility's administrator: Is responsible for the overall management of the facility; enforces the rules and regulations relative to the level of health care and safety of patients, and to the protection of their personal and property rights; and plans, organizes, and directs those responsibilities delegated to him by the governing body. Through meetings and periodic reports, the chief executive officer maintains on-going liaison among the governing body, medical and nursing personnel, and other professional and supervisory staff of the facility, and acts upon recommendations made by the medical staff and the governing body. In the absence of the chief executive officer, a qualified person is authorized in writing to act on the officer's behalf.

* * * * *

(3) The responsibilities of the chief executive officer include but are not limited to:

* * * * *

(v) Maintaining and submitting such records and reports, including a chronological record of services provided to patients, as may be required by the facility's internal committees and governing body, or as required by the Secretary.

(vi) Participating in the development, negotiation, and implementation of agreements or contracts into which the facility may enter, subject to approval by the governing body of such agreements or contracts.

* * * * *

(h) *Standard: medical staff.* The governing body of the ESRD facility designates a qualified physician (see § 405.2102) as director of the ESRD services; the appointment is made upon the recommendation of the facility's organized medical staff, if there is one. The governing body establishes written policies regarding the development, negotiation, consummation, evaluation, and termination of appointments to the medical staff.

§ 405.2138 [Amended]

16. Section 405.2138(e) is amended by removing the words "Network Council" and inserting in their place, the words "network organization".

§ 405.2161 [Amended]

17. Section 405.2161(a) is amended by removing the reference "§ 405.2102(r)(5)" and inserting in its place, the reference "§ 405.2102".

§ 405.2162 [Amended]

18. Sections 405.2162(a) and (c) are amended by removing the reference "§ 405.2102(r)(5)" and inserting in its place, the reference "§ 405.2102".

§ 405.2163 [Amended]

19. Sections 405.2163(c) and (d) are amended by removing the references "§ 405.2102(r)(5)" and "§ 405.2102(r)(2)" and inserting in their places, the references "§ 405.2102" and "§ 405.2102", respectively.

§ 405.2164 [Amended]

20. Section 405.2164(a) is amended by removing the phrase "§§ 405.2132, 405.2134, and 405.2137.", and inserting in its place, the phrase "§§ 405.2134 and 405.2137 that relate to participation in the network activities and patient long-term programs.".

§ 405.2170 [Amended]

21. Section 405.2170 is amended by removing the references "§ 405.2102(r)(7)" and "§ 405.2102(r)(5)" and inserting in their places, the reference "§ 405.2102".

§ 405.2171 [Amended]

22. Sections 405.2171(b) and (c) are amended by removing the references

"§ 405.2102(r)(6)" and "§ 405.2102(r)(2)" and inserting in their places, the reference "§ 405.2102".

23. The Appendix to Subpart U is removed.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: March 6, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: March 20, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-7995 Filed 4-14-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-113; RM-5163; RM-5198]

FM Broadcast Station in Hollywood and California, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 275A to Hollywood, Maryland, in response to a petition filed by Richard A. Myers, or to California, Maryland, in response to a petition filed by Tippity Whichity Communications Company. This allotment could provide for a first FM broadcast service for either community.

DATES: Comments must be filed on or before May 30, 1986, and reply comments on or before June 16, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Hollywood and California, Maryland); MM Docket No. 86-113, RM-5163, RM-5198.

Adopted: March 28, 1986.

Released: April 8, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration two conflicting petitions for the allotment of FM Channel 275A. Richard A. Myers ("Myers"), requests that Channel 275A be allocated to Hollywood, Maryland, while Tippity Whichity Communications Company ("Tippity"), seeks the channel allocation to California, Maryland. Both parties have indicated their intent to apply for the channel at their respective communities.

2. Although Channel 275A could provide a first FM broadcast service to either community, it cannot be allocated to both. Section 73.207 of the Commission's Rules requires a minimum distance separation of 105 kilometers between co-channel Class A stations. Hollywood and California, Maryland, are only 7.4 kilometers apart. Therefore, the proposals are mutually exclusive. A staff engineering study indicates an alternative channel is not available for either community. In their comments, petitioners should indicate their continued interest in the proposed allocations and provide comparative showings which might assist the Commission in making its decision between the two communities. See, *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

3. In view of the foregoing, we consider it appropriate to solicit comments on the proposals to amend the FM Table of Allotments, § 73 207(b) of the Commission's Rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
Hollywood, Maryland	—	275A
OR		
California, Maryland	—	275A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before May 30, 1986, and reply comments on or before June 16, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Robert G. Allen, McCabe and Allen, 8803 Sudley Road, Suite 202, P.O. Box 2126, Manassas, Virginia 22110 (Counsel for Richard A. Myers)

Louis R. du Treil, du Treil-Rackley, 1200—18th Street, NW., Washington, D.C. 20036 (Consultant for Tippity Whichity Communications Company)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, 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. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the noncommercial educational FM Table of Allotments, § 73.504(a) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule

Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 86-8336 Filed 4-14-86; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 72
Tuesday, April 15, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on May 15, 1986, at The Galt House, Corn Island Room, 4th Street at River Road, Louisville, Kentucky. The purpose of the meeting is to review, for approval, the draft of the briefing memorandum regarding the desegregation of public housing in Louisville and Lexington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter Peeples or Bobby Doctor, Acting Director of the Southern Regional Office at (404)221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-8323 Filed 4-14-86; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on May 5, 1986, at the Holiday Inn, Carousel Room, Blush Hill Road, Waterbury, Vermont. The purpose of the meeting is to discuss plans for a factfinding meeting in conjunction with a study of "Civil Rights Laws and Enforcement in Vermont."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kenneth Holland or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-8322 Filed 4-14-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Lloyd A. Borguss (P234A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Lloyd A. Borguss, Dolphins Plus, Inc.

b. Address: 147 Corrine Place, Key Largo, Florida 33037.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins *(Tursiops truncatus)*, 6 female.

4. Type of Take: Permanent removal from the wild for captive maintenance.

5. Location of Activity: West coast of Florida.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-8361 Filed 4-14-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Loro Parque, S.A. (P365)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Loro Parque, S.A.

b. Address: Puerto de la Cruz, Tenerife, Spain.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*), 8; California sea lions (*Zalophus californianus*); 6.

4. Type of Take: Live capture and beached/stranded.

5. Location of Activity: United States.

6. Period of Activity: 2 years.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Departamento de Agriculture have been found appropriate and sufficient to allow consideration of this permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application hava been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-8358 Filed 4-14-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: National Marine Fisheries Service, Southwest Fisheries Center (P77#18)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: National Marine Fisheries Service, Southwest Fisheries Center.

b. Address: P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research/Enhance Propagation or Survival.

3. Name and Number of Marine Mammals: Hawaiian monk seal (*Monachus schauinslandi*), one immature juvenile male.

4. Location of Activity: Lisianski Island, Hawaii.

5. Period of Activity: 1 year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: April 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-8360 Filed 4-14-86; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Application for Permit; New York State Department of Environmental Conservation (P244B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-22).

1. Applicant:

a. Name: Bureau of Fisheries, New York State Department of Environmental Conservation.

b. Address: 50 Wolf Road, Albany, New York 12233.

2. Type of Permit: Scientific Purposes.

3. Name and Number of Marine Mammals: Shortnose sturgeon (*Acipenser brevirostrum*), 150.

4. Type of Take: Shortnose sturgeon incidentally taken in the course of game and commercial fish studies will be weighed, measured, and released. Dead specimens will be retained, preserved and deposited in scientific collections.

5. Location of Activity: Hudson River, New York.

6. Period of Activity: 5 years.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: April 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-8359 Filed 4-14-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification; Mr. Richard S. Borguss, Dolphins Plus, Inc. (P234)

Notice is hereby given that Mr. Richard S. Borguss, Dolphins Plus, Inc., P.O. Box 2114, Key Largo, Florida 33037, has requested a modification to Permit No. 292 issued on June 3, 1980 (45 FR 38432), as modified on August 23, 1985 (50 FR 35590), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to allow up to four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*) into an open canal at the facility. The canal opens to the Atlantic approximately 400 yards east of the facility. Homing devices will be used to guide the animals back to the facility. The program will be used for underwater filming, underwater study of the animals, and underwater human/dolphin interaction.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., Duval Bldg., St. Petersburg, Florida 33702.

Dated: April 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-8357 Filed 4-14-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Boll Weevil Eradication Foundation of North Carolina, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to the Boll Weevil Eradication Foundation of North Carolina, Inc., having a place of business at Raleigh, North Carolina, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Boll Weevil Trap," U.S. Patent Application S.N. 6-734,647. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-8294 Filed 4-14-86; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Mine Support Systems

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Mine Support Systems, having a place of business in Grand Junction, Colorado, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Rotary Jaw Crusher," U.S. Patent 4,165,042. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of the Interior.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-8296 Filed 4-14-86; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Trece, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Trece, Inc., having a place of business in

Salinas, California, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Synthetic Pheromone 5-hydroxy-4-Methyl-3-Heptanone and Its Use in Controlling Grain Weevils" U.S. Patent Application S.N. 6–716,798. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86–8295 Filed 4–14–86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Navigation Improvements for the Existing Navigation Channel in New York Harbor at Port Jersey, Bayonne, NJ

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY:

1. Description of Proposed Action

The proposed plan will recommend dredging to the optimal depth for the existing Port Jersey channel from 35 ft. mean low water (mlw) to a maximum 45 ft. mlw. The width of the proposed improvement is 300 ft., except at a bend in the alignment, and at the channel's east end. The proposal requires that the 300 ft. wide straight section of the channel be aligned so that the northern limit of the channel is 150 ft. from Global Terminal & Container Services bulkhead. At the eastern end of the inner channel, the channel bends 12.5 degrees. At the apex of the bend the width of the channel is 425 ft. The proposed channel is again 300 ft. wide after the main bend to a point 1000 feet from the end of the channel where it begins to taper to a width of 1300 ft. perpendicular to the east end of the channel. The turning basin at the west end of Port Jersey Channel will continue to be 1200 ft. in diameter. Ocean disposal of the dredged material is also proposed.

2. Reasonable Alternatives

a. Plans of improvement include alternate channel depths (35 ft. mlw to 45 ft. mlw). An optimal channel depth will be recommended. In addition, non-structural plans were also considered during the initial plans formulation phase and were found to offer insufficient economic benefits than the structural plans. The no-action plan was also considered.

b. (Disposal Alternatives) The New York District is presently examining alternative sites and methods of dredged material disposal for maintenance dredging projects under separate studies. The subject project Draft EIS will refer to these studies and summarize findings for other feasible alternatives such as, upland disposal, subaqueous borrow pits and wetlands creation.

3. Scoping Process

a. Public Involvement

During initial plans formulation, the New York District was responsible for conducting and coordinating the overall project, compiling and consolidating data from studies of other agencies. Corps of Engineers personnel worked closely and/or coordinated with all appropriate Federal, State and local agencies, citizens groups and interested individuals, many of whom provided data relative to the study project feasibility or concerns. The U.S. Fish and Wildlife Service is participating, offering planning aid letters at critical study junctures. The project coordination and scoping effort began with the distribution of a public notice in January 1981 announcing the initiation of the study to all parties on our mailing list. The notice described the study, study area and requested input. During the formulation stage contacts were made to further refine and update concerns identified in the reconnaissance stage. Any others interested in the proposed project may contact the EIS coordinator listed below.

b. Significant Issues Requiring In-depth Analysis

Water quality impacts, archaeological and cultural resources impacts and aquatic resources impacts.

c. Assignments

None anticipated.

d. Environmental review and consultation

Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1978 (40 CFR Parts 1500–1508) and Corps regulations ER–200–2–2, dated August 25, 1980 (revised March 2, 1981).

4. Scoping Meeting will [☐]* will not [X] be held

*Date Time Location

5. Estimate date of statement availability February 1987

Address:

Project manager,
Mr. Douglas Sullivan,
ATTN: NANPL–FN,
Tel No. (212) 264–9078.

EIS Coordinator,
Mr. Peter Doukas
ATTN: NANPL–E,
Tel No. (212) 264–1275.

US Army Engineer District, New York, 26 Federal Plaza, New York 10007.

Signature (Type Name, Position, title)

Samuel P. Tosi,

Chief, Planning Division

[FR Doc. 86–8293 Filed 4–14–86; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF ENERGY

Finding of No Significant Impact for Tritium Loading Facility; Savannah River Plant, Aiken, SC

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact for the construction and operation of a new Tritium Loading Facility, Building 233–H.

Summary and Finding: The Department of Energy (DOE) has prepared an environmental assessment (EA) for the construction and operation of a new Tritium Loading Facility, Building 233–H, at the Department of Energy Savannah River Plan (SRP) near Aiken, South Carolina (DOE/EA–0297). Based upon the analyses in the EA, the DOE has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore, the

preparation of an environmental impact statement is not required.

The EA is classified SECRET and is therefore not available for public review. However, an unclassified summary of the EA is available for distribution to interested individuals and organizations. Copies of the unclassified summary of the EA may be obtained by writing: Roger P. Whitfield, Director, Environmental Division, Savannah River Operations Office, U.S. Department Energy, P.O. Box A, Aiken, South Carolina 29802.

Description of Proposed Action and Effects: The project involves the construction and operation of a new Tritium Loading Facility, Building 233–H, at the Department of Energy's Savannah River Plant (SRP) near Aiken, South Carolina. The facility will replace and upgrade some of the tritium processing and loading functions now carried out in Building 234–H to meet projected weapons production requirements more efficiently. The new facility will be located at the present site of SRP tritium facilities. The SRP tritium facilities extract tritium from irradiated reactor targets, purify it and package it for the weapons program. The existing tritium facilities have been in operation since the late 1950's. They are located near the center of the plant site in a SRP chemical separations area.

The present 234–H facility has reached its production capacity and contains equipment which makes incorporation of needed technological improvements difficult. The age of the facility and its equipment make retrofitting no longer practical or cost effective. The new facility will incorporate recently developed process technology and engineered systems for physical protection and security, while reducing tritium releases to the environment.

The previously cleared 25-acre site is located within an existing SRP operating area. Approximately 7 acres of timber will be cleared for relocation of an electrical transmission line. Minor construction impacts will be experienced, including minimal increases in particulate emissions at the SRP boundary. The peak construction work force of 900 workers will come from existing SRP construction workers upon completion of other projects and will have minimal effects on land use, housing and social services. No impacts are expected on ecological resources or archaeological and historic sites.

Once operational, the new facility will employ about 90 people (less than existing operational). No liquid effluents from operations will be released to onsite streams or discharged to the groundwater. Tritium contaminated solid waste generation and storage/disposal rates at the tritium facilities are expected to decrease by 25 percent as a result of construction of the new facility. Water usage of existing tritium facilities is expected to decrease by about 50 percent.

The new loading facility will be a maximum resistance, reinforced concrete, underground structure with a sealed concrete floor and earth cover. The new facility is designed to be automated and self-monitoring. It will be designed and built to incorporate modular process units using digital control systems and automated procedural actions. Technological improvements in processes and use of process glove boxes will reduce potential personal doses. All process equipment will be enclosed in nitrogen blanketed glove boxes connected to a continuous tritium stripper system to reduce both routine and non-routine releases. An improved building ventilation system and reduced equipment size and complexity will also reduce releases to the environment.

Routine operation of the new facility will result in the reduction of atomospheric radiological releases from SRP tritium operations to less than 5 percent of present releases. Releases in 1984 resulted in a dose to the public within 89 km of 0.2 percent of natural background levels. At the plant perimeter, the maximum individual dose from all 1984 SRP releases was 2.4 mrem which is 10 percent of the U.S. Environmental Protection Agency standard for routine radiological releases to the atmosphere (40 CFR 61). The most severe credible accident (earthquake) would result in a maximum individual dose (at the SRP boundary) of 408 millirem, which is about 25 percent of the dose that would be received if the present facility experienced an equal magnitude earthquake and 2 percent of the criteria standard for siting and designing reactors (10 CFR Part 100). Underground construction reduces earthquake impacts and reduce potential destruction associated with high winds and tornadoes.

Alternatives: In the EA, the DOE considered the following alternatives to the action of constructing the new loading facility: no-action, alternative DOE and SRP sites, and facility modification.

The no-action alternative was determined to be unacceptable because it is incompatible with national defense objectives. Alternatives to locate the facility at a different DOE site or SRP location were determined to be unacceptable because of the loss of efficiencies between the new facility and the necessary support facilities, including a production reactor and purfication facility. These alternatives would necessitate building additional support facilities and/or shipping tritium from SRP tritium facilities to an alternate site with corresponding increases in environmental and accidental risks.

Alternatives to modify the existing facility were determined to be unacceptable because the present facility cannot efficiently incorporate needed process technology improvements. Time, complex process interconnections, and expanding product requirements have combined to reduce the efficiency of present tritium loading operations in the aging facility. Design studies show that facility modifications would not substantially improve physical protection or security system, nor substantially reduce tritium releases to the environment.

Issued at Washington, DC: April 2, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86–8315 Filed 4–14–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 86–21–NG]

Natural Gas Imports; IGI Resources, Inc.; Application To Import Natural Gas From Canada for Short-Term and Spot Sales

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 25, 1986, of an application from IGI Resources, Inc. (IGI), a wholly-owned subsidiary of Intermountain Gas Industries, Inc., an Idaho Corporation, for blanket authorization to import Canadian natural gas for short-term sales in the domestic spot market. Authorization is requested to import up to 50 Bcf of Canadian natural gas per year for a two-year term beginning on the date of first delivery of the import. IGI proposes to purchase the volumes of natural gas from various individual producers or pipelines for its own account or for others and to resell those imported volumes on the short-term or spot market to purchasers in the U.S.

Since IGI intends to utilize existing pipeline facilities for the transportation of the volumes imported, the proposal does not contemplate the construction of any new domestic facilities.

IGI proposes to submit quarterly reports giving details of individual transactions in the month following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than May 15, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave. SW., Washington, DC 20585, (202) 252–9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: IGI requests a shortened notice procedure and consideration of its application on an expedited basis. ERA administrative procedures require a 30-day notice period except in emergency circumstances. IGI failed to identify any emergency circumstances that would justify shortening the notice period. Therefore, IGI's request for a shortened notice procedure is denied. An ERA decision on IGI's request for expedited treatment, particularly with respect to whether additional written comments or other procedures will be necessary in this case, will not be made until all responses to this notice have been received and evaluated.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.d.t., May 15, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of IGI's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–8366 Filed 4–14–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–85–007; OFP Case No. 61053–9271–20, 21–24]

Powerplant and Industrial Fuel Use; American Cogen Technology, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of extention of decision period on petition for exemption by American Cogen Technology, Inc., for a proposed facility in Spreckels, CA.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by another ninety (90) days to June 17, 1986, the Decision Period within which to either grant or deny the request for a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) filed by American Cogen Technology, Inc. for its proposed electric powerplant in Spreckels, California.

Section 501.58(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extensions of the decision period of an exemption petition to a date certain by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision to grant or deny the petition is necessary because of uncertainties which have arisen regarding the downsizing of the project to under 50 MW which will be required for the electric powerplant in order to meet California Energy Commission's requirements. American Cogen Technology, Inc. will attempt to resolve these issues during the extension period.

Issued in Washington, DC, on April 2, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–8364 Filed 4–14–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time: May 5, 1986—9:00 a.m.–5:00 p.m.

Place: Conference Room A–410, U.S. Department of Energy, Germantown, Maryland.

Contact: David A. Smith, Department of Energy, Office of Health and Environmental Research (ER–72), Office of Energy Research, Washington, DC 20545, Telephone: 301/353–2987.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

May 5, 1986

- Report from HERAC Subcommittee on Ecology
- Report from HERAC Subcommittee on Radiation Biology
- New Business Discussion
- Public comment (10-minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David A. Smith at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 10, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–8362 Filed 4–14–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP86–367–000, et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

April 9, 1986.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP86–367–000]

Take notice that on March 7, 1986 Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP86–367–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes the following five mainline construction and abandonment projects:

(1) The construction and operation of approximately 1.0 mile of 24-inch pipeline replacing 0.9 mile of 20-inch pipeline in two sections, in Floyd County, Kentucky.

Columbia states that the purpose of the proposed construction is to replace two sections of deteriorating, bare, coupled pipeline originally constructed in 1931 to assure continued reliable operation of this pipeline.

(2) The abandonment of approximately 0.2 mile of 16-inch transmission pipeline in Washington County, Pennsylvania.

Columbia states that it operates a 5.6 mile section of 16-inch pipeline, which is a portion of a pipeline which originally extended from Columbia's Glenville compressor station to a point south of its Ellwood City Compressor Station and that all of this pipeline north of the 5.6-mile section has previously been abandoned. It is explained that the 5.6-mile section is currently utilized to supply consumers along the pipeline section. Columbia proposes herein the abandonment, due to age and condition, of the 0.2-mile of 16-inch located at the southern terminus of the 5.6-mile section.

(3) The abandonment of two 900 and one 425 horsepower compressor units and appurtenant facilities at the Gala compressor station, in Botetourt County, Virginia.

Columbia states that the two 900 horsepower units and the 425 horsepower unit are 1920 vintage units which were installed at the Gala compressor station in the early 1940's and that the operations of the Gala compressor station since 1983 has indicated that these units are not required for normal operations.

(4) The abandonment of the Urbana compressor station consisting of two 140 horsepower compressor units and appurtenant facilities in Champaign County, Ohio.

Columbia states that the Urbana compressor station was constructed in the early 1950's in order to meet the peak hour requirements of Bellefontaine, Ohio, and that due to the operational changes, Urbana has not been required in recent years and is not projected to be required in the future.

(5) The abandonment of approximately 21.8 miles of 26-inch pipeline and six points of delivery to Mountaineer Gas Company, in Pendleton and Randolph Counties, West Virginia.

Columbia states that the section of pipeline proposed for abandonment was originally constructed in 1950 without protection against corrosion and that it originally functioned as part of Columbia's high-pressure B system, which is the major source of supply for the Baltimore-Washington market area. In Docket No. CP81–191–000 Columbia advised the Commission that it planned to remove approximately 70.5 miles of 26-inch pipeline in its B System from high-pressure service to low pressure service, due to age and condition. The pipeline proposed for abandonment in this project is a portion of this 70.5 miles of 26-inch pipeline.

Columbia states that due to recent flooding along this section of 26-inch pipeline, approximately 0.9-mile of the pipeline was damaged and left exposed. Columbia has concluded that the cost of replacing the damaged 0.9-mile segment of 26-inch pipeline, in order to continue this section of pipeline in low pressure service, cannot be economically justified. Columbia proposes to remove the 0.9 mile of exposed 26-inch pipeline and to abandon the remaining 20.9-miles in place.

The proposed construction projects have an estimated cost of $974,800, excluding the Commission's filing fees.

Comment date: April 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Penn-York Energy Corp. and National Fuel Gas Supply Corp.

[Docket No. CP85-845-003]

Take notice that on March 31, 1986, Penn-York Energy Corporation (Penn-York), 10 Lafayette Square, Buffalo, New York 14204, and National Fuel Gas Supply Corporation (National), 110 State Street, Erie, Pennsylvania 16501, filed in Docket No. CP85-845-003 an amendment to their pending application filed in Docket No. CP85-845-000 pursuant to section 7 of the Natural Gas Act so as to reflect an extension of the term for Penn-York to provide supplemental withdrawal option (SWOP) service to existing storage customers and for National to provide limited-term exchange (LTEX) service to Penn-York, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is explained that Penn-York and National have received temporary certificate authorization in Docket No. CP85-845-000 to provide the SWOP and LTEX services for the 1985-1986 winter season. Penn-York and National propose to extend the term of this service through the later of October 31, 1987, or, provided a final settlement is approved by the Commission in Docket No. CP76-492-037, the date the facilities for which authority to construct and operate has been requested in Docket No. CP76-492-037 are installed and operational.

Penn-York indicates that the SWOP service would enable existing Rate Schedule SS-1 customers, which now are entitled to withdraw at a maximum daily rate of 1/150th of annual storage volume, to increase such daily rate to a level of up to 1/110th of annual storage volume. Penn-York would charge its customers a rate of 61.69 cents per McF withdrawn at daily levels exceeding 1/150th of annual storage volume. It is stated that there would be no minimum bill and no service agreement, and the service would be rendered under Rate Schedule SWOP. It is further stated that no changes to Rate Schedule SWOP, other than an extension of the term of service, are contemplated by this proposal.

It is indicated that LTEX service is required in order to enable Penn-York to meet its customers' requirements under Penn-York's Rate Schedules SS-1 and SWOP. It is stated that National would advance up to 6,000 Mcf of gas to Penn-York at a daily rate of up to 140,000 Mcf and would accept returned volumes at daily rate of up to 50,000 Mcf with all advanced volumes to be returned by the date service is proposed to terminate. National would charge Penn-York on a monthly basis a rate of 61.69 cents per Mcf for the maximum number of Mcf of advanced volume outstanding at any one time during the term of the service.

Penn-York and National indicate that the proposed extension of the term for the SWOP and LTEX services would enable Penn-York to meet its customer requirements during the 1986-87 winter season beginning November 1, 1986.

Comment date: April 30, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

Docket No. CP86-404-000

Take notice that on March 27, 1986, Texas Eastern Transmission Corporation (Applicant), One Houston Center, Houston, Texas 77010, filed in Docket No. CP86-404-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of natural gas for certain shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport natural gas on an interruptible basis for the following shippers up to the maximum daily quantities (MDQ), and such additional daily quantities in excess of the MDQ as Applicant in its sole judgement determines it is able to transport, pursuant to submitted gas transportation agreements (agreements):

Shipper	MDQ dt equivalent of gas per day
Bay State Gas Company	20,000
Boston Gas Company	380,000
Central Hudson Gas & Electric Corporation	19,725
Commonwealth Gas Company	31,000
Connecticut Light & Power Company	51,000
Connecticut Natural Gas Corporation	60,000
Fall River Gas Company	5,000
Middleborough Gas and Electric Department	1,000
Orange and Rockland Utilities, Inc.	125,000
Providence Gas Company	35,000
The Southern Connecticut Gas Company	75,000
	802,725

Applicant further requests that the authorization be limited to a term commencing upon acceptance of the certificate and terminating on and including October 31, 1987.

Applicant states that the shippers listed above are gas distribution companies which are customers of Algonquin Gas Transmission Company (Algonquin) and that although these shippers are dependent upon Algonquin either entirely or in substantial part for their long-term gas supplies, they have engaged in self-help efforts to acquire supplemental short-term gas supplies from other sources and have requested Applicant to provide transportation of such supplies.

It is stated that pursuant to the terms of the agreements with each shipper, Applicant would receive on an interruptible basis for the account of each shipper, at specified points of receipt(s), quantities of natural gas up to the specified MDQ, and such additional daily quantities of gas in excess of the MDQ as Applicant in its sole judgement determines it is able to transport. Such quantities would be delivered by Applicant, less applicable shrinkage, to Algonquin, for each shipper's account, at specified points of delivery.

Applicant states that beginning with the month in which transportation commences, the shipper would pay Applicant each month a charge for this service equivalent to the rate in Applicant's Rate Schedule T-3, and where applicable the currently effective Gas Research Institute (GRI) surcharge per dt equivalent for the gas transported, as required by the Commission's Regulations, for remittance to GRI. Applicant further states that it would retain for applicable shrinkage, gas for use by Applicant in providing transportation, and that Applicant should have the right to change the amount of applicable shrinkage from time to time in order to ensure it retains a quantity of gas sufficient to meet it requirements in providing transportation service. It is stated that the applicable shrinkage is currently one percent per dekatherm of natural gas received by Applicant per zone within which the natural gas is transported.

Applicant also states that the agreements provide that in the event of need to prorate interruptible services, the transportation would be subject to § 12.6 of the General Terms and Conditions of Applicant's FERC Gas Tariff Fourth Revised Volume No. 1.[1]

Comment date: April 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

[1] On March 13, 1986, Applicant filed a stipulation and agreement which included a FERC Gas Tariff, Fifth Revised Volume No. 1, in its rate proceeding in Docket No. RP85-177-000. It is indicated that upon approval of the stipulation and agreement, priority of the proposed transportation service would be determined by § 12.7 of the General Terms and Conditions of the Tariff's Fifth Revised Volume No. 1.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-405-000]

Take notice that on March 28, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-405-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it has filed, concurrently with the subject application, a stipulation and agreement in Docket No. TA85-1-29-000, *et al.*, which attempts to resolve certain rate and tariff matters affecting Transco. Transco further states that in accordance with Article IV, section 2, of said stipulation and agreement, Transco has filed the instant application for a blanket certificate. Transco notes that its application is predicated upon the agreements and understandings reflected in the stipulation and agreement and that Transco's willingness to accept a blanket certificate is further predicated upon the assumption that the Commission would issue an order approving all of the terms and provisions of said stipulation and agreement without modification or condition. Transco asserts that it would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations, which paragraph refers to Subpart A of Part 284 of the Commission's Regulations, to the extent not modified by or in conflict with the stipulation and agreement.

As part of the said stipulation and agreement, Transco states, it is filing new Rate Schedules IT and FT for interruptible and firm transportation service, respectively. Transco explains that the transportation rates applicable to these rate schedules are deemed to comply with all requirements under Order No. 436 and the Commission's Regulations, including the provisions of § 284.7.

Comment date: April 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, and hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8324 Filed 4-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-803-000, et al.]

Texas Eastern Transmission Corp. et al.; Availability of the Penn-Jersey Pipeline Project Environmental Assessment

April 9, 1986.

In the matter of Texas Eastern Transmission Corp., Docket No. CP85-803-000, Docket No. CP85-804-000, Docket No. CP85-805-000, Docket No. CP85-806-000, Docket No. CP86-46-000, Docket No. CP86-82-000, Docket No. CP84-429-015; Consolidated Gas Transmission Corp., Docket No. CP85-756-000; and Equitable Gas Co. and Kentucky West Virginia Gas Co., Docket No. CP85-876-000.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the above-referenced dockets. The staff has determined that construction and operation of the proposed facilities would not constitute a major Federal action significantly affecting the quality of the human environment. The Penn-Jersey Pipeline Project facilities include 147.1 miles of 24- through 42-inch-diameter pipeline loop and appurtenances. The facilities examined in the EA would be located in Ohio, West Virginia, Virginia, Pennsylvania, and New Jersey. A detailed listing of the counties affected in each state, except for modifications to an existing meter and regulator station in Loudoun County, Virginia, was published in the **Federal Register** on December 3, 1985 (50 FR 49598.[1] Alternatives are also evaluated.

The EA will be used in the regulatory decision-making process at the Commission and may be presented as evidentiary matter in formal hearings. Motions to intervene in the proceedings out of time can be filed with the Commission in accordance with the requirements of Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Anyone desiring to file a protest should do so in accordance with 18 CFR 385.211.

The EA has been placed in the public files of the Commission and is available for public inspection in the FERC Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. Copies have been sent to all parties to the proceeding; Federal, state, and local officials; newspapers of general circulation in the areas affected; known residences within 50 feet of the proposed pipeline's permanent right-of-way; and individuals who have requested it. Copies are available in limited quantities from the FERC Division of Public Information.

Anyone wishing to do so may file comments on the EA as soon as possible but no later than April 30, 1986. Comments should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Additional information about the project is available from Mr. Kenneth D. Frye, Project Manager, Environmental Evaluation Branch, Office of Pipeline

[1] On March 18, 1986, Texas Eastern filed an application under Docket No. CP84-429-015 that proposed to construct a total of 3.66 miles of pipeline loop at six locations adjacent to areas previously identified in Pennsylvania. See 51 FR 10432.

and Producer Regulation, telephone (202) 357–9039.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–8327 Filed 4–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, General Motors Corp.; Order Granting Request for Clarification

Issued: April 10, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 10, 1986, General Motors Corporation (GM) filed a request for clarification of § 284.223(g)(1) of the regulations adopted in Order No. 436.[1] Specifically, GM seeks clarification that its high-priority gas transportation arrangements with Panhandle Eastern Pipe Line Company (Panhandle) and others, involving 22 GM plants, are eligible for continued transportation authorization under the transitional provisions of § 284.223(g)(1). We will grant the clarification request for the reasons discussed below.

On August 21, 1985, GM entered into four contracts for a "self-help" transportation program: A gas purchase agreement with Producers' Gas Company (Producers), an agreement with Panhandle to transport GM's gas to Michigan Gas Storage Company, an agreement with Michigan Gas Storage to transport GM's gas to Consumers Power Company (Consumers), and an agreement with Consumers to transport the gas to various GM plants in Michigan. Panhandle, an interstate pipeline, received the gas from Producers at receipt points in Oklahoma. Michigan Gas Storage, another interstate pipeline, received the gas from Panhandle at receipt points in Oakland County, Michigan. The gas was then delivered to Consumers, which has existing interconnections with the various GM plants in Michigan. Consumers is a Hinshaw pipeline, is exempt from our jurisdiction, and is regulated by the Michigan Public Service Commission.

The transportation service commenced on August 27, 1985. It was to continue through February 21, 1987 under the Panhandle contract and through August 21, 1987 under the Michigan Gas Storage contract.

Each of the four contracts provided for a maximum daily delivery of 90,000 MMBtu, to supply at least 22 GM plants in Michigan. GM expressly represented to Panhandle and Michigan Gas Storage that the gas was for process and feedstock needs (a high-priority end use, as defined at former § 157.202(13) of the Commission's Regulations).

On September 16, 1985, Panhandle filed with the Commission its initial report under former § 157.209(g) for the transportation service commenced on August 27, 1985. Panhandle mistakenly or unnecessarily specified § 157.209(e)(1) (which authorized transportation for any end use regardless of priority) as the authority for the transportation. On September 26, 1985, Michigan Gas Storage filed its initial report covering its transportation service. Like Panhandle, Michigan Gas Storage mistakenly or unnecessarily cited § 157.209(e)(1) as authority for its transportation.

On October 21, 1985, GM wrote to Panhandle and Michigan Gas Storage requesting that they make corrective filings with the Commission to properly classify the volumes as high priority. Panhandle and Michigan Gas Storage filed subsequent reports under former § 157.209(g) (on October 25 and October 31, 1985, respectively), amending their initial reports to show transportation authorization under former § 157.209(a)(1) (which authorized transportation for high-priority end use only).

On October 31, 1985, Panhandle suspended transportation service for GM based on our *Midwest Solvents Company* clarification order.[2] In the order granting rehearing[3] of the *Midwest Solvents Company* clarification order, we determined that high-priority end users that received authorization under former § 157.209(e) qualify for transitional treatment under § 284.223(g)(1) because the gas being transported mistakenly or unnecessarily under § 157.209(e) authority was in fact for high-priority uses. Such high-priority transportation was automatically authorized under former § 157.209(a)(1). Thus, GM's transportation arrangements with Panhandle and Michigan Gas Storage have continuing transitional authorization under § 284.223(g)(1).

After a detailed review by GM of the end use of the gas at each of the 22 plants, GM found that a small amount of the gas, at 6 of the plants, was intended for consumption as low-priority boiler fuel. GM states that, based on plant forecasts, 97.39% of the total annual gas requirement was for high-priority uses, and only 2.6% was for low-priority boiler fuel.

In the *Southern Natural Gas Company* clarification order,[4] we stated that gas which would have qualified for transportation under former § 157.209(a)(1) for high-priority end use, and for which transportation had commenced prior to October 9, 1985, was eligible for the transitional provisions of § 284.223(g)(1), even though not all of the gas flowing to the end user was for high-priority uses. Thus, GM may continue receiving transportation service for the high-priority gas.[5]

GM presents one final issue. Although the transportation service commenced August 27, 1985 was intended by all parties to make deliveries to all 22 plants immediately, GM's internal procedures required each of the 22 plants to obtain proper internal authorization to cease purchasing gas from Consumers. After a plant received internal authorization, GM added the plant name to its contract with Consumers to transport gas to it. By October 9, 1985, only four plants were receiving GM gas transported for it by Consumers. By October 30, 1985, the other 18 GM plants had switched over to the transported gas.

GM states that the amendments to the GM/Consumers transportation contract were gratuitously or unnecessarily added to the GM/Michigan Gas Storage transportation contract. GM points out that Michigan Gas Storage receives the gas from Panhandle, transports it, and redelivers it to Consumers at a single pair of receipt and delivery points that has never changed. Although it was necessary for Consumers to know which plants were to receive the transported gas, no useful purpose was served by adding that information to the contract with Michigan Gas Storage, because the latter always delivered the gas to and from the single receipt and delivery point.

GM further submits that the post-October 9 amendments to its contract with Consumers (adding the plants as they received internal authority) did not

---

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] Order Denying Request for Clarification, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Midwest Solvents Company), 33 FERC ¶ 61,157 (October 31, 1985).

[3] Order Granting Rehearing, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Midwest Solvents Company), 33 FERC § 61,395 (December 19, 1985).

[4] Order Granting Request for Clarification, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Southern Natural Gas Company), 33 FERC ¶ 61,444 (December 27, 1985).

[5] GM has indicated that the low-priority gas will be purchased directly from Consumers.

change any of the "operative terms and conditions" of the *interstate* transportation arrangements by Panhandle and Michigan Gas Storage that existed on October 9, 1985.[6] Even assuming *arguendo* that material changes did occur in the contract between GM and Consumers after October 9, those changes dealt only with transportation under the jurisdiction of the Michigan Public Service Commission.

We agree with GM on this final issue. The post-October 9 amendments to the GM/Michigan Gas Storage contract were in the nature of background information,[7] and did not alter any operational aspect of the interstate transportation arrangements agreed to in writing and commenced prior to October 9, 1985. The volumes of gas specified in the GM/Michigan Gas Storage contact, and the receipt and delivery points on Panhandle's and Michigan Gas Storage's systems, have never changed and were not affected by the amendments. Accordingly, the transportation arrangement between GM, Panhandle, Michigan Gas Storge and Consumers, for 22 GM plants in Michigan, qualifies for transitional authorization under § 284.223(g)(1), through February 21, 1987 under the Panhandle contract, and through August 21, 1987 under the Michigan Gas Storage contract.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8356 Filed 4-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-22-000]

Williston Basin Interstate Pipeline Co. v. ARCO Oil & Gas Co., Division of Atlantic Richfield Co.; Complaint

April 9, 1986.

Take notice that on March 14, 1986, Williston Basin Interstate Pipeline Company (Williston) filed a complaint pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure [1] against ARCO Oil & Gas Company (ARCO). In its complaint, Williston requests that the Commission find that ARCO is attempting to collect retroactive charges from Williston for certain purchases of natural gas in contravention of the contract between the parties and, thus, in contravention of section 504(a)(1) of the Natural Gas Policy Act of 1978 [NGPA],[2] and § 273.204 of the Commission's Regulations.[3]

Williston states that ARCO is seeking to collect on a retroactive basis, for the period January 1981 through September 1983, the NGPA section 107(c)(5) incentive price [4] for natural gas purchased under a July 30, 1962 contract, as amended. Williston asserts that this contract does not contain the requisite language necessary for such retroactive collection, as required by §§ 273.204(c)(4) and (5) of the Commission's Regulations.

Williston requests the Commission to find: (1) That the July 30, 1962 contract does not allow for retroactive collection of the section 107(c)(5) incentive price sought by ARCO; (2) that the contract provides only for prospective application of the incentive price from April 21, 1985 (the date on which the wells at issue received their final eligibility determination) or, in the alternative, prospectively from the date of final determination of Williston's appeal of FERC Order Nos. 338[5] and 338-A,[6] which is presently *sub judice* before the United States Court of Appeals for the District of Columbia Circuit;[7] and (3) that the contract at issue does not allow for interest charges on any retroactive collection of incentive prices.

Any person desiring to be heard or to protest Williston's complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure.[8] All such motions or protests should be filed on or before May 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. ARCO has been served a copy of the complaint by Williston, and the due date for answering the complaint is 30 days from the issuance date of this Notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8326 Filed 4-14-86; 8:45 am]

BILLING CODE 6717-01-M

---

[6] Any changes in terms or conditions after October 9, 1985, require an application for a new blanket certificate under section 284.221. Order Denying Request for Clarification, Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol (Consolidated Fuel Supply, Inc.), 33 FERC ¶ 61,151 (October 31, 1985).

[7] *CF.* Order Granting Request for Clarification, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Entrade Corporation), 33 FERC ¶ 61,376 (December 13, 1985). That case involved a pipeline transportation contract that failed to include an interconnection point. We found the modification to be technical and allowed the transportation arrangement to continue under the transitional provisions of Order No. 436.

[1] 18 CFR 385.206 (1985).

[2] 15 U.S.C. 3414(a)(1) (1982).

[3] 18 CFR 273.204 (1985).

[4] 15 U.S.C. 3317(c)(5) (1982).

[5] 48 FR 46,268 (1983), FERC Statutes and Regulations [Regulations Preambles] ¶ 30,505.

[6] 33 FERC ¶ 61,175 (1985).

[7] Williston Basin Interstate Pipeline Co. v. Federal Energy Regulatory Commission, Docket No. 85-1835.

[8] 18 CFR 385.214 and 385.211 (1985).

Office of Hearings and Appeals

Objection to Proposed Remedial Order Filed

Period of March 3 Through March 21, 1986.

During the period of March 3, 1986 through March 21, 1986, the Notice of Objection to Proposed Remedial Order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate, pursuant to 10 CFR 205.194, within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

April 1, 1986.

Eton Trading Corp., and Eton Enterprises, Inc. Houston, Texas, KRO-0260

On March 17, 1986, Eton Trading Corp. and Eton Enterprises, Inc. (Eton), 515 Post Oak, Suite 125, Houston, Texas 77027, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Dallas, Texas Office of Enforcement of the Department of Energy (DOE) issued to the firm on January 14, 1986.

On March 20, 1986, the State of California filed a Notice of Objection to the Eton PRO issued on January 14, 1986.

In the PRO, the Dallas Office of alleges that during the period June 1980 through December 1980, Eton violated the layering regulation, 10 CFR 212.186, and the anti-circumvention regulations, 10 CFR 205.202 and 210.62(c) by reselling crude oil without performing any services traditionally and historically associated with the resale of crude oil. According to the PRO, the violation resulted in $9,182,412.70 of overcharges.

[FR Doc. 86-8313 Filed 4-14-86; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 3 Through March 7, 1986

During the week of March 3, through March 7, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Rek-Chem Manufacturing Corporation, 3/7/86, KFA-0017

Rek-Chem Manufacturing Corporation filed an Appeal from a denial by the Department of Energy Albuquerque Operations Office of a request which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the unit price information which was requested by Rek-Chem was properly withheld under FOIA Exemption 4, 5 U.S.C. 552(b)(4). The DOE reasoned that a competitor would gain an unfair advantage from unit prices because it could more easily predict a firm's behavior in future solicitations, and adjust its bid accordingly. Furthermore, the DOE was not convinced by Rek-Chem's assertion that the specific unit price information had been made public in other recent contracts. Thus DOE concluded that release of the unit prices would cause substantial competitive harm to the submitter and the Director's determination was upheld.

Ivan Von Zuckerstein, 3/4/86, KFA-0014

Ivan Von Zuckerstein filed an Appeal from a denial by the Manager of the Chicago Operations Office (Authorizing Official) of a request for information submitted under the Freedom of Information Act. In the request, Mr. Zuckerstein sought information relating to his employment at Argonne National Laboratory (ANL), a private laboratory operated under a contract with the DOE. In considering the Appeal, the DOE found that the Authorizing Official properly determined that an internal ANL memorandum was an "agency record" subject to disclosure under the FOIA and, pursuant to Exemption 5 of the FOIA, had properly withheld portions of the memorandum which contained the personal opinions, evaluations, and recommendations of its author. Accordingly, the Decision and Order denied Appellant's Appeal.

Remedial Order

Independent Trading Corporation, Independent Refining Corporation, 3/7/86, HRO-0261

A crude oil reseller, Independent Trading Corporation, and its parent corporation, Independent Refining Corporation, objected to a proposed remedial order that required the firms to refund crude oil overcharges based on a finding by the ERA that Independent Trading Corporation had violated the permissible average markup (PAM) rule during the period July 1979 through May 1980. Among many contentions, Independent specifically argued that the PAM rule is unenforceable because (1) the rule is substantively invalid because it discriminated against similarly situated resellers and violated antitrust law; (2) was promulgated in violation of statutory rulemaking requirements; and (3) the 20 cent PAM designation was impermissibly applied retroactively. It was also argued that Independent Refining Corporation should not be held liable for the alleged wrongdoing of its wholly-owned subsidiary.

OHA rejected all of the firms' contentions, finding that (1) the price rule did not work the kind of unfairness among similarly situated resellers as the firms contended, (2) the utilization of the safe harbor provision of the price rule did not necessarily violate antitrust laws, (3) although the designation of a 20 cent PAM figure was applied retroactively, it was permissible for the ERA to do so, and (4) Independent Refining Corporation was liable for the alleged overcharges since, as the parent corporation of the firm which violated price regulations, it participated in and benefitted from the regulatory overcharges. Accordingly, the PRO was issued as a final remedial order and Independent Trading Corporation and Independent Refining Corporation were ordered to remit $13,332,453.00 plus interest into an interest bearing account for ultimate distribution pursuant to special refund procedures.

Request for Exception

Meier Oil Service, Inc., 3/5/86, KEE-0014

Meier Oil Service, Inc. (Meier) filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B with the DOE Energy Information Administration. In considering the request, the DOE determined that the loss of key employees in the firm's bookkeeping department, together with problems Meier was encountering in changing computer systems, had greatly increased the burden the Applicant faced in fulfilling the reporting requirement. After balancing these temporary additional burdens against the public interest in acquiring reliable energy data, the DOE determined that limited exception relief was appropriate. The DOE relieved the firm of its responsibility to file Form EIA-782B until March 1986.

Implementation of Special Refund Procedures

Martin Oil Service, Inc., 2/3/86, HEF-0123

The DOE issued a Decision and Order implementing a plan for the distribution of $256,731 received as a result of a consent order entered into by the DOE and Martin Oil Service, Inc. (Martin) on August 31, 1981. The DOE determined that the Martin settlement fund should be distributed to customers who purchased motor gasoline fuel from Martin during the period March 1, 1979 through August 31, 1979. The specific information requested in refund applications is provided in the Decision.

Refund Applications

Aminoil U.S.A., Inc./Miller's Bottled Gas, Inc., 3/7/86, RF139-52

The DOE issued a Decision and Order concerning an Application for Refund filed by Miller's Bottled Gas, Inc., a reseller-retailer of Aminoil NGLPs. Miller's refund request relates to its purchases of 12,307,730 gallons of propane from Aminoil during the consent order period. In its review of the application, the DOE found that Miller's experienced a competitive disadvantage as a result of its purchases from the consent order firm, and that it had maintained banks of unrecouped increased product costs during the relevant period. However, Miller's request that interest on the primary amount of its refund be computed from the date of its purchases was rejected, since interest in the consent order escrow account only accrued from the date of deposit of the consent order funds. Accordingly, the total amount of refund granted was $294,647, representing $182,782 in principal and $111,865 in accrued interest.

Apco Oil Corporation/Hocker Oil Company et al., 3/6/86, RF83-55, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by Hocker Oil Company, *et. al.* Each of the applicants had purchased refined petroleum products from Apco Oil Corporation, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Apco. Six of the nine firms applied for a refund based upon the procedures for filing small claims outlined in *Apco Oil Corp.*, 12 DOE ¶ 85,149 (1985). The three remaining applicants were eligible to apply for refunds greater than $5,000 but elected to limit their claims to $5,000. After examining the applications, the DOE concluded that each of the nine firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total of refunds granted was $32,545.

Charter Company/Florida Coline Gasoline Corporation/Florida, 3/6/86, RQ23-270, RQ2-271

The State of Florida filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under consent orders with Charter Company and Coline Gasoline Corporation. Florida proposed to use the monies to fund a ridesharing marketing program directed at selected employers throughout the state and to provide energy-saving field row covers to various parts of Florida's agricultural sector. The OHA concluded that Florida's restitutionary plan would benefit allegedly injured consumers.

Gulf Oil Corporation/Farmers, Union Central Exchange, Inc., 3/7/86, RF40–2655

The DOE issued a Decision and Order regarding an Application for Refund filed by Farmers' Union Central Exchange, Inc., (CENEX) in the Gulf Oil Corporation special refund proceedings. In its application, CENEX requested a refund based upon purchases of 7,168,812 gallons of petroleum products from Gulf Canada during the consent order period. The DOE found that because purchases were from a foreign firm, the prices of the products were not subject to the Mandatory Petroleum Price Regulations and hence, no pricing violation could have occurred. Accordingly, the CENEX application was denied.

Gulf Oil Corporation/Four Point L.P. Gas Company, Inc., 3/3/86, RF40–3010

The DOE issued a Decision and Order concerning an Application for Refund filed by Four Point L.P. Gas Co., Inc., a direct purhaser of Gulf Oil Corporation propane. Four Point applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 8,5048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In support of its refund claim, Four Point presented material indicating that, beginning in May 1974 and continuing through January 1976 (the end of the consent order period), it accumulated significant banks of unrecovered increased product costs. The material also indicated that during April 1974, Four Point did not avail itself of the opportunity provided by the DOE regulations to increase its selling prices by up to $.01 per gallon for the recovery of non-product cost increases. Based on this evidence, the DOE concluded that during the period April 1974 through January 1976, Four Point would not have been required to reduce its prices to its customers by the amount of the refund claimed. The DOE therefore approved a refund of $1,473 for Four Point, representing $1,248 in principal and $225 in interest.

Gulf Oil Corporation/Thomlinson and McWhite, Incorporated, et al., 3/3/86, RF40–838, et al.

The DOE issued a Decision and Order concerning 40 Applications for Refund filed by retailers and resellers of Gulf covered refined petroleum products and natural gas liquid products. All of the claimants applied for refunds based on the volumetric presumption outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this decision total $110,414.

Gulf Oil Corporation/Whities Gulf Wrecker and Carry Out Service, et al., 3/3/86, RF40–01655, et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation escrow fund to 10 purchasers of Gulf refined petroleum products. The refunds from these firms totaled $10,108, representing $8,563 in principal and $1,545 in interest.

Leonard E. Belcher, Inc./Henry J. Kulig Oil Company, 3/3/86, RF227–0005

The DOE issued a Decision and Order concerning an Application for Refund filed by Henry J. Kulig Oil Company (Kulig), a retailer of No. 2 fuel oil purchased directly from Leonard E. Belcher, Inc. (Belcher). Kulig applied for a refund based on the procedures outlined in *Leonard E. Belcher, Inc.*, 13 DOE ¶ 85,348 (1986). After examining the evidence and supporting documentation submitted by Kulig, the DOE concluded that Kulig should receive a total of $4,286 ($3,537 principal plus $749 interest) based upon a total volumne of 613,995 gallons of Belcher purchases.

Leonard E. Belcher, Inc./Robbins Trailer Service, 3/3/86, RF227–0001

The DOE issued a Decision and Order concerning an Application for Refund filed by Robbins Trailer Service (Robbins), an end-user of No. 2 fuel oil purchases directly from Leonard E. Belcher, Inc. (Belcher). Robbins applied for a refund based on the procedures outlined in *Leonard E. Belcher, Inc.* 13 DOE ¶ 85,348 (1986). After examining the evidence and supporting documentation submitted by Robbins, the DOE concluded that Robbins should receive a total of $1,330 ($1,098 principal plus $232 interest) based upon a total volume of 190,516 gallons of Belcher purchases.

Little America Refining Company/Myers oil, et al., 3/7/86, RF112–54, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company deposit escrow account to 18 purchasers of Larco covered products. All of the applicants submitted claims for less than the $5,000 threshold, and were therefore not required to submit additional evidence of injury. The refunds to these firms total $80,474, representing $54,002 in principal and $26,472 in interest.

Little America Refining Company/Sav-O-Mat, Inc., 3/7/86, RF112–5

Sav-O-Mat, Inc. filed an Application for Refund, seeking a portion of funds remitted by Little America Refining Company (Larco pursuant) to a consent order that Larco entered into with the DOE. Sav-O-Mat purchased 23,395,280 gallons of gasoline from Larco during the consent order period. The DOE found that the gasoline prices Larco charged Sav-O-Mat were generally higher than average market prices, and that as a result, Sav-O-Mat was competitively injured. The DOE therefore granted Sav-O-Mat a refund of $8,380.10 plus accrued interest, which equals the share of the Larco consent order fund allocated to Sav-O-Mat on the basis of the firm's gasoline purchase volume.

Little America Refining Company/Wiles Oil Company, 3/5/86, RF112–11

Wiles Oil Company, a retailer of motor gasoline and middle distillates, filed an Application for Refund in which the firm sought a portion of the funds remitted to the DOE by the Little America Refining Company (Larco). While its volumetric share of the Larco funds amounted to $19,719, Wiles claimed a refund of $1,306,605. In considering the Application, the DOE determined that: (1) The refund amount claimed by Wiles did not represent a precise measurement of the level at which the firm was allegedly overcharged by Larco; and (2) Wiles had not established that is was disproportionately overcharged as compared to other direct purchasers from Larco. However, the DOE also determined that Wiles had not demonstrated a level of injury sufficient to receive a refund at the volumetric level. Accordingly, the DOE found it appropriate to grant Wiles a refund of $19,719 principal and $9,666 interest accrued on that principal.

Mapco, Inc./National Cooperative Refinery Association, 3/6/86, RF108–9

National Cooperative Refinery Association (NCRA) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with MAPCO, Inc. (MAPCO). The applicant claimed a refund on the basis of its purchase of 41,250,174 gallons of NGLs and NGLPs from MAPCO during the consent order period. The DOE determined that NCRA was an agricultural cooperative association that is organized and operated under the laws of the State of Kansas for the benefit of the thousands of farms and agricultural end-users to whom it supplies refined petroleum products on a non-profit basis. Accordingly, the DOE determined that NCRA is entitled to a refund. The DOE therefore granted NCRA a refund of $74,250.31 in principal and $56,207.50 in accrued interest for a total refund of $130,457.81.

Red Triangle Oil Company/Gennuso's Service, et al., 3/6/86, RF178–1, et al.

The DOE issued a Decision granting refunds to 22 firms which had been identified by the Economic Regulatory Administration as having sustained overcharges alleged in the ERA's audit of Red Triangle's sales of motor gasoline. Each claimant filed an Application for Refund in which it adequately demonstrated that it was injured by the alleged overcharges. The total amount of the refund approved in the Decision is $28,709, representing $25,586 in principal and $3,123 in interest.

Seminole Refining, Inc./Grumman Aerospace Corporation, 3/3/86, RF111–11

Grumman Aerospace Corporation (Grumman) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into which Seminole Refining, Inc. (Seminole). The applicant claimed a refund on the basis of its purchases of 359,473 gallons of aviation jet fuel and 15,463 gallons of aviation diesel fuel from Seminole during the consent order period. However, we determined that only 196,690 gallons of the Seminole aviation jet and diesel fuels purchased through February 25, 1979, were relevant to this proceeding since aviation jet fuel was decontrolled effective February 26, 1979. The DOE determined that Grumman was an end-user of the aviation jet and diesel fuels purchased from Seminole and was therefore entitled to a refund. The DOE therefore granted Grumman a refund of $1,231.28 in principal and $1,013.96 in accrued interest for a total refund of $2,245.24.

St. James Resources Corporation/J.L. Jenny Coal Company, et al., 3/4/86, RF180–1, et al.

The DOE issued a Decision and Order granting refunds to 29 firms which had been identified by the Economic Regulatory Administration as having sustained

overcharges alleged in the ERA's audit of St. James' sales of No. 2 heating oil. Each claimant filed an Application for Refund in which it adequately demonstrated that it was injured by the alleged overcharges. The total amount of the refunds approved in the Decision is $86,014, representing $45,124 in principal and $40,890 in interest.

Standard Oil Company (Indiana)/Nebraska, 3/5/86, RM21-11

The DOE issued a Decision and Order concerning the Motion for Modification filed by the State of Nebraska in the Standard Oil Company (Indiana) second-stage refund proceeding. Nebraska sought permission to modify an earlier second-stage decision approving seven restitutionary programs submitted by the state to benefit Nebraska's injured consumers of motor gasoline and middle distillates. *See Standard Oil Co. (Indiana)/Nebraska,* 12 DOE ¶ 85,115 (1984). The OHA allowed Nebraska to change the location of its $10,000 transportation study. OHA also permitted Nebraska to place its $90,000 energy conservation loan program under the auspices of the Benson Energy Development Corporation. However, OHA denied the state's request to transfer $39,000 from the telecommunications project to the Nebraska Community Energy Management Program, because it was unclear how that money would be spent and by whom.

Dismissals

The following submissions were dismissed:

Company name and Case No.

Ace Precisions Industries, RF225-113
Collins & Leary, Inc., RF213-2
Ingersoll-Rand, RF225-211
Interstate Electric Company, RF225-107
Interstate Transmissions, RF213-142
Marathon Petroleum Company, HRO-0025, HRO-0026, HRD-0067, HRD-0080, KRD-0007 thru KRD-0020, KRD-0012, KRH-0012.
Mid-Missouri Oil Company, KEE-0026
Regional Publishing Corporation, RF225-196
Roselawn Memorial Park, RF225-201
W&F Manufacturing Company, Inc., RF213-81

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 86-8367 Filed 4-14-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $69,216.58 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Wellen Oil, Inc. of Jersey City, New Jersey. The funds will be available to customers who purchased petroleum products from Wellen during the period September 1, 1973 through December 31, 1973.

DATE AND ADDRESS: Applications for Refund of a portion of the Wellen consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Wellen Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case Number HEF-0584.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Wellen Oil, Inc. of Jersey City, New Jersey, which settled possible pricing violations with respect to the firm's sales of petroleum products during the period September 1, 1973 through December 31, 1973. Under the terms of the Consent Order $69,216.58 has been remitted by Wellen and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Wellen consent order funds. The Proposed Decision and Order discussing the distribution of the Wellen consent order funds was issued on January 14, 1986. 51 FR 3245 (January 24, 1986).

As the Wellen Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased petroleum products from Wellen during the period September 1, 1973 through December 31, 1973. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: April 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

April 3, 1986.

Name of firm: Wellen Oil, Inc.
Date of filing: May 28, 1985
Case number: HEF-0584

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on May 28, 1985. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by DOE and Wellen Oil, Inc. (Wellen) of Jersey City, New Jersey.

I. Background

Wellen is a "reseller-retailer" of petroleum products, as this term was defined in 10 CFR 212.31. In a Proposed Remedial Order (PRO) issued to Wellen on July 31, 1979, the ERA alleged that Wellen had overcharged members of its barge class of purchaser by $849,713 in sales of No. 2 heating oil during the period September 1, 1973 through December 31, 1973 (the audit period). In order to settle all claims and disputes between Wellen and the DOE regarding Wellen's compliance with the Federal Petroleum Price and Allocation Regulations during the audit period (hereinafter referred to as the consent order period), the firm entered into a Consent Order with the DOE on June 25, 1984. Under the terms of the Consent Order, Wellen agreed to remit $69,216.58

to the DOE. These funds were deposited by the DOE in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that no formal findings of violation were made. Additionally, the Consent Order states that Wellen does not admit that it committed any such violations.

On January 14, 1986, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Wellen consent order fund. 51 FR 3245 (January 24, 1986).

We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Wellen's pricing practices during the consent order period.

A copy of the PD&O was published in the **Federal Register** on January 24, 1986, and comments were solicited regarding the proposed refund procedures. While none of Wellen's customers filed comments on the proposed procedures, comments were filed on behalf of the State of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia. These comments, however, discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. The formulation of procedures for the disposition of any second stage refund claims will necessarily depend on the size of the remaining fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). It would therefore be premature for us to address at this time the issues raised by the States' comments concerning the disposition of any funds remaining after all meritorious first stage claims have been paid. Since no comments have been filed regarding the proposed first-stage refund procedures, we will adopt those procedures.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds where appropriate. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement, 8 DOE ¶ 82,597 (1981) (hereinafter cited as Vickers).* As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Wellen consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Eligible Claimants

Although the PRO lists specific alleged overcharges for customers in the barge class of purchaser who brought No. 2 heating oil from Wellen during the consent order period, we noted in the PD&O that the terrms of the Consent Order are global in scope and cover all claims and disputes regarding Wellen's compliance with the DOE regulations during the four-month consent order period, "whether or not those claims and disputes have been previously raised." *See* Consent Order ¶ 101. Accordingly, we will adopt our proposal to allow any customer who purchased petroleum products from Wellen during the consent order period to apply for a refund in this proceeding.[1]

IV. Determination of Injury

As proposed in the PD&O, claimants who resold petroleum products purchased from Wellen will be required to demonstrate that they did not pass on to their customers the price increases implemented by Wellen. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers and refiners acting in the capacity of resellers) must show that during the consent order period market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller claimant must show that it had a "bank" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See* PD&O at 3 (citing Tenneco Oil Co./Chevron U.S.A., 10 DOE ¶ 85,014 (1982)).

As proposed in the PD&O, we will adopt presumptions of injury which have been used in many prior refund cases. These presumptions will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. *See* 10 CFR 205.282(e).

A. Applicants Claiming a Refund of $5,000 or Less

In the present case, we will adopt a presumption of injury which has been used in many previous special refund cases. We will presume that reseller applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of product from Wellen. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore by unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). As proposed in the PD&O, we will adopt such a procedure in this case. Therefore, any reseller applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[2]

B. Spot Purchasers

We will also adopt a rebuttable presumptoin that resellers who made spot purchases from Wellen have

[1] The Consent Order required Wellen to pay the State of Virginia $180,783.42, representing the State's prorated share of the No. 2 heating oil overcharges alleged in the PRO. Accordingly, the State of Virginia will not be eligible to apply for a refund based on its purchases of No. 2 heating oil from Wellen. In addition, JOC Oil, Inc., an entity affiliated from Wellen, has waived its right to apply for a refund in this proceeding. *See* Consent Order ¶ 502.

[2] As in prior refund cases, resellers whose potential refund, calculated on the basis of the volumetric factor described below, exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

suffered no injury. These firms will therefore be ineligible to receive a refund, even a refund at or below the $5,000 threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser tends to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of Wellen's product at increased prices unless it was able to pass through the full amount of the alleged overcharges to its own customers. *See Vickers*, 8 DOE at 85–396–97. Accordingly, in order to overcome the rebuttable presumption that it was not injured, a spot purchaser must submit evidence to establish that it was unable to recover the prices it paid for Wellen's product and did not have discretion as to where and when to make the purchase(s) upon which its refund claim is based.

C. End-users

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to make a detailed showing of injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have therefore concluded that end-users of Wellen products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Wellen products for consumption as fuel or raw materials will not be considered end-users for the purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

V. Calculation of Refund Amounts

As set forth in the PD&O, we will use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method generally presumes that the alleged overcharges were spread equally over all the gallons of the consent order product(s) sold by a consent order firm. *See, e.g., Vickers.* In the present case, we have calculated the volumetric refund amount by dividing the consent order fund ($69,216.58) by the estimated total volumes of petroleum products sold by Wellen during the consent order period and covered by the present proceeding (14,891,239 gallons), resulting in a per gallon refund amount of $0.004648.[3] The interest that has accrued on the money in the escrow account will be added to the refund of each successful applicant in proportion to the size of its refund.

As in previous cases, we will establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.* 9 DOE ¶ 82,541 at 85,225 (1982).

VI. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Wellen consent order fund. Accordingly, we shall now accept applications for refund from customers who purchased petroleum products from Wellen during the consent order period.

In order to receive a refund, each applicant will be required to submit the following information:

(i) Each applicant must report the monthly volume of Wellen petroleum products for which it is claiming a refund.

(ii) Each applicant must state how it used the products, i.e., whether it was a reseller or an ultimate consumer.

(iii) Any reseller requesting a refund in excess of the $5,000 threshold amount must submit evidence to establish that it did not pass on the alleged overcharges to its customers. Specifically, the claimant must provide data showing (a) the existence of unrecouped product costs from the beginning of the consent order period through the date of decontrol, and (b) the prices the firm paid to Wellen during each month of the consent order period.

(iv) Each applicant must state whether there has been a change in ownership of the firm since the consent order period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

(v) Applicants must report any past or present involvement as a party in DOE or private section 210 enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d).

(vi) Each application must also include the following statement signed by the applicant: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application.

All applications must be filed in duplicate and must be received within 90 days after the publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to the Wellen Consent Order Fund, Case No. HEF–0584. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from funds remitted to the Department of Energy by Wellen Oil, Inc. pursuant to the Consent Order executed on June 25, 1984 may now be filed.

(2) All applications must be filed no later than 90 days after publication of

[3] Because the available audit files do not list the volumes of petroleum products sold by Wellen during the entire consent order period, we have extrapolated sales figures from the available audit data. In addition, we have omitted the volumes of petroleum products sold to JOC and the volumes of No. 2 heating oil sold to the State of Virginia. Any alleged overcharges on these volumes are not covered by this special refund proceeding. *See* n.1, *supra*.

this Decision and Order in the **Federal Register.**

Dated: April 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-8365 Filed 4-14-86; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power; Salt Lake City Area Office; Corrections

AGENCY: Western Area Power Administration, DOE.

ACTION: Post-1989 General Power Marketing and Allocation Criteria; corrections.

SUMMARY: This document corrects the marketing and allocation criteria, as well as supplementary information for the disposition of capacity and energy from the Colorado River Storage Project, and the Collbran and Rio Grande Projects, which were published February 7, 1986 (51 FR 4844-4870).

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Greiner, Area Manager or Ms. Marlene Moody, Assistant Area Manager for Power Marketing at: Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, P.O. Box 11606, Salt Lake City, Utah 84147. Telephone: (801) 524-5493.

Corrections

In **Federal Register,** Volume 51, No. 26, February 7, 1986, make the following corrections:

On page 4845: In the first column in item C.2., fourth line, delete the colon following the word "among."

In the second column, third line, delete the hyphen between the words "first" and "right."

In the third column in item D.1., second line, delete the period after the word "Laws," insert a blank line following the word "Laws," and begin a new paragraph with the word "In."

On page 4847: In the first column in the last paragraph, third line, add the words "for power" following the word "applying."

On page 4848: In the third column in the last paragraph, second line, add the word "power" following the word "distribute."

On page 4849: In the first column in the first full paragraph, four lines from the bottom, change the word "step" to "steps."

On page 4850: In the third column in item 3.c. in the second paragraph, third line, add the word "market" following the word "customer."

On page 4852: In the first column in the last paragraph, first line, change the word "Pose-1989" to "Post-1989."

In the third column in the fourth full paragraph, four lines from the bottom, change the word "small" to "smaller."

On page 4855: In the third column in item F.1.a., between the seventh and eight lines, add the subheading "b. Discussion."

On page 4856: In the first column in item 2, ten lines from the bottom, change the word "generating" to "generation."

On page 4857: In the second column in item 3, sixth line, change the word "Gen" to "Glen."

On page 4861: In the second column, third line, add the word "or" following the word "reduced."

On page 4862: In the first column in item F.4.b. second line, change the word "groups" to "grouped."

In the second column in the first full paragraph, first line, change the word "Comments" to "Commentors."

On page 4864: In the first column, first full paragraph, second line, change the word "schedule" to "scheduled."

In the second column in item G.2. in the second paragraph, seventh line, add the word "the" following the word "and."

On page 4865: In the third column in item C.2., last line, change the word "coordinatin" to "coordination."

On page 4867: In the second column, second line, change the word "needs" to "need."

In the second column in item C.1.c., third line, change the word "SLCS" to "SLCA."

On page 4869: In the continuation table in the last column labeled "Change," first line, change "17.227" to "−17.227."

In the continuation table in the last column labeled "Change," fourth line, change "54.800" to "−54.800."

Issued in Golden, Colorado, April 1, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-8314 Filed 4-14-86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 7, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Managment and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0004

Title: Environmental Information Collection Requirements (Sections 1.1307, 1.1308, and 1.1311)

Action: Revision

Respondents: Individuals or households, State or local governments, businesses (including small businesses), and non-profit institutions

Estimated Annual Burden: 1,132 Responses; 3,962 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-8339 Filed 4-14-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1579]

Applications for Review of Action in Rule Making Proceeding

April 7, 1986.

Applications for Review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transportation Service (202-857-3800). Oppositions to these applications for review must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Richmond, Virginia), Number of Petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-8338 Filed 4-14-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. DS-503]

Advisory Committee on Reduced Orbital Spacing; Meeting

April 7, 1986.

A meeting of the full FCC Advisory Committee on Reduced Orbital Spacing will take place on Tuesday, April 29, 1986. The purpose of this advisory committee is to obtain expert technical and operational recommendations on how to better implement 2° spacing between satellites in the ⅝ GHz and 12¾14 GHz frequency bands. The objective of this meeting will be to implement the recommendations of each working group into a final Phase II report.

Date: April 29, 1986.
Time: 9:30 a.m.
Place: Main Theatre, COMSAT World Systems, 950 L'Enfant Plaza SW., Washington, DC 20024.
Agenda:
1. Adoption of Agenda.
2. Adoption of Minutes from last meeting.
3. Report from Chairman on committee progress to date.
4. Presentation from each of the three working group chairmen on Phase II activities and implementation of their recommendations into the final Phase II report.
5. Report from Chairman of Ad Hoc Work Group on satellite loading and replacement criteria.
6. Other Business.

This meeting is open to the public. For additional information contact Roger Herbstritt at the FCC at (202) 634-1624.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-8333 Filed 4-14-86; 8:45 am]
BILLING CODE 6712-01-M

Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee); Working Group Meeting

April 7, 1986.

Working Group C: Other Bands—Services.

Chairman: S.E. Probst (703) 471-2245.
Vice Chairman: David Long (703) 790-7701.
Date: Thursday, April 17, 1986.
Time: 1:30 p.m.
Location: Federal Communications Commission, 1919 M Street NW., Room 535, Washington, DC 20554.
Agenda:

(1) Review and approval of memoranda to the Chairman, Space WARC Advisory Committee, providing input to the first report of the SWAC to the FCC

(2) Review and report or assigned elements in the long range work program.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-8335 Filed 4-14-86; 8:45 am]
BILLING CODE 6712-01-M

Ninth and Tenth Meetings of the Land Mobile Radio/UHF Television Technical Advisory Committee

April 7, 1986.

The ninth meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on May 5, 1986, in Room 856 (the Commission Meeting Room), 1919 M Street NW., Washington, DC. The meeting will start at 10:00 a.m.

The tenth meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on May 6, 1986, in Room 856 (the Commission Meeting Room), 1919 M Street NW., Washington, DC. The meeting will start at 10:00 a.m.

All interested parties are invited to attend these meetings. Since this is a technical advisory committee, attendees should be prepared for technical discussions.

The agenda for these meetings will consist of:

1. Approval of minutes of last meeting, if any;
2. Complete work on Committee report.

Any questions regarding these meetings should be directed to Mr. Kenneth Nichols at (301) 725-1585.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-8334 Filed 4-14-86; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of information collection: Consolidated Reports of Income and Condition (Savings Banks) (OMB No. 3064-0054).

Background: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for revising the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is submitting for OMB review changes to the Consolidated Reports of Income and Condition (Call Reports) filed quarterly by insured state-chartered savings banks. This request is being made because of the March 11 submission to the Senate Committee on Banking, Housing, and Urban Affairs of a Joint Statement by the Federal Reserve Board (FRB), the FDIC, and the Office of the Comptroller of the Currency (OCC) on Regulatory Policies Toward Agricultural Lenders. In this joint statement, the agencies proposed "to modify regulatory reporting and disclosure requirements for restructured debt" for all banks.

The revisions to the Call Reports that are the subject of this submission would become effective as of the June 30, 1986 report date. These changes are:

(1) A modification in the reporting treatment of the loans now reported in column D, "Renegotiated 'troubled' debt," of Schedule RC-N—Past Due, Nonaccrual, and Renegotiated Loans and Lease Financing Receivables. Amounts representing renegotiated debt 30 days or more past due that are currently reported in column D would be reported as past due loans in columns A or B of Schedule RC-N, as appropriate. All other renegotiated debt that is currently reported in column D would be reported instead in a new memorandum item to Schedule RC-C—Loans and Lease Financing Receivables, that would replace the present column D of Schedule RC-N.

(2) The addition to Schedule RC-N of a new memorandum item in which to separately report the amount of restructured loans included in the total

amounts of loans 30 through 89 days past due, 90 days or more past due, and in nonaccrual status. The information collected in this memorandum item would not be available to the public.

It is not expected that the effect of the revision proposed in this submission will cause any significant change in the savings bank Call Report collection system's present estimated annual burden. It is estimated that it takes, on the average, approximately 33 hours for a savings bank to prepare the Call Report each quarter.

Dated: April, 9 1986.

Federal Deposit Insurance Corporation.

Noyle L. Robinson,

Executive Secretary.

[FR Doc. 86-8329 Filed 4-14-86; 8:45 am]

BILLING CODE 7714-01-M

Agency Information Collection Activities Under Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial Banks) (OMB No. 3064-0052).

Background: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for revising the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Deiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is submitting for OMB review changes to the Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commerical banks. While these changes cover three specific areas, the requests for their review is being made at this time because of the March 11 submission to the Senate Committee on Banking, Housing, and Urban Affairs of a Joint Statement by the Federal Reserve Board (FRB), the FDIC, and the Office of the Comptroller of the Currency (OCC) on Regulatory Policies Toward Agricultural Lenders. In this joint statement, the agencies proposed "to modify regulatory reporting and disclosure requirements for restructured debt" for all banks.

The revisions to the Call Reports that are included in this submission would become effective as of the June 30, 1986 report date and are as follows:

(1) Changes emanating from the FRB-FDIC-OCC joint statement concerning agricultural lenders:

(a) A modification in the reporting treatment of thé loans now reported in column D, "Renegotiated 'troubled' debt," of Schedule RC-N—Past Due, Nonaccrual, and Renegotiated Loans and Lease Financing Receivables. Amounts representing renegotiated debt 30 days or more past due that are currently reported in column D would be reported as past due loans in columns A or B of Schedule RC-N, as appropriate. All other renegotiated debt that is currently reported in column D would be reported instead in a new memorandum item to Schedule RC-C—Loans and Lease Financing Receivable, that would replace the present column D of Schedule RC-N.

(b) The addition to Schedule RC-N of a new memorandum item in which to separately report the amount of restructured loans included in the total amounts of loans 30 through 89 days past due, 90 days or more past due, and in nonaccrual status. The information collected in this memorandum item would not be available to the public.

(2) The addition to Schedule RC-M—Memoranda, of an item in which to report the amount of real estate acquired and held for investment that has been included in the "Other real estate owned" account on the balance sheet (Schedule RC). This item would be applicable to state nonmember banks only.

(3) The deletion from the FFIEC 031, 032, and 033 of Schedule RI, Memorandum item 5, "Income taxes applicable to gains (losses) on securities not held in trading accounts. This item is not collected on the FFIEC 034.

It is expected that the combined effect of the additions and deletions proposed in this submission will cause no change in the commercial bank Call Report collection system's present estimated annual burden. It is estimated that it takes, on the average, approximately 25 hours for a commercial bank to prepare the Call Report each quarter.

Dated: April 9, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-8330 Filed 4-14-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL TRADE COMMISSION

Consumer Protection; Consumer Product Warranties; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act, 44 U.S.C. 3507, for clearance of information collection requirements contained in an amendment to the Presale Availability of Warranties Rule, 16 CFR Part 702. An amendment of the existing clearance, OMB Control No. 3084-0056, has been requested.

SUMMARY: The Presale Availability of Warranties Rule, which implements the Magnuson-Moss Warranty Act, 15 U.S.C. 2302(b)(1)(A) (1982), requires that written warranties on consumer products be made available for review by prospective purchases prior to sale. The Comission has determined, after notice and an opportunity for public comment, to revise the rule to reduce the compliance burdens it imposes. Specifically, the estimate of paperwork burden associated with this rule would be reduced from 4,578,900 to 1,030,000 burden hours.

DATE: Comments on this application must be submitted on or before May 15, 1986.

ADDRESS: Send comments to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the application may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 523-3776.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-8300 Filed 4-14-86; 8:45 am]

BILLING CODE 6750-01-M

Line of Business Reports Program; Revision of Confidentiality Rules and Procedures

AGENCY: Federal Trade Commission.

ACTION: Revision of confidentiality rules for line of business reports.

SUMMARY: The Line of Business ("LB") Program at the Federal Trade Commission is being discontinued as a separate unit in the Bureau of Economics. The LB confidentiality rules are being revised in order to permit Bureau of Economics staff to continue using LB data for research. Some changes are also being made to simplify the rules' language and to permit an additional organizational unit of the Commission to have access to LB data under very limited circumstances. The revisions will take effect on publication. However, the Commission will receive comments for 45 days after publication, after which it will take such action as it deems appropriate in light of the comments.

ADDRESS: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Comments will be entered on the public record in Room 130 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joanne L. Levine, (202) 523–1363, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. For substantive information about the LB program, call (202) 634–7332.

SUPPLEMENTARY INFORMATION: The LB confidentiality rules were last revised in December 1981 (46 FR 62703). Since then, the Commission has ceased collecting LB data (1977 was the last year for which data were obtained), and, because personnel were no longer necessary to process newly acquired data, has reduced the size of the LB Program's staff. The Commission believes that it is no longer efficient to devote substantial resources exclusively to research with LB data, particularly since a hiring freeze and other budgetary restraints limit hiring additional economists for other necessary work. Accordingly, it intends to dissolve the LB Program as a separate entity and to integrate LB staff into the Division of Industry Analysis and other parts of the Bureau of Economics. The Commission accordingly is adopting revisions to accommodate these plans by providing flexibility in assigning staff and storing LB data.

The most significant organizational change in the rules is that access to individual companies' LB data ("LB" data) is no longer limited to employees in a single unit. The rules permit the Director of the Bureau of Economics to designate any sworn employee of the Bureau (except the Director) to have access to individual company data. An employee who is designated can thus have projects using LB data while working on others that do not involve LB data. Key responsibilities of the LB Program Manager will be transferred to a custodian, responsible for supervising access to and physical security of LB data, and a disclosure avoidance officer, responsible for ensuring that publicly released aggregates do not reveal individual company data.

Another significant change is an end to the absolute prohibition on employees' participation in law enforcement matters. The revisions permit Bureau of Economics employees who have access to LB data to work on law enforcement matters if the LB custodial certificates, and the General Counsel's Office concurs, that the assignment would not create a risk that LB data would be used in proceedings to carry out specific law enforcement responsibilities of the Commission. This provision gives the Bureau greater flexibility in assigning staff. Because all the present LB Program employees cannot be transferred to divisions that do no law enforcement work, some employees with LB research in progress must be assigned to divisions with enforcement responsibilities. This change in the rules enables them to complete their current LB research. It will also premit a broader range of Bureau employees to do research with LB data.

There are many potential law enforcement assignments that pose no risk of misusing LB data, either because the data collected are not relevant to a particular proceeding (as is the case in many consumer protection matters) or because the LB Program did not collect data on the industry involved (*e.g.*, service industries, professionals, most retailers). Alternatively, an employee assigned to a law enforcement matter would not receive access to LB data that are arguably relevant to the assignment. The Bureau of Economics has used similar informal screening procedures for consultant-special employees of the LB Program without difficulty. See, *e.g.*, *Alluminum Co. of America* v. *FTC*, 1984–1 Trade Cas. (CCH) ¶ 65955, at 68400 (S.D.N.Y 1984).

Additionally, the rules permit the Bureau of Economics' clerical staff and computer specialists—persons who provide only ancillary support to law enforcement matters—to have access to LB data without going through the certification procedure. This provides greater flexibility in assignment of clerical staff and makes it possible for the Bureau to have LB data processed by its own data processing center. Because these employees are not ordinarily responsible for obtaining or analyzing data for enforcement matters, their access will not result in LB data being used for law enforcement.

Another change in the rules gives the Commission's Division of Personnel access to LB data for purposes of personnel actions. This change is intended for situations where an employee's allegedly deficient work LB data is grounds for an adverse action, but where the LB rules would prevent the Division of Personnel from examining or evaluating the employee's work product because it contained or could reveal LB data.

The proposed revisions also make several technical or clarifying changes, such as consolidating redundant provisions and eliminating now-obsolete provisions concerning ongoing collection of LB data. Among other changes, the rules use "individual company data" instead of "LB Reports" to refer to data pertaining to individual reporting companies. This change affects terminology only; it does not affect what information is covered by the rules.

The old rules' confinement of LB data to a separate unit, whose members could not work on law enforcement matters, was not required by statute. Rather, those provisions complemented the core protections for reporting companies, *i.e.*, prohibitions on outside disclosure of individual companies' data and on use of such data for law enforcement purposes. The Commission believes that the old rules provided much more protection than was necessary to ensure the confidentiality of LB data—indeed, other information that is equally, if not more, competitively sensitive is kept confidential without the need for special rules. The Commission accordingly believes that these revisions will not compromise the Commission's compliance with restrictions imposed by the penultimate paragraph of sectin 6 of the FTC Act, 15 U.S.C. 46 (1982).

The Commission is aware that some reporting companies may object to these changes in the rules. Unfortunately, the Commission no longer can afford the luxury of segregating persons with access to LB data into a separate unit. The alternative—ending virtually all research with LB data—is not acceptable.

Because the budgetary situation requires prompt reassignments of the LB Program staff, these rules take effect immediately.[1] However, the Commission will receive comments and endeavor to respond to them, modifying the revised rules if necessary.

Federal Trade Commission

Confidentiality Rules and Procedures for Line of Business Reports

Notice is hereby given that the Federal Trade Commission has approved and adopted revisions to rules and procedures prescribing the confidential handling and use of reports filed by companies pursuant to an Order to File Special Report under the Line of Business ("LB") Program.

Definitions

For purposes of these rules, the following definitions apply:

"LB Report Form" refers to a report filed by a company pursuant to an Order to File Special Report under the LB Program.

"Individual company data" are identifiable individual company data contained in or taken from an LB Report Form.

"LB activities" are activities concerned with planning, developing, and preparing statistical and economic reports. Such activities include processing, storing, and retrieving data from LB Report Forms, research with LB data, publication of aggregated LB data, administrative support and other ancillary functions.

"Employee" refers to employees, special employees, and officers of the Commission.

Confidentiality of Individual Company Data With Respect to Persons Outside the Commission

(1) These rules and procedures are authorized by the undesignated penultimate paragraph of section 6 of the Federal Trade Commission Act, 15 U.S.C. 46 (1982). That paragraph states:

> No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on the date of the enactment of the Federal Trade Commission Improvements Act of 1980, or as changed by law.

(2) Under these rules, the Commission will not disclose individual company data to any person outside the Commission, including Congress, parties in court proceedings, governmental agencies, and members of the public, except pursuant to a superseding act of Congress; or pursuant to an order of a court, but only after all avenues for judicial relief have been exhausted. In the event that the Commission receives a subpoena for individual company data, it will promptly notify the reporting companies that supplied the data (unless it is legally precluded from doing so).

(3) Under Section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, any employee of the Commission who makes public any information obtained by the Commission, without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor. Upon conviction, the employee may be punished by a fine of up to $5,000 and/or by imprisonment not exceeding one year. The Commission considers unauthorized disclosures of individual company data to be punishable under 18 U.S.C. 1905, and the stealing, conversion, or unauthorized conveyance of such data to be punishable under 18 U.S.C. 641.

Confidentiality of Individual Company Data Within the Commission

(4) Individual company data may be used to prepare aggregated statistical reports and other research studies and publications authorized by the Commission, which may be used in connection authorized by the Commission investigation or proceeding for carrying out specific law enforcement responsibilities of the Commission. However, data in such studies and publications shall not be compiled in such a way that individual company data can be identified. Persons authorized to have access to and use of individual company data shall not disclose such data, nor in any way provide access to them, to unauthorized persons. Individual company data shall not be made available to any person within the Commission for use in connection with any Commission investigation or proceeding for carrying out specific law enforcement responsibilities of the Commission.

(5) (a) Except as described in ¶ (6) below, access to and use of individual company data within the Commission shall be restricted to sworn empolyees of the Bureau of Economics who are designated by the Director of the Bureau of Economics to work with individual company data (or to assist in doing such work) in connection with LB activities. Provided: Every employee who was part of the LB Program on March 21, 1986, shall be deemed to have been designated by the Director.

(b) Employees of the Bureau of Economics who are designated to have access to individual company data shall not, while their designation is in effect, participate in any Commission investigation or proceeding for carrying out specific law enforcement responsibilities of the Commission, unless a custodian (¶ 5(e), *infra*) certifies in writing that such participation does not pose a risk that individual company data will be used for law enforcement purposes, and the General Counsel or his or her delegate approves the certification. This paragraph shall not apply to clerical employees and computer specialists whose only role in law enforcement activities is to provide ancillary support services.

(c) Every employee who is designated to have access shall be formally notified in writing that he or she is subject to these rules, to section 10 of the FTC Act, and to 18 U.S.C. 641 and 1905. Every designated employee shall certify that he or she will abide by these rules and amendments to them, and that after the designation is terminated, he or she will not retain any documents or materials containing individual company data, or statistics derived from such data, that the Commission has not authorized to be disclosed publicly. When a designation is terminated, the employee shall certify that he or she does not possess any such nonpublic information or materials, and understands that individual company data may not be used for unauthoirized purposes or disclosed to unauthorized persons.

(d) The Director of the Bureau of Economic shall not have access to individual company data. He or she shall, however, have supervisory responsibility and authority with respect to LB activities. Such responsibility and authority shall include approving any studies or publications based on individual company data, making recommendations with respect to the preparation of such studies or publications, and exercising any other supervisory control not requiring access to individual company data.

[1] The LB confidentiality rules are procedural and therefore do not require the notice-and-comment procedures of 5 U.S.C. 553. *Aluminum Co. of America* v. *FTC, supra*, 1984–1 Trade Cas. at 68401. See also, *e.g., Shell Oil Co.* v. *Department of Energy*, 477 F. Supp. 413, 437 (D. Del. 1979), *aff'd*, 631 F.2d 231 (3d Cir.), *cert. denied*, 450 U.S. 1024 (1981).

(e) The Director shall appoint one or more custodians, who shall be responsible for devising and supervising procedures for the safekeeping of individual company data. He or she shall also appoint one or more disclosure avoidance officers, who shall be responsible for establishing procedures to comply with ¶ 5(f) below. (A single person may carry out duties as both a custodian and disclosure avoidance officer.)

(f) Before any document based on individual company data may be disseminated to persons who are not designated pursuant to ¶¶ (5) and (6), the document shall be subjected to procedures sufficient to assure that individual company data cannot be identified from the document, and a disclosure avoidance officer shall certify to the Director of the Bureau of Economics that he or she has reviewed and approved the procedures applied to the document, and that it does not identify individual company data.

(6) Sworn Commissioners and employees in the following organizational units of the Commission (or in equivalent successor units) are also designated to receive access to individual company data:

(a) The Automated Systems Division in the Office of the Executive Director may have access to individual company data for the purpose of electronic processing of individual company data. The Division may employ the services of an outside computer facility for the same purposes, subject to the restriction that no one other than designated sworn employees of the Federal Trade Commission may examine individual company data. Any such outside computer facility shall sign an agreement assuring that the facility and its employees abide by this restriction and other applicable restrictions in these rules and the FTC Act.

(b) The General Counsel and his or her staff may have access to individual company data as needed in order to advise the Commission or the Bureau of Economics concerning LB activities and to represent the Commission in pending or anticipated litigation concerning LB activities.

(c) The Commissioners and their assistants may have access to individual company data as needed to make decisions concerning LB activities.

(d) The Division of Personnel may have access to individual company data, but only to the extent necessary to deal with personnel actions concerning employees' work with LB data. The Division of Personnel will not retain any individual company data in its offices.

(e) For official recordkeeping purposes, the following persons in the Office of the Secretary may have access to documents containing, and to Commission meetings discussing, individual company data: the Secretary, Attorney-Advisor to the Secretary, Chief of the Records Division, and their assistants; and employees of the Minutes Branch. Their access will be limited to that required for official recordkeeping purposes related to LB activities, including attendance at and transcription of Commission meetings, preparation of Commission minutes, and filing of Commission records. Documents containing individual company data shall be kept, when not in use, in a locked drawer, cabinet, or safe. However, memoranda, minutes, transcripts, and other such records from which individual company data have first been deleted may be stored and used without being subject to restrictions applicable to individual company data.

(f) Before any Commission member or employee may examine individual company data pursuant to ¶ (6), he or she shall first be required to certify that during the assignment he or she will abide by these rules and amendments to them; and that after termination of the assignment requiring access, he or she will not retain any documents or materials that contain individual company data.

(7) Any employees designated pursuant to ¶¶ 5 and 6 shall be personally reponsible for ensuring that unauthorized persons do not obtain access to individual company data in their possession and that individual company data in their possession are not used for law enforcement purposes.

Applicability of These Rules and Procedures

(8) These rules shall also apply to Quarterly Financial Reports ("QFR") from individual companies.

(9) These rules shall not apply to:

(a) The identify of a reporting company.

(b) Information furnished by a reporting company in a document other than an LB or QFR Report Form and information that the Commission has obtained through means other than an Order to File Special Report under the LB or QFR Program. The confidentiality of such other information shall be determined in accordance with other laws, including sections 6(f) and 21 of the FTC Act, 15 U.S.C. 46(f), 57b–2 (1982).

(c) The authority of the Commission to require by subpoena or other compulsory process the production of any information or data from any source outside the Commission for use in connection with an investigation or proceeding for carrying out specific law enforcement responsibilities of the Commission.

By direction of the Commission, dated April 1, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86–8349 Filed 4–14–86; 8:45 am]

BILLING CODE 6750-01-M

Quarterly Financial Reports Program; Revocation of Confidentiality Rules

AGENCY: Federal Trade Commission.

ACTION: Revocation of confidentiality rules for quarterly financial reports.

SUMMARY: Because the Quarterly Financial Reports Program has been transferred to the Department of Commerce, the confidentiality rules for Quarterly Financial Reports (46 FR 62708 (1981)) are obsolete. The Commission is revoking those rules and providing that Quarterly Financial Reports that it has retained will be treated like data collected from individual companies in the Commission's Line of Business Reports Program. This change is effective upon publication.

ADDRESS: Comments may be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Comments will be entered on the public record in Room 130 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joanne L. Levine, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Tel.: (202) 523–1363.

Until it was transferred to the Commerce Department in 1983 (Pub. L. No. 97–454, 96 Stat. 2494), the Quarterly Financial Reports ("QFR") Program was operated as a separate statistical reporting program at the Commission. The QFR confidentiality rules (46 FR 62706, 62707 (1981)) provided that Line of Business ("LB") Program employees would be considered QFR employees for purposes of access to GFR data, and specified that their handling of QFR data would be governed by the QFR rules. Those rules paralleled the LB rules' restrictions on access, disclosure, and permissible uses. When the QFR Program was transferred, the LB Program retained QFR data in its possession under that provision.

So long as the LB Program existed and had confidentiality rules that were comparable to the QFR rules, it was immaterial which set of rules governed QFR data. However, the LB Program is being discontinued as a separate unit and its rules are being modified (see the separate notice published today). Because the QFR Program no longer exists here, the Commission is revoking the QFR confidentiality rules. QFR data in the Commission's possession will be covered by the LB confidentiality rules, which forbid disclosure of individual companies' data outside the Commission and use of such data for law enforcement purposes.

By direction of the Commission, dated April 1, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-8348 Filed 4-14-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness; Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet in 1986:

Name: *Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness*

Dates, Time, Places:

Date: *April 30, 1986*
9:00 a.m. until 4:00 p.m.
Place: Humphrey Auditorium, 200 Independence Avenue SW., Washington, DC 20201

Date: *May 14, 1986*
9:00 a.m. until 4:00 p.m.
Place: Dallas,Texas
Location to be announced

Date: *June 20, 1986*
9:00 a.m. until 4:00 p.m.
Place: Humphrey Auditorium, 200 Independence Avenue SW., Washington, DC 20201

Date: *July 30, 1986*
9:00 a.m. until 4:00 p.m.
Place: Chicago, Illinois
Location to be announced

Date: *July 31, 1986*
9:00 a.m. until 4:00 p.m.
Place: California
Location to be announced.

Purpose: The purpose of the Private/Public Sector Advisory Committee on Catastrophic Illness will be to: (1) Solicit input from all interested parties regarding how government and the private sector can work together to address the problems of affordable insurance for catastrophic illness: and (2) to reflect periodically the views of the interested parties as well as the constituencies on the committee regarding the report on catastrophic health care which the Secretary of Health and Human Services must submit to the President by the end of the year.

Agenda: These meetings will be the public forums of the Advisory Committee. They will include welcome and opening remarks: A review of purpose, scope and membership of the catastrophic illness study; presentation of witness testimony and discussion.

Anyone wishing to testify or submit a statement for the record should write or call Charlene Quinn, Executive Director, Advisory Committee on Catastrophic Illness, Immediate Office of the Secretary, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245-2641.

Those making verbal presentations should also submit written statements for the record.

Anyone wishing to obtain a roster of members' minutes of meetings, or the other relevant information should write to or call Ms. Charlene Quinn.

Thomas R. Burke,

Chairman, Executive Advisory Committee.

[FR Doc. 86-8255 Filed 4-14-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85M-0419]

Premarket Approval of DEY-VIAL® Sterile Saline Solution

Correction

In FR Doc. 86-7082 beginning on page 11110 in the issue of Tuesday, April 1, 1986, make the following corrections:

1. On page 11110, in the third column, in the **SUMMARY,** in the thirteenth line, "(CDHR)" should read "(CDRH)".

2. On page 11111, in the second column, in the second complete paragraph, in the fourth line, "360(h)" should read "360j(h)".

3. Also on page 11111, the name in the signature should read "John C. Villforth".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Temporary Closure of Certain Public Lands in the Las Vegas District to Off Road Vehicle Use

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Temporary closure of certain Public Lands in the Las Vegas District, Clark County, Nevada, on and adjacent to the Mint 400 ORV race course, on May 10 and 11, 1986. Access will be limited to race officials, entrants, law enforcement, BLM emergency personnal licensees, permittees and right-of-way grantees and other authorized personnel as designated during the period of the closure.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 00:01 hours May 10, 1986 through 06:00 hours May 11, 1986 to protect persons, property, and public lands and resources on and adjacent to the 1986 Mint 400 ORV race course. This temporary closure is made pursuant to 43 CFR Part 8364.

The public lands to be closed are those lands adjacent to and road trails, and washes identified as the 1986 Mint 400 ORV race course and certain lands adjacent to the course within the McCullough Pass area, further described as:

T.25S.,R61E.,
All of sections 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31 and 32. Also closed are lands in the Hidden Valley area: T.24S., R60E., all of sections 29, 30 and 36; T.24S., R.61E., all of sections 4, 5, 8, 9, 16, 20, 21, 29, 30, and 31.

A map showing specific areas closed to public access is available from the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada, 89126 (702) 388-6403 and the Stateline Resource Area Office, P.O. Box 7384, Las Vegas, Nevada (702) 388-6627. Any person who fails to comply with this closure order issued under 43 CFR 8364 may be subject to the penalties provided in 43 CFR 8360.0-7.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 86-8299 Filed 4-14-86; 8:45 am]

BILLING CODE 4310-FB-M

Environmental Statements; Availability, etc., Central Yukon Planning Area, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice that the Final Environmental Impact Statement and Proposed Resource Management Plan for the Central Yukon Planning Area Alaska, is available for review and comment.

SUMMARY: The Final Environmental Impact statement (FEIS) presents a range of resource management alternatives and the consequences of implementing each alternative. The Proposed Resource Management Plan (PRMP) presents land use allocation and multiple use management prescriptions for the subject lands.

EFFECTIVE DATE: April 15, 1986; comments or protests must be submitted on or before May 15, 1986.

ADDRESSES: The FEIS/PRMP and associated background material are available at: Fairbanks District Office, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703.

Comments may be submitted to the above Fairbanks District Office address.

Any person or group who participated in the planning process and has an interst which is or may be adversely affected by the approval of the FEIS/PRMP may protest this action to: Director, Bureau of Land Management, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Bolstad, Northwest Resource Area, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99701.

SUPPLEMENTARY INFORMATION: The PRMP will guide future management actions on public lands within the Central Yukon Planning Area, West of Fairbanks, Alaska. BLM manages approximately 9.5 million acres within this planning unit.

The PRMP is a comprehensive land use plan. The planning process included identifying significant issues, establishing planning criteria, assessing resource capability, formulating reasonable alternatives to address the issue and publishing a draft EIS/RMP in July 1985. Alternatives range from favoring resource protection to favoring resource use. The consequences of implementing each alternative are presented in the FEIS. Resource Management Plans are authorized by the Federal Land Management Policy Act of 1976. Standards, guidelines, and procedures for RMP preparation are contained in 43 CFR Part 1600.

An interdisciplinary team was used to develop the PRMP. Disciplines included were wildlife biology, subsistence management, soil conservation, socio-economics, fire management, geology, recreation management, hydrology, fishery biology, realty, and archeology. Major issues addressed in the PRMP are subsistence resources, mineral location, mineral leasing, mining, access, wildlife habitat, and realty actions.

Fred E. Wolf,

Acting State Director.

[FR Doc. 86-8350 Filed 4-14-86; 8:45 am]

BILLING CODE 4310-JA-M

Proposal To Designate Areas of Critical Environmental Concern within the Central Yukon Planning Area; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposal to Designate Areas of Critical Environmental Concern within the Central Yukon Planning Area.

SUMMARY: Areas of Critical Environmental Concern (ACECs) developed during preparation of the Draft Environmental Impact Statement for the Central Yukon Area were published in **Federal Register** Vol. 50, No. 182, pg. 38037. Based on public comments and management review, the BLM Fairbanks, District Office has modified and added to the proposed number of areas to be designated as ACECs. The Final Environmental Impact Statement and Proposed Resource Management Plan (PRMP) has retained the five subunits developed during draft preparation. The proposed ACECs for the Central Yukon Proposed Resource Management Plan (PRMP) are grouped by the following subunits:

Subunit 1: Nulato Hills

In order to maintain high quality anadromous fish-spawning habitat, in the following three highly important rivers, the identified crucial spawning habitat including 300 feet along each side of the river and the river bed of non-navigable waterways will be closed to mineral entry and location. Those portions of the watershed above the downstream limit of these withdrawals will be designated as an ACEC.

1. Unalakleet River—including the North Fork Watershed.
2. Kateel River Watershed
3. Gisasa River Watershed

The upper portions of four additional watersheds located within the subunit will be designated as ACECs in order to protect identified crucial spawning habitat located downstream from lands covered by this Proposed Resource Management Plan.

1. Inglutalik River Watershed
2. Ungalik River Watershed,
3. Shaktoolik River Watershed,
4. North River Watershed.

These ACECs are open to mineral leasing and mineral entry and location. The primary focus of these ACECs is protection of crucial fisheries habitat. All surface disturbing uses within these areas will be limited so an to protect this habitat from siltation, or other forms of physical or chemical pollution.

Subunit 2: Dulbi-Kaiyuk Mountains

Approximately 17,000 acres of crucial caribou habitat within this subunit will be designated as an ACEC due to its importance as a caribou calving area.

Additional areas totaling approximately 91,520 acres will be designated as ACECs in order to protect crucial riparian habitat associated with known peregrine falcon nesting areas. These AECs are open to mineral leasing and mineral entry and location. The primary focus of these ACECs is protection of crucial habitat for the identified specific wildlife species. All surface uses will be limited, in order to minimize habitat loss and species disturbance.

Subunit 3: Hughes

That portion of the combined watersheds of Caribou, Clear, and Bear Creeks (Tributaries of the Hogatza River) located upstream from the lower stream withdrawal limit is proposed as an ACEC, in order to protect crucial fisheries habitat. The identified spawning habitat of these three creeks including a zone 300 feet wide along each side of the creek will be closed to further mineral entry and location.

That portion of the Indian River watershed location upstream from the identified lower stream withdrawal limit is proposed as an ACEC, in order to protect crucial fisheries habitat. The identified spawning habitat of this river including a zone 300 feet wide along each side of the river will be closed to further mineral entry and location.

These ACECs are open to mineral leasing and mineral location and entry. The primary focus and limitations for these ACECs are the same as those identified for the Nulato Hills subunit.

Subunit 4: Tozitna

That portion of the Tozitna watershed located upstream from the identified lower stream withdrawal limit is proposed as an ACEC in order to protect identified crucial fisheries habitat. The

identified spawning habitat of this river, including a zone 300 feet wide along each side of the river and the bed of any non naviagable portion of this river, will be closed to mineral entry and location.

This ACEC will be open to mineral leasing and mineral location and entry. The primary focus and limitations for this ACEC are the same as those identified for the Nulato Hills subunit.

The Ray Mountains and Tanana Ridge ACECs in this subunit are proposed to protect crucial caribou calving and movement areas. These ACECs will be open to mineral leasing and mineral location and entry. The primary focus and limitations for these ACECs are the same as those identified for caribou within the Dulbi-Kaiyuk Mountains subunit. Note: The majority of the proposed Tanana Ridge ACEC is within the proposed Tozitna watershed ACEC.

Subunit 5: Kuskokwin

That portion of the Sulukna River watershed (a tributary of the Nowitna River) located within the subunit will be designated as an ACEC in order to protect identified crucial spawning habitat for the Nowitna Sheefish population. This ACEC will be open to mineral leasing and mineral location and entry. The primary focus and limitations for this ACEC are the same as those identified for the Nulato Hills subunit.

EFFECTIVE DATE:

Comments on these proposed ACECs will be accepted at the following address for 60 days following publication of the notice.

ADDRESSES: Maps showing the location of these proposed ACECs are available in the Final EIS/Proposed RMP for the Central Yukon at the following address: Fairbanks District Office Bureau of Land Management 1541 Gaffney Road, Fairbanks, Alaska 99703, Telephone: (907) 356–5378.

FOR FURTHER INFORMATION CONTACT: Roger Bolstad Northwest Resource Area, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99701.

Fred E. Wolf

Acting State Director.

[FR Doc. 86–8351 Filed 4–14–86; 8:45 am]

BILLING CODE 4310-(JA)-M

[NM 56613–OK]

Public Land Sale in Latimer County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Land Sale.

SUMMARY: The Notice of Realty Action—Competitive Sale—for the following described land in Latimer (LT) County, Oklahoma as published in the **Federal Register**, Volume 51, No. 30, on February 13, 1986, at page 5417 is hereby cancelled in its entirety:

Tract	Legal description	Acres
LT–2 and LT–3.	T. 6 N., R. 21 E., I.M., Sec. 31: NE¼SW¼ and Lot 3.	77.82

The reason for cancellation of the sale is that a protest was lodged by an adjacent landowner who is contesting the change in the method of sale from modified competitive to competitive. The protestant is of the opinion that bidding should be restricted to adjoining land owners, because the land does not have legal access. The land will be reoffered for sale upon the resolution of the subject protest.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, 405–231–5491.

Jim Sims,

District Manager.

[FR Doc. 86–8298 Filed 4–14–86; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Intention To Negotiate Concession Contract; Best's Studio, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Best's Studio, Inc. authorizing it to continue to provide General Art and Photographic facilities and services for the public at Yosemite National Park for a period of ten (10) years from October 1, 1986, through September 30, 1996.

This proposed contract requires a construction and improvement program which was previously described in the Environmental Impact Statement (July 1979) for the General Management Plan for Yosemite National Park.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on September 30, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposeed contract.

Dated: March 24, 1986.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 86–8371 Filed 4–14–86; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract; Chattahoochee Outdoor Center, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Chattahoochee Outdoor Center, Inc., authorizing it to continue to provide transportation, food and beverage service, sale and rental of rafts, canoes, kayaks, bicycles and associated merchandise, recreational, educational and cultural programs within Chattahoochee River National Recreation Area for a period of ten years from January 1, 1987, through December 31, 1996.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1986, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth

(60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

Dated: February 21, 1986.

Bob Baker,

Regional Director, Southeast Region.

[FR Doc. 86-8372 Filed 4-14-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 5, 1986. Pursuant to § 60.13 of 38 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 30, 1986.

Linda McClelland,

Acting Chief of Registeration, National Register.

ARIZONA

Mohave County

Archeological Site No. 0-1 (Kingman MRA)
Kingman, *AT&SF Locomotive No. 3759 (Kingman MRA)*, City Park
Kingman, *AT&T Building (Kingman MRA)*, Pine and Third Sts.
Kingman, *Anderson, J. Max, House (Kingman MRA)*, 523 Pine
Kingman, *Anderson, R.L., House (Kingman MRA)*, 703 E. Beale
Kingman, *Armour and Jocobson Building(Kingman MRA)*, 426—430 Beale
Kingman, *Blakeley, William G., House (Kingman MRA)*, 503 Spring St.
Kingman, *Brown, J. Duff, House (Kingman MRA)*, 524 E. Oak
Kingman, *Building at 218 Spring (Kingman MRA)*, 218 Spring St.
Kingman, *Carr, Raymond, House (Kingman MRA)*, 620 E. Oak
Kingman, *Dennis, Foster S. (Kingman MRA)*, Second and Park
Kingman, *Desert Power & Water Company Electric Power Plant (Kingman MRA)*, Bounded by AT&SF RR tracks, Spillway Ln., Park and First Sts.
Kingman, *Elks' Lodge No. 468 (Kingman MRA)*, Fourth and Oak
Kingman, *Elliott, S.T., House (Kingman MRA)*, 537 Spring
Kingman, *Fuel and Water Tanks (Kingman MRA)*, Andy Devine Ave. and Fith St.
Kingman, *Gates, J.M., House (Kingman MRA)*, 714 E. Oak St.
Kingman, *Gruninger, W.A., Building (Kingman MRA)*, 424 Beale
Kingman, *Gymnasium (Kingman MRA)*, First St.
Kingman, *House at 105 Spring St. (Kingman MRA)*, 105 Spring St.
Kingman, *House at 519 Golconda (Kingman MRA)*, 519 Golconda
Kingman, *House at 527 Pine (Kingman MRA)*, 527 Pine
Kingman, *House at 536 Park (Kingman MRA)*, 536 Park
Kingman, *House at 809 Grandview (Kingman MRA)*, 89 Grandview
Kingman, *Householder, E., Ross House (Kingman MRA)*, 431 Spring
Kingman, *IOOF Building (Kingman MRA)*, 208 N. Fifth St.
Kingman, *Kayser, George R., House (Kingman MRA)*, 604 E. Oak
Kingman, *Kingman Commercial Historic District (Kingman MRA)*, 300 and 400 blks. of Andy Devine Ave.
Kingman, *Kingman Grammar School (Kingman MRA)*, Pine St.
Kingman, *Lefever House (Kingman MRA)*, 525 E. Oak
Kingman, *Little Red School (Kingman MRA)*, 219 N. Fourth
Kingman, *Livingston, Dr. David S., House (Kingman MRA)*, 222 Topeka
Kingman, *Lovin and Withers Cottages (Kingman MRA)*, Eighth and Topeka
Kingman, *Lovin and Withers Investment House (Kingman MRA)*, 722 E. Beale
Kingman, *Mahoney, W.P., House (Kingman MRA)*, 155 E. Walnut
Kingman, *Masonic Temple (Kingman MRA)*, 212 N. Fourth
Kingman, *Mohave County Hospital (Kingman MRA)*, W. Beale between Grand View and First St.
Kingman, *Sargent, Mrs. M.P., House (Kingman MRA)*, 426 Topeka
Kingman, *St. John's Methodist Episcopal Church (Kingman MRA)*, Spring and Fifth Sts.
Kingman, *St. Mary's Catholic Church (Kingman MRA)*, Third and Spring Sts.
Kingman, *Sullivan, G.H., Lodging House (Kingman MRA)*, 218 E. Oak
Kingman, *Tyrell House (Kingman MRA)*, 133 Beale St.
Kingman, *U.S. Post Office (Kingman MRA)*, 310 N. Fourth
Kingman, *Van Marter Building (Kingman MRA)*, 423-427 Beale St.
Kingman, *Walker, O.E., House (Kingman MRA)*, 906 Madison
Kingman, *White, Dr. Toler R., House (Kingman MRA)*, 509 Spring
Kingman, *Williams, E.B., House (Kingman MRA)*, 513 E. Oak
Kingman, *Wright, J.B., House (Kingman MRA)*, 317 Spring St.
Kingman, *Ziemer, Charles (Kingman MRA)*, 507 E. Oak

ARKANSAS

Garland County

Hot Springs, *Martin, William H., House*, 815 Quapaw Ave.

DELAWARE

New Castle County

Glascow Vicinity, *Stewart, James, House*, CR 401
Townsend, *Townsend Historic District*, Roughly bounded by Taylor, Main, Commerce, Lattiamus, South, Ginn, and Walnut Sts., Railroad Ave., and Cannery Ln.

ILLINOIS

Cook County

Barrington, *Barrington Historic District*, Roughly bounded by Dundee, W. Coolidge, E. Hillside, and S. Grove Aves., and S. Hough, E. Lake, Main, N. Garfield, and E. Applebee Sts. (also in Lake County)
Chicago, *Blackstone Hotel*, 80 E. Balbo Dr.
Chicago, *Chicago Beach Hotel (Hyde Park Apartment Hotels TR)*, 5100-5110 S. Cornell Ave.
Chicago, *East Park Towers (Hyde Park Apartment Hotels TR)*, 5236-5252 S. Hyde Park Blvd.
Chicago, *Flamingo-On-The-Lake Apartments (Hyde Park Apartment Hotels TR)*, 5500-5520 S. Shore Dr.
Chicago, *Hotel Del Prado (Hyde Park Apartment Hotels TR)*, 5307 S. Hyde Park Blvd.
Chicago, *Hyde Park-Kenwood Historic District (Boundary Increase)*, 825-833 E. Fifty-second St.
Chicago, *Jeffery-Cyril Historic District*, 7146-7148, 7128-7138 Cyril Ave., 7144-7148, 7147, & 7130 S. Jeffery Blvd., and 1966-1974 E. Seventy-first Pl.
Chicago, *Lakeview Historic District (Boundary Increase)*, 701, 705, 711, 715-717, 721, 733-735, 737, and 739 Belmont, 3162 & 3164 Orchard and 3171 Halsted
Chicago, *Mayfair Apartments (Hyde Park Apartment Hotels TR)*, 1650-1666 E. Fifty-sixth St.
Chicago, *Poinsetta Apartments (Hyde Park Apartment Hotels TR)*, 5528 S. Hyde Park Blvd.
Chicago, *Shoreland Hotel (Hyde Park Apartment Hotels TR)*, 5450-5484 S. Shore Dr.
Lemont, *Lemont Methodist Episcopal Church*, 306 Lemont St.

Effingham County

Altamont, *Wright, Dr. Charles M., House*, 3 W. Jackson St.

Jersey County

Jerseyville, *Jersey County Courthouse*, Public Square

Kane County

Aurora, *Aurora Watch Factory*, 603-621 LaSalle St.

Mercer County

Keithsburg, *Keithsburg Historic District*, Roughly bounded by Third, Jackson, Fifth, and Washington Sts.

Sangamon County

Springfield vicinity, *Tiger-Anderson House*, CR 3N

Vermilion County

Danville, *Stone Arch Bridge*, 760–800 E. Main St.

Will County

Peotone, *Conrad, John, House*, 206 N. First St.

MASSACHUSETTS

Middlesex County

Cambridge, *Ash Street Historic District (Boundary Increase) (Cambridge MRA)*, 3—10 Acacia St., 11—42 Hawthorn St., and 151—165 Mt. Auburn St.
Cambridge, *Bennink—Douglas Cottages (Cambridge MRA)*, 35—51 Walker St.
Cambridge, *Berkeley Street Historic District (Boundary Increase) (Cambridge MRA)*, *1—8 Berkeley Pl.*
Cambridge, *Bertram Hall at Radcliffe College (Cambridge MRA)*, *53 Shepard St.*
Cambridge, *Brabrook, E.H., House (Cambridge MRA)*, 42—44 Avon St.
Cambridge, *Cambridge Common Historic District (Boundary Increase and Decrease) (Cambridge MRA)*, Roughly NW of Waterhouse St. on Concord Ave. between Garden and Follen Sts.
Cambridge, *Dana—Palmer House (Cambridge MRA)* 12—16 Quincy St.
Cambridge, *Dunvegan, The (Cambridge MRA)*, 1654 Massachusetts Ave.
Cambridge, *Eliot Hall at Radcliffe College (Cambridge MRA)*, 51 Shepard St.
Cambridge, *Fogg Art Museum (Cambridge MRA)*, 26—32 Quincy St.
Cambridge, *Follen Street Historic District (Cambridge MRA)*, 1—44 and 5—29 Follen St.
Cambridge, *Gray Gardens East and West Historic District (Cambridge MRA)*, 1—37 Gray Gardens West, 3—24 Gardens West, 91 Garden St. and 60 Raymond St.
Cambridge, *Hapgood, Richard, House (Cambridge MRA)*, 382—392 Harvard St.
Cambridge, *Harvard Union (Cambridge MRA)*, Quincy and Harvard Sts.
Cambridge, *Jarvis, The (Cambridge MRA)*, 27 Everett St.
Cambridge, *Memorial Drive Apartments Historic District (Cambridge MRA)*, 983—984, 985—986, 987—989, and 992—993 Memorial Dr.
Cambridge, *Montrose, The (Cambridge MRA)*, 1648 Massachusetts Ave.
Cambridge, *Peabody Court Apartments (Cambridge MRA)*, 41—43 Linnaean St.
Cambridge, *Shady Hill Historic District (Cambridge MRA)*, Roughly bounded by Museum, Beacon, Holden, and Kirkland Sts. and Francis Ave.
Cambridge, *Stanstead, The (Cambridge MRA)*, 19 Ware St.
Cambridge, *Stickney—Shepard House (Cambridge MRA)*, 11—13 Remington St.
Cambridge, *Warren, H. Langford, House (Cambridge MRA)*, 6 Garden Terrace
Cambridge, *Withey, S.B., House (Cambridge MRA)*, 10 Appian Way
Cambridge, *Wood, J.A., House (Cambridge MRA)*, 3 Sacramento St.

SOUTH DAKOTA

Butte County

Newell, *Newell High School (Rural Butte and Meade Counties MRA)*, Dartmouth St.

WASHINGTON

Asotin County

Cloverland, *Cloverland Garage*, CR 01050

Clallam County

Port Angeles, *Naval Lodge Elks Building*, 131 E. First St.

Kittitas County

Ellensburg, *Ramsay House*, 215 E. Ninth

Pierce County

Tacoma, *Engine House No. 11 (Historic Fire Stations of Tacoma, Washington TR)*, 3802 McKinley Ave.
Tacoma, *Engine House No. 13 (Historic Fire Stations of Tacoma, Washington TR)*, 3825 N. Twenty-fifth St.
Tacoma, *Engine House No. 8 (Historic Fire Stations of Tacoma, Washington TR)*, 4301 S. L St.
Tacoma, *Fire Alarm Station (Historic Fire Stations of Tacoma, Washington TR)*, 415 S. Tacoma Ave.
Tacoma, *Fire Station No. 1 (Historic Fire Stations of Tacoma, Washington TR)*, 425 S. Tacoma Ave.
Tacoma, *Fire Station No. 10 (Historic Fire Stations of Tacoma, Washington TR)*, 7247 S. Park Ave.
Tacoma, *Fire Station No. 14 (Historic Fire Stations of Tacoma, Washington TR)*, 4701 N. Forty-First St.
Tacoma, *Fire Station No. 15 (Historic Fire Stations of Tacoma, Washington TR)*, 3510 E. Eleventh St.
Tacoma, *Fire Station No. 2 (Historic Fire Stations of Tacoma, Washington TR)*, 2701 S. Tacoma Ave.
Tacoma, *Fire Station No. 5 (Historic Fire Stations of Tacoma, Washington TR)*, 1453 S. Twelfth St.
Tacoma, *Fireboat Station (Historic Fire Stations of Tacoma, Washington TR)*, 302 E. Eleventh St.
Tacoma, *South J Street Historic District*, W Side of S. J St. between S. Seventh and S. Eighth Sts.

San Juan County

Doe Bay, Orcas Island, *Doe Bay General Store and Post Office*, End of County Road

Snohomish County

Everett, *Hartley, Roland House*, 2320 Rucker Ave.
Everett, *Weyerhauser Office Building*, 1710 W. Marine View Dr.

Spokane County

Spokane, *Holy Names Academy Building*, 1216 N. Superior St.

Whitman County

Palouse, *Palouse Main Street Historic District*, Main St. between K and Marys Sts.
Pullman Vicinity, *Leonard, T.A., Barn*, S side of Old Moscow Hwy.

Yakim County

Yakima *Old North Yakima Historic District*, Roughly bounded by E. Yakima Ave., S. First St., E. A St., and the Northern Pacific RR tracks

WEST VIRGINIA

Barbour County

Philippi, *Philippi B & O Railroad Station*, 146 N. Main St.

Brooke County

Wellsburg, *Beallmore (Pleasant Avenue MRA)*, 1500 Pleasant Ave.
Wellsburg, *Brooke Cemetery (Pleasant Avenue MRA)*, 2200 Pleasant Ave.
Wellsburg, *Duval, General I.H., Mansion (Pleasant Avenue MRA)*, 1222 Pleasant Ave.
Wellsburg, *Elmhurst (Pleasant Avenue MRA)*, 1606 Pleasant Ave.
Wellsburg, *Hall, Lewis, Mansion (Pleasant Avenue MRA)*, 1300 Pleasant Ave.
Wellsburg, *Kirker House (Pleasant Avenue MRA)*, 1520 Grand Ave.
Wellsburg, *Paull, Harry and Louisianna Beall, Mansion (Pleasant Avenue MRA)*, 1312 Pleasant Ave.
Wellsburg, *Tarr, Lucy, Mansion (Pleasant Avenue MRA)*, 1456 Pleasant Ave.
Wellsburg, *Fleming, David and Lucy Tarr, Mansion (Pleasant Avenue)*

The 15-day commenting period for the following property which appeared in the **Federal Register** on April 8, 1985 is to be waived in order to assist the buildings preservation.

Massachusetts, *Bristol County*, Fall River, Truesdale Hospital *(Fall River MRA)*, 1820 Highland Ave.

[FR Doc. 86–8373 Filed 4–14–86; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-10924]

Sea-Land Freight Service, Inc., and Sea-Land Service, Inc.; Alaskan Trade Substituted Service—Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for a declaratory order.

SUMMARY: Sea-Land Freight Service, Inc., and Sea-Land Service, Inc., seek a declaratory order determining whether a motor contract carrier authorized to provide service between points in Washington and Alaska may, under the Interstate Commerce Act or any Commission rules or regulations, use as substituted service either (a) the joint rate/through route service of a motor common carrier and an ocean common carrier pursuant to tariffs on file with the ICC, or (b) an ocean common carrier for the port-to-port segment of such operation, paying the ocean common carrier its tariff rate on file with the Federal Maritime Commission.

DATES: Comments are due on May 15, 1986.

ADDRESSES: Send an original and eight copies to:

MC–C–10924, Room 2203, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

Send one copy of comments to petitioner's representatives:

John Guandolo, Harry J. Jordan, Suite 200, 1090 Vermont Avenue NW., Washington, DC 20005, and

B. Carlton Bailey, Jr., Sea-Land Industries, Inc., 10 Parsonage Road, P.O. Box 800, Iselin, NJ 08830

FOR FURTHER INFORMATION CONTACT: Eric S. Davis (202) 275–7941 or Andrew L. Lyon (202) 275–7805.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Dated: March 26, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–8320 Filed 4–14–86; 8:45 am]

BILLING CODE 7035–01–M

[Section 5a Application No. 92; Amdt No. 3]

Maine Motor Rate Bureau Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of correction to decision.

SUMMARY: This notice corrects our earlier decision in this proceeding, 51 FR 3451 (January 27, 1986), to the extent that it erroneously excluded all weekends and holidays from computation of the 15-day notice requirement for collective discussion of or voting on general rate increases or decreases. The proper interpretation excludes only weekends or holidays falling on the 15th day.

DATES: This decision is effective on the date served, April 14, 1986.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein (202) 275–7912 or Howell I. Sporn (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision, available for inspection and copying at the Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, DC 20423; or may be purchased from TS InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, or call toll-free (800) 424–5403; or (202) 289–4357 in the Washington, DC, metropolitan area.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: April 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–8321 Filed 4–14–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85–5]

Diodo Leduc, d/b/a/ Farmacia Leduc; Revocation of Registration

On December 28, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Diodo Leduc, trading as Farmacia Leduc (Respondent), of 34 Munoz Riveria, P.O. Box 124, Toa Alta, Puerto Rico 00751, proposing to revoke DEA Certificate of Registration AF4197439, and deny any pending applications for renewal of registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for the proposed action was that the Respondent pharmacy has been without lawful authority to dispense controlled substances under the laws of the Commonwealth of Puerto Rico since June 30, 1979; in applications for DEA registration executed on August 28, 1979, September 8, 1980, September 15, 1981, September 13, 1982 and October 3, 1983, the Respondent knowingly submitted false material information; and Diodo Leduc, owner and operator of the Respondent pharmacy was convicted on June 26, 1984, in the United States District Court for the District of Puerto Rico, of violations of 21 U.S.C. 841(a)(1) and 843(a)(4), felony offenses related to controlled substances. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

On February 19, 1985, the Administration Law Judge, Francis L. Young ordered that the Government and Respondent file their respective prehearing statements on or before March 22, 1985. Counsel for the Government requested a five-day extension for filing its prehearing statement. Judge Young granted the request as to both parties. The Government's prehearing statement was subsequently filed in a timely manner. In its prehearing statement, Government counsel claimed that since Respondent pharmacy was not authorized by the Commonwealth of Puerto Rico to handle controlled substances the matter could be disposed of without the necessity of an evidentiary hearing. Respondent never filed its prehearing statement. As a result of Respondent's failure to file a prehearing statement, Judge Young concluded that Respondent had no evidence to present which would require an evidentiary hearing, and thus determined that Respondent had waived its opportunity for a hearing. Consequently, the Administrative Law Judge ordered that all proceedings in this matter be terminated as of April 5, 1985.

Since Respondent has waived its opportunity for a hearing by failing to file a prehearing statement, the Administrator has reviewed the investigative file and administrative record in their entirety, and pursuant to 21 CFR 1301.54(d), 1301.54(e) and 1316.67, hereby issues his final order in this matter, based upon the information contained therein.

The investigative file indicates that after June 30, 1979, Respondent pharmacy was no longer authorized by the laws of the Commonwealth of Puerto Rico to handle controlled substances. The Administrator has consistenly held that when a DEA registrant is not authorized to handle controlled substances in the state in which it operates, DEA is without lawful authority to maintain a registration. See *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985), *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983), and *Thomas E. Woodson, D.O.*, Docket No. 81–4, 47 FR 1353 (1982).

In addition, a review of Respondent's applications for renewal of its DEA Certificate of Registration, executed August 28, 1979, September 8, 1980, September 15, 1981, September 13, 1982 and October 3, 1983, shows that Respondent knowingly submitted false material information in that Respondent indicated on such applications that it was authorized under the laws of Puerto Rico to dispense controlled substances, when in fact, such privilege ceased as of June 30, 1979. Finally, the record clearly reflects that Diodo Leduc, the owner and operator of Respondent pharmacy, was convicted in the United States District Court for the District of Puerto Rico, on

June 26, 1984 of possession with intent to distribute Librium, Tranxene and Dalmane, all Schedule IV controlled substances, in violation of 18 U.S.C. 2 and 21 U.S.C. 841(a)(1); and unlawfully, knowingly and intentionally furnishing false and fraudulant information when submitting a renewal application for registration, as described above.

Having concluded that there is a lawful basis for revoking Respondent's registration and denying any pending renewal applications; and having further concluded that under the facts and circumstances presented in this case, Respondent's registration is inconsistent with the public interest, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AF4197439, issued to Respondent Diodo Leduc, trading as Farmacia Leduc, be revoked; and further orders that any pending applications for renewal filed by Respondent be summarily denied.

This order is effective April 15, 1986.

Dated: April 9, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-8344 Filed 4-14-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of Lower Living Standard Income Level.

SUMMARY: The Job Training Partnership Act (JTPA), provides that the term "economically disadvantaged" may be defined as 70 percent of the "lower living standard income level" (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL.

DATE: This notice is effective on April 30, 1986.

ADDRESS: Send written comments to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo. Telephone: 202-376-6093.

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those *economically disadvantaged* individuals . . . , who are in special need of such training to obtain productive employment". [Emphasis added.] JTPA Section 2; See 20 CFR 626.1(a)(2). JTPA section 4(8) defines, for the purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See CFR 626.4. Similar definitions of "economically disadvantaged," which also include references to the LLSIL, are provided at JPTA sections 201(b)(3) and 202(a)(3) for JTPA Title II allotment and within-State allocation purposes. See 20 CFR 629.39 and 630.1.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes.

JTPA section 4(16) defines LLSIL as follows:

> The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent "lower living family budget" issued by the Secretary.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under the JPTA, the Employment and Training Administration (ETA), published the 1985 updates to the LLSIL in the **Federal Register** of June 11, 1985. (50 FR 24506.) ETA has again updated the LLSIL to reflect cost of living increases for 1986, by applying the percentage change in the December 1985 consumer price index (CPI), compared with the December 1984 CPI, to each of the June 11, 1985, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to section 4(8) of JTPA, those figures are listed as well.

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION [1]

Region	Updated 1986 LLSIL	70 percent of LLSIL
Northeast:		
Metropolitan	$18,500	$12,950
Nonmetropolitan	18,110	12,680
North Central:		
Metropolitan	17,920	12,540
Nonmetropolitan	17,480	12,240
South:		
Metropolitan	17,110	11,980
Nonmetropolitan	16,050	11,240
West:		
Metropolitan	18,640	13,050
Nonmetropolitan	19,010	13,310

[1] For ease of calculation, these figures have been rounded to the nearest ten.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

North Central

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Kentucky
Louisiana
Maryland
Mississippi
North Carolina
Northern Marianas
Oklahoma
Puerto Rico
South Carolina
Tennessee
Texas
Trust Territories
Virginia
West Virginia

West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii and Guam as indicated in the Table 2 below.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII, AND GUAM [1]

	Updated 1986 LLSIL	70 Percent of LLSIL
Alaska:		
Metropolitan	$26,250	$18,380
Nonmetropolitan	24,790	17,350
Hawaii and Guam:		
Metrpolitan	23,690	16,580
Nonmetropolitan	21,940	15,360

[1] Rounded to the nearest ten.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available, although the timeframes used for the updated data are not exactly the same. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the nearest ten, are set forth in Table 3 below.

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL—25 MSAs

MSA	Updated LLSIL	70 Percent of LLSIL
Anchorage, AK	$27,210	$19,050
Atlanta, GA	17,440	12,210
Baltimore, MD	17,210	12,050
Boston, MA	18,770	13,140
Buffalo, NY	17,360	12,150
Chicago, IL/Northwestern, IN	18,630	13,040
Cincinatti, OH/KY/IN	18,090	12,660
Cleveland OH	18,410	12,890
Dallas, Fort Worth, TX	16,600	11,620
Denver-Boulder, CO	18,600	13,020
Detroit, MI	16,770	11,740
Honolulu, HI	22,960	16,070
Houston, TX	16,140	11,300
Kansas City, MO/KS	16,490	11,540
Los Angeles/Long Beach/ Anaheim, CA	18,930	13,250
Milwaukee, WI	18,460	12,920
Minneapolis-St. Paul, MN	16,840	11,790
New York, NY/Northeastern, NJ	18,600	13,020
Philadelphia, PA/NJ	17,840	12,490
Pittsburgh, PA	19,130	13,390
San Diego, CA	19,580	13,710
San Francisco-Oakland, CA	18,550	12,990
Seattle-Everett, WA	20,430	14,300
St. Louis, MO/IL	17,140	12,000
Washington, D.C./MD/VA	19,590	13,710

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1986 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figures, the figure is indicated in parentheses.

(Section 4(8) of JTPA defines "economically disadvantaged" as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. Poverty level guidelines were transmitted to the States on April 1, 1986).

TABLE 4.—70 PERCENT OF UPDATED 1986 LLSIL, BY FAMILY SIZE

One	Two	Three	Four [1]	Five	Six
$6,860	$11,240	$15,430	$19,050	$22,480	$26,290
6,620	10,840	14,890	18,380	21,690	25,360
6,250	10,240	14,050	17,350	20,470	23,940
5,970	9,780	13,430	16,580	19,560	22,880
5,790	9,480	13,020	16,070	18,960	22,180
5,530	9,060	12,440	15,360	18,120	21,200
(5,150)	8,440	11,580	14,300	16,870	19,730
(4,940)	8,090	11,110	13,710	16,180	18,920
(4,820)	7,900	10,850	13,390	15,800	18,480
(4,790)	7,850	10,780	13,310	15,710	18,370
(4,770)	7,820	10,730	13,250	15,640	18,290
(4,730)	7,750	10,640	13,140	15,510	18,130
(4,700)	7,700	10,570	13,050	15,400	18,010
(4,690)	7,690	10,560	13,040	15,390	18,000
(4,690)	7,680	10,550	13,020	15,360	17,970
(4,680)	7,660	10,520	12,990	15,330	17,930
(4,660)	7,640	10,490	12,950	15,280	17,870
(4,650)	7,620	10,470	12,920	15,250	17,830
(4,640)	7,610	10,440	12,890	15,210	17,790
(4,560)	7,480	10,270	12,680	14,960	17,500
(4,560)	7,470	10,250	12,660	14,940	17,470
(4,510)	7,400	10,160	12,540	14,800	17,310
(4,500)	7,370	10,120	12,490	14,740	17,240
(4,410)	7,220	9,910	12,240	14,440	16,890
(4,400)	7,200	9,890	12,210	14,410	16,850
(4,370)	7,170	9,840	12,150	14,340	16,770
(4,340)	7,110	9,760	12,050	14,220	16,630
(4,320)	7,080	9,720	12,000	14,160	16,560
(4,310)	7,070	9,700	11,980	14,140	16,530
(4,240)	6,960	9,550	11,790	13,910	16,270
(4,230)	6,930	9,510	11,740	13,850	16,200
(4,180)	6,860	9,410	11,620	13,710	16,040
(4,150)	6,810	9,350	11,540	13,620	15,930
(4,070)	6,670	9,150	11,300	13,330	15,590
(4,050)	6,630	9,100	11,240	13,260	15,510

[1] Figures provided in Tables 1-3 of this notice are for a family size of four persons. To use Table 4, the appropriate figure should be found in the family size of four column. Then one may read across the row for family sizes other than four in the appropriate columns.

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies (SESAs) and employers in their States to use in determining eligibility for JTPA programs. Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulation at 20 CFR 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI. Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA.

Signed at Washington, DC this 3rd day of April 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-8195 Filed 4-14-86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel, Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue NW., Washington, DC 20506, in Room 730, from 9:00 a.m. to 5:30 p.m. on May 9, 1986.

The purpose of the meeting is to review applications for certificates of indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 1986.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of U.S.C. 552(b), and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with the operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Stephen J. McCleary, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call 202/786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-8343 Filed 4-14-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Renewal

The Director of the National Science Foundation has determined that the renewal of the Alan T. Waterman Award Committee is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

M. Rebecca Winkler,

Committee Management Officer.

April 9, 1986.

[FR Doc. 86-8355 Filed 4-14-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp. et al.; Availability of Environmental Assessment and Finding of No Significant Change in Impacts Relating to the Full-term Operating License Review

The Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (staff) has issued an Environmental Assessment related to the application for Full-Term Operating License (FTOL) filed by GPU Nuclear Corporation on March 6, 1972, for its Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

In preparation for the conversion of Provisional Operating License (POL) No. DPR-16 for Oyster Creek to an FTOL, the NRC staff performed an assessment of the existing Final Environmental Statement (FES) dated December 1974.

The NRC staff has evaluated the environmental effects of the continued operation of Oyster Creek station and reexamined the impacts initially presented in the FES. Based on this evaluation, the NRC staff has determined that: (1) There are no new impacts that differ significantly from those evaluated in the FES, there are no substantial changes in the proposed actions relevant to environmental concerns and there are no significant new circumstances or information relevant to environmental concerns bearing on the proposed action or its impact and, thus, issuance of a supplement to the FES is not required under the National Environmental Policy Act (NEPA); and (2) the conclusion on page 10-10, section 10, Benefit-Cost Analysis, of the 1974 FES, as applied to Oyster Creek station, is still valid.

Finding of No Significant Change In Impact

The Commission has determined not to prepare a supplement to the FES for the proposed FTOL conversion.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment beyond that described in the 1974 FES.

For further details with respect to this action, see the Commission's Environmental Assessment dated April 10, 1986 and the 1974 FES, which are available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Bethesda, Maryland, this 10th day of April 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director BWR Project Directorate No. 1 Division of BWR Licensing.

[FR Doc. 86-8354 Filed 4-14-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Postal Rates, Fees, and Mail Classfications; Adjustment of Preferred Rates of Postage

On April 7, 1986, the President signed Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, which includes certain revisions to the laws concerning eligibility for preferred rates of postage. On April 8, 1986, the Governors of the Postal Service announced in Resolution 86-8 that new preferred rates in accordance with the statutory changes will become effective at 12:01 a.m., April 20, 1986.

The new rates shown in the attached schedules take into account the elimination of the limited circulation rates for regular rate and science of agriculture second-class publications, without change to the total amounts provided for the fiscal year 1986 revenue forgone appropriation. Effective April 20, 1986, all copies of regular rate and science of agriculture second-class publications qualifying for second-class mailing privileges and mailed to destinations outside the county of publications will be subject to the applicable level A, level B, or level C per piece rate. The level D, level E, and level F rates are eliminated. This change results in a reduction of all other preferred rates.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

Preferred Rate Schedule

Table of Contents

SCHEDULE 1.—SECOND-CLASS PREFERRED RATE: IN-COUNTY

Rate category	Preferred rate (cents)
Pound-rate matter:	
Per pound	9.1
Per piece:	
Presorted to carrier route	3.1
Other	4.9

SCHEDULE 2.—SECOND-CLASS PREFERRED RATE: PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS, OUTSIDE COUNTY

Rate category	Postage rate unit	Preferred rate (cents)
Non-advertising	Pound	8.5
Advertising:		
1 and 2	do	11.3
3	do	12.6
4	do	14.7
5	do	17.8
6	do	21.1
7	do	25.0
8	do	28.3
Pieces:		
A	Piece	8.7
B	do	6.1
C	do	4.2
SCF difference	do	−1.0

SCHEDULE 3.—SECOND-CLASS PREFERRED RATE: CLASSROOM PUBLICATIONS

Rate category	Postage rate unit	Preferred rate (cents)
Non-advertising	Pound	7.4
Advertising:		
1 and 2	do	9.8
3	do	10.9
4	do	12.9
5	do	16.0
6	do	19.3
7	do	23.1
8	do	26.6
Piece: A	Piece	6.6
SCF difference	do	−1.0

SCHEDULE 4.—SECOND-CLASS PREFERRED RATE: REGULAR-RATE PUBLICATIONS OUTSIDE COUNTY—SCIENCE OF AGRICULTURE

Rate category	Postage rate unit	Preferred rate (cents)
Advertising: Zones 1 and 2	Pound	11.3
SCF difference	Piece	−1.0

SCHEDULE 5.—THIRD-CLASS PREFERRED RATE: NONPROFIT BULK

Rate category	Preferred rate (cents)
Minimum per-piece rate:	
Required presort	8.5
Presorted to 5-digit ZIP	7.1
Presorted to carrier route	5.5
Pound rate:	
Required presort	25.3
Plus per piece	3.0
Presorted to 5-digit ZIP	25.3
Plus per piece	1.6
Presorted to carrier route	25.3

SCHEDULE 6.—FOURTH-CLASS PREFERRED RATE: LIBRARY

Rate category	Preferred rate (cents)
First pound	54
Each additional pound through 7 pounds	19
Each addition pound	10

[FR Doc. 86-8345 Filed 4-14-86; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15044; File No. 811-3425]

American Shares, Inc.; Application

April 7, 1986.

Notice is hereby given that American Shares, Inc. ("Applicant"), 405 Central Avenue, St. Petersburg, Florida 33701, registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management company, filed an application on December 16, 1985, pursuant to section 8(f) of the Act, and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant, a Maryland corporation, registered under the Act on March 23, 1982, and filed a registration statement pursuant to section 8(b) of the Act on November 9, 1982. Applicant's registration statement under the Securities Act of 1933 was also filed on November 9, 1982, and was declared effective on the same date, registering for sale an indefinite number of shares of Applicant's capital stock. Applicant's initial public offering of shares commenced on November 18, 1982.

Applicant further represents that on June 28, 1985, at an annual meeting, Applicant's shareholders approved the liquidation, winding-up and dissolution of Applicant. Thereafter, Applicant liquidated each of its investment portfolios and, after making due provision for payment of all of its outstanding liabilities, Applicant paid to the holders of all its capital stock the redemption value of their shares, calculated in accordance with the requirements of Applicant's charter and by-laws. Applicant also states that all of its undistributed net investment income for the fiscal year ended April 30, 1985, was distributed to its shareholders as a dividend. Thus, Applicant has retained no assets, has no outstanding liabilities, and no securityholders. Applicant states that it is not engaged in, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs. In this regard, it is further stated that upon completion of state tax clearance and other required procedures, Applicant will file articles of dissolution under Maryland law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 2, 1986, at 5:30 p.m., do so by submittiing a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-8340 Filed 4-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15043; File No. 812-6224]

Industrial Series Trust; Application and Opportunity for Hearing

April 7, 1986

Notice is hereby given that Industrial Series Trust ("Trust") and Mackenzie Investment Management Inc. ("Mackenzie") (collectively, "Applicants"), c/o Keith W. Vandivort, Esq., Dechert Price & Rhoads, 1730 Pennsylvania Avenue, NW., Washington, DC 20006, filed an application on October 15, 1985, and an amendment thereto on March 13, 1986, for an order of the Commission pursuant to section 11(a) of the Investment Company Act of 1940 ("Act") approving the terms of certain offers of exchange. Applicants also request that such order extend to future investment companies ("Additional Funds") for which Mackenzie may serve as distributor. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicants state that the Trust is registered as an open-end management investment company under the Act and is a Massachusetts business trust which currently consists of five series ("Funds"): Industrial Cash Management Fund ("No-Load Fund"), Industrial American Fund, Industrial Bond Fund, Industrial Option Income Fund, and Industrial Government Securities Plus Fund ("Load Funds"). Mackenzie is a wholly-owned subsidiary of Mackezine Financial Corporation, a public corporation organized under the laws of Ontario. As principal underwriter for each of the Funds, Mackenzie maintains a continuous public offering of shares of the No-Load Fund at their current net asset value without a sales charge, and also maintains a continuous public offering of shares of the Load Fund at their respective current net asset values. The sales charge of the Load Funds are set forth in their prospectuses.

Applicants also state that Mackenzie may offer Additional Funds each of whose shares may be issued either without a sales charge or with a maximum sales charge of 8.50% of the public offering price. At the initiation of cetain new Load Funds, Mackenzie may initially offer shares of such additional Funds at their respective net asset values plus a sales charge lower than that applicable during the later continuous offerings. Accordingly, Mackenzie on its own behalf and on behalf of such Additonal Funds to be

established has requested that the Commission extend any order granted to the Applicants to such Additional Funds provided that exchange transactions made by them conform in all material respects, including payment of any differential between sales charges and holding period requirements, to the exchange transactions described in the application.

Applicants propose to allow a shareholder of any Load Fund to exchange all or a portion of his shares for shares of any other Load Fund on the basis of the relative net asset values of the two Funds at the time of the exchange without any sales charge, but only if the shareholder has owned such shares for at least 180 days. Any transfer between the Load Funds prior to the expiration of 180 days will result in the payment of any differential between the sales charge previously paid and the sales charge of the Funds being acquired. Each exchange will be made on the basis of both Fund relative net asset values per share next computed following receipt of a properly executed Exchange Authorization Form by the Transfer Agent, The First National Bank of Boston. A $5.00 Service charge will be payable to the Transfer Agent by the shareholder for each exchange.

Applicants also propose to allow shareholders of any Load Fund to exchange their shares for shares of the No-Load Fund. Thereafter, the Applicants propose to allow shareholders to exchange the new shares (*i.e.*, those representing the proceeds of the shares originally exchanged) back into the Load Fund from which they were exchanged on the basis of the relative net asset values of the shares at the time of the second exchange without a sales charge. These shareholders also may exchange back into any other load Fund on the same no-load basis, provided that at least 180 days have elapsed since they initially purchased the shares of the Load Fund (such period may include the time they owned the No-Load Fund). If less than 180 days have elapsed since that initial purchase, these shareholders may exchange into another Load Fund upon payment of any differential between the original and subsequent sales charges. A $5.00 service charge will be assessed for effecting each such exchange.

Finally, Applicants propose to allow shares of the No-Load Fund, except those acquired as a result of a previous exchanged from a Load Fund in any manner to be exchange for shares of any Load Fund based on the relative net asset values at the time of the exchange plus the payment of the sales charge which would have been paid had the Load Fund been acquired directly. Each exchanging shareholder will be assessed a $5.00 service charge for effecting each such exchange.

Applicants state that, in the event that a sales charge is imposed on an exchange, rights of accumulation and other arrangements described in the Fund's prospectuses allowing for reduced sales charges will be considered in determining the sales charge applicable to the exchange. In addition, if the sales charge paid on the shares of the Fund from which the exchange is being made was reduced as a result of a prior exchange, the sales charge initially paid will be treated as the aggregate of that charge and all previous sales charges paid on the purchase of shares of other Funds.

Applicants further state that, in each of the exchanges described above, shares of each Load Fund acquired through reinvestment of dividends and capital gains distributions will be exchanged on the basis of the relative net asset values of the shares being exchanged and those being acquired regardless of the holding period. For purposes of determining the length of the holding period in each of the exchanges described above, shares will be exchanged on a "first in, first out" basis.

Applicants state that shareholders of each Fund will be notified of the exchange privileges by means of the Fund's prospectus and possibly in other communications. In the event that Applicants determine no longer to provide some or all of the proposed exchange privileges, no notice of the termination will be provided to the shareholders of the Funds other than in the next subsequent effective prospectuses of the Funds.

Applicants assert that the purpose of the proposed exchange offer is to permit a shareholder of any Fund who changes his investment objective to exchange, in a simple transaction, his or her Fund shares for shares of any other Fund on an equitable basis. Applicants represent that, if these exchanges were always made at their relative net asset value, the distribution system of the Load Funds would be disrupted because an investor could easily avoid the sales charge of the Loan Fund by first purchasing No-Load Fund shares (or shares of a Load Fund sold with a low maximum sales charge) and immediately exchanging the shares so acquired for Load Fund shares sold with a higher effective sales charge. The offers of exchange proposed by the Applicants would avoid this problem, would be equitable to all shareholders and would benefit exchanging shareholders by crediting them for sales charges previously paid.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an Attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary

[FR Doc. 86-8341 Filed 4-14-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on Turbine Engine Rotor Blade Containment/Durability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) availability and request for comments.

SUMMARY: This draft AC (No. 33-5) is intended to provide guidance for complying with turbine engine rotor blade containment as required by Part 33 of the Federal Aviation Regulations (FARs).

DATES: Comments must be received on or before July 1, 1986.

ADDRESS: Send all comments on draft AC No. 33-5 to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Daniel Salvano, National Resource Specialist, ANE-100N, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Background

The potential hazard resulting from an uncontained turbine engine rotor blade failure has been a long-term concern of the FAA. FAR Part 33 has always required the engine to be designed to contain damage resulting from rotor blade failure. Amendment 10 to FAR Part 33 (49 FR 6832) introduced new section 33.94 which requires blade containment and rotor unbalance tests. This AC is intended to provide guidance on engine design and construction, tests, and test results relative to engine rotor blade containment.

Comments Invited

Interested parties are invited to submit comments on this draft AC. The draft AC and comments received may be inspected at the Aircraft Certification Division, Room 408, 12 New England Executive Park, Burlington, Massachusetts, between the hours of 8:00 a.m. and 4.30 p.m. on weekdays, except Federal holidays.

Issued in Burlington, Massachusetts, on March 28, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-8312 Filed 4-14-86, 8:45 am]

BILLING CODE 4910-13-M

Monterey Peninsula Airport, Noise Exposure Maps

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Monterey Peninsula Airport District, Monterey, California for the Monterey Peninsula Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and the 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is March 26, 1986.

FOR FURTHER INFORMATION CONTACT: L. Yvonne Gibson, Airport Planner, AWP-611.5, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1621.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Monterey Peninsula Airport, Monterey, California, are in compliance with applicable requirements of FAR Part 150, effective March 26, 1986.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land use as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Monterey Peninsula Airport District, on June 19, 1985. The FAA has determined that the noise exposure maps for the Monterey Peninsula Airport are in compliance with applicable requirements. This determination is effective on March 26, 1986. FAA's determination on an airport operator's noise exposure map is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Boulevard, Room 6E25, Hawthorne, CA 90261

Mr. O.N. Ford, District Manager, Monterey Peninsula Airport District, P.O. Box 550, Monterey, CA 93940

Issued in Hawthorne, California, on April 2, 1986.

B. Keith Potts,

Deputy Director, Western-Pacific Region.

[FR Doc. 86-8309 Filed 4-14-86; 8:45 am]

BILLING CODE 4910-13-M

Natrona County International Airport; Casper, WY; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) announced its findings on the noise compatibility program submitted by Natrona County Airport Board under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On October 1, 1985, the FAA determined that the noise exposure maps submitted by the Airport Board under Part 150 were in compliance with applicable requirements. On February 25, 1986, the Administrator approved the Natrona County International Airport noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Natrona County International Airport noise compatibility program is February 25, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop, Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 17900 Pacific Highway South; C–68966; Seattle, Washington 98168. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Natrona County International Airport, effective February 25, 1986.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordnace with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airport District Office in Denver, Colorado.

The Airport Board submitted to the FAA on June 5, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Natrona County International Airport. The airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 1, 1985. Notice of this determination was published in the **Federal Register** on October 10, 1985.

The Natrona County International Airport noise compatibility study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management. It was requested that the FAA evaluate and approve this material as a noise compatibility program as describe in section 104(b) of the Act. The FAA began its review of the program on October 1, 1985, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 9 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective February 25, 1986.

Outright approval was granted for 8 specific program elements. Program Element B.2 Runway Extension, was disapproved because it was not consistent with the noise compatibility objectives of the 1979 Act. Program actions include a future noise abatement take-off procedure, zoning changes, avigation easements, subdivision regulations, and preventive land use planning and policies. The program also maintains the existing noise complaint system.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on February 25, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Natrona County International Airport.

Issued in Seattle, Washington on April 2, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–8308 Filed 4–14–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[BS–Ap–No. 2518]

National Railroad Passenger Corp. and New Orleans Union Passenger Terminal Co.; Exemption Petitions

The National Railroad Passenger Corporation and the New Orleans Union Passenger Terminal Company have petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the interlockings and traffic control system on the tracks of the New Orleans Union Passenger Terminal Company at New Orleans, Louisiana. This proceeding is identified as FRA Block Signal application No. 2518.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on the proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on May 29, 1986, in Room 13034 of The Federal Building at 701 Loyola Street in New Orleans, Louisiana.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of

Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be non cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on April 10, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-8370 Filed 4-14-86; 8:45 am]

BILLING CODE 4910-06-M

[RS&I-Ap-No. 1017]

Southern Pacific Transportation Co., Exemption Petitions

The Southern Pacific Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking an exemption from the requirements of § 236.23 of the Rules, Standards and Instructions to the extent that a yellow light, lunar light or a series of lights or a semaphore blade in the upper or lower quadrant at an angle of 45 degrees to the vertical not be required in approach to a signal made dark for purpose of conducting operational tests. This proceeding is identified as FRA Rules, Standards and Instructions application No. 1017.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on the proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on May 21, 1986, in the Department of Transportation Conference Room on the 11th floor at 211 Main Street in San Francisco, California.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.21), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wishes to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on April 10, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-8369 Filed 4-14-86; 8:45am]

BILLING CODE 4910-06-M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that InterFirst Bank Houston, N.A., with offices at 1100 Louisiana, Houston, Texas, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: April 9, 1986.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary

[FR Doc. 86-8352 Filed 4-14-86; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP85-13; Notice 2]

Motor Vehicle Safety Standards; Union City Body Co., Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Union City Body Company, Inc., Union, City, Indiana, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.302 Motor Vehicle Safety Standard No. 302 "Flammability of Interior Materials." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on September 9, 1985, and an opportunity afforded for comment (50 FR 36703).

Federal Motor Vehicle Safety Standard No. 302 requires that interior materials must not have horizontal burn rates greater than 4 inches per minute. Section S5.2.2 of this standard requires that the test specimen be cut in the direction that produces the most adverse test results, and the specimen be oriented so that the surface closest to the occupant compartment air space faces downward (towards the flame) on the test frame. Through a misinterpretation, Union City Body Company tested samples of seat fabric oriented so the surface closest to the occupant compartment air space faced upward instead of downward. This orientation produced burn rates ranging from 1.7 to 2.9 inches per minute—well withing the 4 inch per minute specification. When the tests were repeated with the surface closest to the occupant compartment air space facing downward, burn rates ranging from 4.5 to 5.4 inches per minute were obtained and the material was determined to be out of compliance. The petitioner states that new complying material was procured and production resumed on July 15, 1985. This apparent noncompliance affects, 5,808 vehicles produced from 1981 through July 8, 1985, which are owned and operated by United Parcel Service (UPS).

Union City Body Company argued that the noncompliance is inconsequential as far as vehicle safety is concerned because (1) the noncompliance is marginal, (2) the UPS vehicles involved are designed for occupancy by only a driver, (3) the UPS vehicles are destroyed at the end of their service life, (4) very little material is exposed when the seat is occupied by the driver, since the seat back and cushion are approximately 16 by 17 inches, and (5) all units carry a 5-BC fire extinguisher.

One timely comment was received on the petition, from Patricia Hill, who opposed it principally because the actual burn rate was far from a marginal failure. A further reason presented for denial is the possibility that the material could be reused: "It is common practice to remove serviceable parts from a vehicle about to be scrapped for use in the repair of another vehicle." After the comment period, the Center for Auto Safety also recommended denial

because of the margin by which the burn rate exceeded the standard's maximum.

The agency has decided to grant Union City's petition. Although the burn rates reported exceed the maximum permissible burn rate, the fact that the vehicle is intended for occupancy by only one person reduces the likelihood of injuries to the public at large. The presence of a fire extinguisher in the van minimizes the possibility that a fire will spread. On the basis of these facts the agency has concluded that petitioner has met its burden of persuasion that the noncompliance with Standard No. 302 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102. Pub. L. 93–492, 88 Stat 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 9, 1966.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–8375 Filed 4–14–86; 8:45 am

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 72
Tuesday, April 15, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10:00 a.m. and 2:00 p.m., Thursday, April 24, 1986.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meetings.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED:

The following items will be on the Bank Board meeting scheduled for 10:00 a.m., on Thursday, April 24, 1986:

DC Branching
Interstate Branching
Universal Monthly

The following items will be on the Bank Board meeting scheduled for 2:00 p.m., on Thursday, April 24, 1986:

Regulatory Capital Requirements of Insured Institutions
Definition of Regulatory Capital
Liquidity Requirements
Nationwide Lending; Loan Participations; Loan Recordkeeping Requirements

April 11, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86–8484 Filed 4–11–86; 3:38 pm]

BILLING CODE 6720–01–M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 21, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–8459 Filed 4–11–86; 3:17 pm]

BILLING CODE 6210–01–M

3

NUCLEAR REGULATORY COMMISSION.

DATE: Weeks of April 14, 21, 28, and May 5, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 14

Tuesday, April 15

2:00 p.m.
Meeting with NARUC on Implementation of Nuclear Waste Policy Act (Public Meeting)

Wednesday, April 16

11:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 21—Tentative

Wednesday, April 23

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Palo Verde-2 (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 28—Tentative

Thursday, May 1

9:30 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of May 5—Tentative

Wednesday, May 7

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Catawba-2 (Public Meeting)

Thursday, May 8

2:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards on Safety Goal Policy (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,

Office of the Secretary.

April 10, 1986.

[FR Doc. 86–8490 Filed 4–11–86; 3:53 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
April 15, 1986

Part II

Department of Education

34 CFR Part 682

Guaranteed Student Loan Program; Schedule of Expected Family Contributions for 1986-87; Final Rule; Republication

DEPARTMENT OF EDUCATION

34 CFR Part 682

Guaranteed Student Loan Program, Schedule of Expected Family Contributions for 1986–87; Republication

[Editorial Note: The following document was originally published at page 10988 in the issue of Monday, March 31, 1986. The document is being republished in its entirety because of typesetting errors.]

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for use in determining student eligibility for interest benefits under the Guaranteed Student Loan Program (GSLP). These regulations, which establish the GSL Family Contribution Schedule for 1986–87, will apply to any loan for a period of instruction which begins on or after July 1, 1986, but no later than June 30, 1987, regardless of the time when the determination of the student's need for a loan is made.

EFFECTIVE DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. The regulations will apply to any loan for a period of instruction which begins on or after July 1, 1986, but no later than June 30, 1987, regardless of the time when the determination of the student's need for a loan is made.

FOR FURTHER INFORMATION CONTACT: Nancy Eakin, Program Specialist, or Ralph Madden, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education (ROB–3, Room 4310), 400 Maryland Avenue SW, Washington, DC 20202, Telephone (202) 245–2475.

SUPPLEMENTARY INFORMATION:

Background

Section 707 of the Education Amendments of 1984 (Pub. L. 98–511) amended section 9 of the Student Financial Assistance Technical Amendments of 1982 (Pub. L. 97–301) by requiring that the 1982–83 Family Contribution Schedule, modified to reflect the most recent and relevant data, be used as the Family Contribution Schedule for 1986–87. These final regulations implement that statutory mandate for the 1986–87 academic year.

The Secretary has proposed a number of programmatic changes in connection with the 1987 Budget request for the GSLP and the PLUS Program. These proposals include requiring uniform need analysis for all Title IV student aid programs including GSL, expecting greater family contributions, and extending need analysis to families with less than $30,000 in income. In place of the current multiple and complicated need analysis methods used for different need-based Federal student aid programs, a single, simplified, and more verifiable need analysis system would be applied. Standardized cost-of-education rules would be applied to all programs. Assessment rates on income and assets would yield expected contribution levels for middle and upper income families substantially higher than under current methods. The Secretary believes that changes such as these, which improve targeting of aid on needy students and reduce unnecessary and excessive subsidies, are important for the future viability of these programs and that they should be enacted by the Congress as a part of the 1987 Budget.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, because the content of the Family Contribution Schedule is determined by statute, public comment could have no effect on the content of these regulations. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these regulations is unnecessary and contrary to the public interest.

Modification of the 1982–83 Family Contribution Schedule For Use for 1986–87

Section 9 of the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97–301) required that the 1982–83 Family Contribution Schedule be modified and used as the schedule for the 1983–84 academic year. The 1983–84 GSL Family Contribution Schedule was the first schedule codified in regulations published in the **Federal Register**. Earlier schedules were published as notices in the **Federal Register**. Section 4(b) of the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98–79) amended Pub. L. 97–301 to provide for schedules for academic years 1984–85 and 1985–86. Section 707 of the Education Amendments of 1984 (Pub. L. 98–511) amended Pub. L. 97–301 to provide for the schedule for 1986–87. This schedule, in turn, modifies the 1985–86 schedule. Because the 1985–86 schedule was substantially the same as the 1982–83 schedule, such modifications are in effect, modifications of the 1982–83 schedule.

This schedule continues the use of systems of financial need anaylsis approved by the Secretary for use in the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Education Opportunity Grant (SEOG) Programs (the campus-based programs), and revises the set of tables in Appendix B of 34 CFR Part 682.

This schedule modifies the 1985–86 Family Contribution Schedule in the following respects:

(1) The 1985–86 schedule applies to loans for periods of instruction beginning on or after July 1, 1985, but not later than June 30, 1986. This schedule applies to loans for periods of instruction beginning on or after July 1, 1986, but not later than June 30, 1987, regardless of when an institution completes its portion of a student's GSLP application.

(2) This schedule requires, in § 682.301(c), that the institution, in determining the adjusted gross family income, consider the income reported by each family member on the 1985 Federal income tax return. "Adjusted gross income" means that term as defined in section 62 of the Internal Revenue Code. Further references to the years 1984 and 1985 in § 682.301(c)(2)(iii) and (c)(4) are revised to refer to the years 1985 and 1986, respectively.

(3) Section 682.301(f) has been revised to specify that this schedule applies to loans for periods of instruction beginning on or after July 1, 1986, but not later than June 30, 1987.

(4) Sections 682.301(f)(1) and (2) have been revised to require the institution, in determining which of the approved need analysis systems may be used to calculate the student's expected family contribution, to consider whether the student has received financial assistance under the campus-based programs for the 1986–87 award year.

(5) The expected family contribution amounts in Tables A, B, C, and D of Appendix B have been revised to reflect 1985 Federal income taxes, F.I.C.A. (Social Security) withholding deductions and average State and other taxes. The Standard Maintenance Allowance (SMA), applicable only to Tables A and B and derived from the most recent Bureau of Labor Statistics low budget standard, has been updated for inflation.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations continue the use of the current formula for determining student eligibility for interest benefits under the GSL program, modified to reflect the most recent and relevant data. The regulations, therefore, do not have an impact on small entities.

Assessment of Education Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program)

Dated: March 26, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN PROGRAM

1. The authority for Part 682 continues to read:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

2. Section 682.301 is revised to read as follows:

§ 682.301 Eligibility for interest benefits on a GSLP loan.

(a) *General.* (1)(i) If a student's adjusted gross family income is $30,000 or less, the student qualifies for interest benefits for the amount of his or her GSLP loan.

(ii) If the student's adjusted gross family income is more than $30,000, the student qualifies for interest benefits if the institution he or she attends or is planning to attend determines that the student demonstrated financial need for the loan.

(2) (i) If the student demonstrates financial need for a loan of $1,000 or more, the student qualifies for interest benefits for the amount for which the student has demonstrated financial need.

(ii) If the student demonstrates financial need for a loan between $500 and $1000, the student qualifies for interest benefits on a loan of up to $1,000.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit to the lender his or her loan application. The application must include a certification from the student's institution of—

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended;

(2) The estimated financial assistance for the student for the academic period for which the loan is intended;

(3) The adjusted gross family income of the student's family;

(4) The student's expected family contribution if his or her adjusted gross family income exceeds $30,000; and

(5) The amount of the student's need for a loan as determined by the institution pursuant to paragraph (e) of this section.

(c) *Adjusted gross family income.* The institution determines the adjusted gross family income of the student's family based upon data provided, and certified to, by each person whose income is required to be considered.

(1) As used in this paragraph, "adjusted gross family income of the student's family" means "adjusted gross income", as defined in section 62 of the Internal Revenue Code, as reported on the 1985 Federal income tax return(s) of—

(i) The student;

(ii) The student's spouse, if any; and

(iii) The student's mother and father, if the student, at the time he or she applies, is determined to be a "dependent student" rather than an "independent student."

(2) A student whose parents are divorced or separated shall comply with the following procedures for reporting a parent's adjusted gross income to determine the adjusted gross family income:

(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application.

(ii) If paragraph (c)(2)(i) of this section does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

(iii) If neither paragraph (c)(2)(i) nor (c)(2)(ii) of this section applies, include only the income of the parent who provided the greater support for the period commencing January 1, 1985, and ending 12 months prior to the date of application.

(3) If one of the parents has died, the student shall include only the income of the surviving parent. If both parents have died, the student shall not report any parental income for those parents even if the parent(s) had income.

(4) The following rule applies if either a parent whose income is taken into account under paragraph (c)(2) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (c)(3) of this section, has remarried. The income of that parent's spouse must be included in determining the adjusted gross family income if, in 1985 or 1986, the student—

(i) Has received or will receive financial assistance of more than $750 from that spouse; or

(ii) Has lived or will live for more than six weeks in the home of the parent and that spouse.

(5) The income of the student's spouse shall not be included in determining the adjusted gross family income for a student who is divorced or separated, or whose spouse has died.

(d) *Independent student.* As used in this section, "independent student" means a student who meets the criteria in 34 CFR 668.1a. All other students are considered to be dependent students.

(e) *Determination of need.* (1) If the student's adjusted gross family income exceeds $30,000, the institution shall determine the student's need for a loan by subtracting from the student's "estimated cost of attendance," as defined in § 682.200, his or her—

(i) "Estimated financial assistance", as defined in § 682.200; and

(ii) Expected family contribution, as determined under paragraph (f) of this section.

(2) The student shall certify the accuracy of any information he or she provides to the institution which is necessary to determine need.

(3) The Secretary may require that family members whose incomes are included in the student's adjusted gross family income under paragraph (c) of this section provide copies of the relevant Federal income tax return(s) and other pertinent documents to

support the student's application for interest benefits.

(f) *Determination of expected family contribution.* For a student who seeks a loan for a period of instruction beginning on or after July 1, 1986, but not later than June 30, 1987, the institution shall calculate his or her expected family contribution as follows:

(1) If the student has been awarded financial assistance for award year 1986–87 (July 1, 1986–June 30, 1987) under the National Direct Student Loan (NDSL), College Work-Study (CWS), or Supplemental Educational Opportunity Grant (SEOG) program at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is his or her expected family contribution as calculated for the NDSL, CWS or SEOG program.

(2) If the student has not been awarded financial assistance under the NDSL, CWS, or SEOG program for award year 1986–87 at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution must be determined under either—

(i) A need analysis system approved by the Secretary for the academic year for which the loan is sought for the NDSL, CWS, and SEOG programs; or

(ii) The tables found in Appendix B if the adjusted gross income of the student and his or her family does not exceed $75,000.

(20 U.S.C. 1087, 1082)

2. Appendix B to Part 682 is revised to read as follows:

Appendix B to Part 682—Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution for 1986–87

If authorized under the provisions of § 682.301(f)(2)(ii), an institution may use the following tables to determine the student's expected family contribution.

For purposes of the four tables—

"Dependent student" means a student who does not qualify as an "independent student";

"Independent student" is defined in 34 CFR 668.1a; and

"Adjusted gross income" means the income, as defined in section 62 of the Internal Revenue Code, received in 1985.

Table A.—Expected Family Contribution for a Dependent Student From a Two-Parent Family—1986–87

For a dependent student from a two-parent family, the educational institution determines the student's expected family contribution according to Table A. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table A, "Family members" include the student, the student's spouse and their dependents, and the student's mother and father and their dependents. If the family includes a step-parent whose income is included in the adjusted gross family income, family members also include the step-parent and the dependents of the step-parent.

Table A is based on the following assumptions:

- One of the two parents is employed.
- No assets are considered.
- All of the family income was earned by the employed parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following—

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;

—F.I.C.A. (Social Security) for one wage earner;

—Average State and other taxes (8%); and

—A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because those living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

BILLING CODE 4000-01-M

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***									
30,001 - 30,124	2,750	2,110	1,600	1,090	720	340	0	0	0	0
30,125 - 30,374	2,800	2,150	1,630	1,130	750	370	0	0	0	0
30,375 - 30,624	2,850	2,190	1,670	1,160	780	410	30	0	0	0
30,625 - 30,874	2,900	2,240	1,710	1,200	820	440	60	0	0	0
30,875 - 31,124	2,950	2,280	1,750	1,230	850	480	100	0	0	0
31,125 - 31,374	3,000	2,330	1,790	1,270	890	510	130	0	0	0
31,375 - 31,624	3,050	2,370	1,830	1,300	920	540	170	0	0	0
31,625 - 31,874	3,100	2,410	1,860	1,340	960	580	200	0	0	0
31,875 - 32,124	3,160	2,460	1,900	1,370	990	610	240	0	0	0
32,125 - 32,374	3,210	2,500	1,940	1,400	1,030	650	270	0	0	0
32,375 - 32,624	3,270	2,540	1,980	1,440	1,060	680	300	0	0	0
32,625 - 32,874	3,330	2,590	2,010	1,470	1,100	720	340	0	0	0
32,875 - 33,124	3,390	2,640	2,050	1,500	1,130	750	370	0	0	0
33,125 - 33,374	3,450	2,690	2,090	1,540	1,160	790	410	30	0	0
33,375 - 33,624	3,510	2,740	2,140	1,570	1,200	820	440	60	0	0
33,625 - 33,874	3,570	2,790	2,180	1,600	1,230	860	480	100	0	0
33,875 - 34,124	3,630	2,840	2,220	1,640	1,260	890	510	130	0	0
34,125 - 34,374	3,690	2,890	2,270	1,680	1,300	920	550	170	0	0
34,375 - 34,624	3,750	2,940	2,310	1,710	1,330	960	580	200	0	0
34,625 - 34,874	3,800	3,000	2,350	1,750	1,360	990	620	240	0	0
34,875 - 35,124	3,860	3,050	2,400	1,790	1,390	1,020	650	270	0	0
35,125 - 35,374	3,920	3,100	2,440	1,830	1,430	1,060	680	310	0	0
35,375 - 35,624	3,980	3,150	2,480	1,860	1,460	1,090	720	340	0	0
35,625 - 35,874	4,050	3,190	2,530	1,900	1,490	1,120	750	380	0	0
35,875 - 36,124	4,120	3,250	2,570	1,940	1,530	1,150	780	410	30	0
36,125 - 36,374	4,190	3,310	2,620	1,980	1,560	1,190	820	440	70	0
36,375 - 36,624	4,250	3,370	2,670	2,010	1,590	1,220	850	480	100	0
36,625 - 36,874	4,320	3,420	2,720	2,050	1,630	1,250	880	510	140	0
36,875 - 37,124	4,390	3,480	2,770	2,090	1,660	1,290	910	540	170	0
37,125 - 37,374	4,450	3,540	2,820	2,140	1,700	1,320	950	580	200	0
37,375 - 37,624	4,520	3,590	2,860	2,180	1,740	1,350	980	610	240	0
37,625 - 37,874	4,590	3,650	2,910	2,220	1,780	1,390	1,010	640	270	0
37,875 - 38,124	4,650	3,710	2,960	2,260	1,810	1,420	1,050	670	300	0
38,125 - 38,374	4,720	3,760	3,010	2,300	1,850	1,450	1,080	710	340	0
38,375 - 38,624	4,790	3,820	3,060	2,340	1,890	1,480	1,110	740	370	0
38,625 - 38,874	4,850	3,880	3,110	2,380	1,920	1,520	1,150	770	400	30
38,875 - 39,124	4,920	3,940	3,150	2,430	1,960	1,550	1,180	810	430	60
39,125 - 39,374	4,990	4,010	3,200	2,470	2,000	1,580	1,210	840	470	100
39,375 - 39,624	5,060	4,070	3,260	2,510	2,030	1,620	1,240	870	500	130
39,625 - 39,874	5,130	4,150	3,320	2,550	2,070	1,650	1,280	910	540	160

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	5,200	4,220	3,390	2,600	2,120	1,690	1,320	940	570	200
40,125 - 40,374	5,270	4,300	3,450	2,660	2,160	1,730	1,350	980	610	240
40,375 - 40,624	5,340	4,370	3,510	2,710	2,210	1,770	1,390	1,020	650	270
40,625 - 40,874	5,400	4,450	3,580	2,770	2,260	1,810	1,420	1,050	680	310
40,875 - 41,124	5,470	4,520	3,640	2,820	2,300	1,850	1,460	1,090	720	350
41,125 - 41,374	5,540	4,590	3,710	2,870	2,350	1,890	1,500	1,130	760	380
41,375 - 41,624	5,610	4,660	3,770	2,930	2,400	1,930	1,530	1,170	790	420
41,625 - 41,874	5,680	4,720	3,830	2,980	2,440	1,970	1,570	1,200	830	460
41,875 - 42,124	5,750	4,790	3,900	3,040	2,490	2,010	1,600	1,240	870	500
42,125 - 42,374	5,820	4,860	3,960	3,090	2,540	2,050	1,640	1,270	900	530
42,375 - 42,624	5,890	4,930	4,030	3,150	2,580	2,100	1,680	1,310	940	570
42,625 - 42,874	5,960	5,000	4,100	3,200	2,640	2,150	1,720	1,340	980	610
42,875 - 43,124	6,030	5,070	4,170	3,260	2,690	2,190	1,760	1,380	1,010	640
43,125 - 43,374	6,100	5,140	4,240	3,320	2,750	2,240	1,800	1,410	1,050	680
43,375 - 43,624	6,170	5,210	4,310	3,380	2,800	2,290	1,840	1,450	1,080	720
43,625 - 43,874	6,240	5,280	4,380	3,440	2,850	2,330	1,880	1,480	1,120	750
43,875 - 44,124	6,310	5,350	4,450	3,500	2,910	2,380	1,920	1,520	1,150	790
44,125 - 44,374	6,370	5,420	4,520	3,560	2,960	2,430	1,960	1,550	1,190	820
44,375 - 44,624	6,440	5,490	4,590	3,620	3,010	2,470	2,000	1,590	1,220	860
44,625 - 44,874	6,510	5,560	4,660	3,680	3,060	2,520	2,040	1,630	1,260	890
44,875 - 45,124	6,580	5,630	4,720	3,740	3,110	2,560	2,080	1,670	1,290	930
45,125 - 45,374	6,650	5,690	4,790	3,800	3,160	2,610	2,130	1,710	1,330	960
45,375 - 45,624	6,720	5,760	4,860	3,850	3,210	2,660	2,180	1,750	1,360	1,000
45,625 - 45,874	6,790	5,830	4,930	3,910	3,270	2,710	2,220	1,790	1,400	1,030
45,875 - 46,124	6,860	5,900	5,000	3,980	3,330	2,760	2,270	1,830	1,430	1,070
46,125 - 46,374	6,930	5,970	5,070	4,050	3,390	2,810	2,310	1,870	1,470	1,100
46,375 - 46,624	7,000	6,040	5,140	4,120	3,450	2,860	2,360	1,910	1,500	1,140
46,625 - 46,874	7,070	6,110	5,210	4,190	3,510	2,910	2,400	1,950	1,540	1,170
46,875 - 47,124	7,140	6,180	5,280	4,260	3,570	2,960	2,440	1,990	1,580	1,210
47,125 - 47,374	7,210	6,250	5,350	4,330	3,620	3,010	2,480	2,020	1,610	1,250
47,375 - 47,624	7,280	6,320	5,420	4,400	3,680	3,060	2,530	2,060	1,650	1,280
47,625 - 47,874	7,350	6,390	5,490	4,470	3,740	3,110	2,570	2,100	1,690	1,320
47,875 - 48,124	7,410	6,460	5,560	4,540	3,800	3,160	2,620	2,150	1,730	1,350
48,125 - 48,374	7,480	6,530	5,630	4,610	3,860	3,220	2,670	2,190	1,770	1,390
48,375 - 48,624	7,550	6,600	5,700	4,680	3,920	3,280	2,720	2,230	1,810	1,420
48,625 - 48,874	7,620	6,670	5,760	4,750	3,990	3,340	2,770	2,270	1,840	1,460
48,875 - 49,124	7,690	6,730	5,830	4,820	4,060	3,400	2,820	2,320	1,880	1,490
49,125 - 49,374	7,760	6,800	5,900	4,880	4,130	3,450	2,870	2,360	1,920	1,530
49,375 - 49,624	7,830	6,870	5,970	4,950	4,200	3,510	2,920	2,400	1,950	1,560
49,625 - 49,874	7,900	6,940	6,040	5,020	4,270	3,570	2,970	2,450	1,990	1,590

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	7,970	7,010	6,110	5,090	4,340	3,630	3,020	2,490	2,030	1,620
50,125 - 50,374	8,040	7,080	6,180	5,160	4,410	3,690	3,070	2,530	2,060	1,660
50,375 - 50,624	8,110	7,150	6,250	5,230	4,480	3,750	3,120	2,570	2,110	1,700
50,625 - 50,874	8,180	7,220	6,320	5,300	4,550	3,810	3,170	2,620	2,150	1,740
50,875 - 51,124	8,240	7,290	6,390	5,370	4,610	3,870	3,220	2,670	2,190	1,770
51,125 - 51,374	8,310	7,360	6,460	5,440	4,680	3,930	3,280	2,720	2,240	1,810
51,375 - 51,624	8,370	7,430	6,530	5,510	4,750	4,000	3,340	2,770	2,280	1,850
51,625 - 51,874	8,430	7,500	6,600	5,580	4,820	4,070	3,400	2,820	2,320	1,880
51,875 - 52,124	8,500	7,560	6,670	5,650	4,890	4,140	3,460	2,870	2,360	1,920
52,125 - 52,374	8,560	7,630	6,740	5,720	4,960	4,210	3,520	2,920	2,410	1,960
52,375 - 52,624	8,620	7,690	6,800	5,790	5,030	4,280	3,580	2,970	2,450	1,990
52,625 - 52,874	8,690	7,750	6,870	5,860	5,100	4,350	3,640	3,020	2,490	2,030
52,875 - 53,124	8,750	7,820	6,940	5,920	5,170	4,410	3,700	3,070	2,540	2,070
53,125 - 53,374	8,810	7,880	7,000	5,990	5,240	4,480	3,760	3,120	2,580	2,110
53,375 - 53,624	8,880	7,940	7,070	6,060	5,310	4,550	3,810	3,170	2,630	2,150
53,625 - 53,874	8,940	8,010	7,130	6,130	5,380	4,620	3,870	3,230	2,680	2,200
53,875 - 54,124	9,000	8,070	7,190	6,200	5,450	4,690	3,940	3,290	2,730	2,240
54,125 - 54,374	9,070	8,130	7,260	6,260	5,520	4,760	4,010	3,350	2,780	2,280
54,375 - 54,624	9,130	8,200	7,320	6,330	5,590	4,830	4,080	3,410	2,830	2,330
54,625 - 54,874	9,190	8,260	7,380	6,390	5,650	4,900	4,140	3,470	2,880	2,370
54,875 - 55,124	9,260	8,320	7,450	6,450	5,720	4,970	4,210	3,530	2,930	2,410
55,125 - 55,374	9,320	8,390	7,510	6,520	5,790	5,040	4,280	3,580	2,980	2,450
55,375 - 55,624	9,380	8,450	7,570	6,580	5,850	5,110	4,350	3,640	3,030	2,500
55,625 - 55,874	9,450	8,510	7,640	6,640	5,910	5,180	4,420	3,700	3,080	2,540
55,875 - 56,124	9,510	8,580	7,700	6,710	5,980	5,250	4,490	3,760	3,130	2,580
56,125 - 56,374	9,570	8,640	7,760	6,770	6,040	5,310	4,560	3,820	3,180	2,630
56,375 - 56,624	9,640	8,700	7,830	6,830	6,100	5,370	4,630	3,880	3,240	2,680
56,625 - 56,874	9,700	8,770	7,890	6,900	6,170	5,440	4,700	3,940	3,300	2,730
56,875 - 57,124	9,760	8,830	7,960	6,960	6,230	5,500	4,770	4,010	3,360	2,780
57,125 - 57,374	9,830	8,900	8,020	7,020	6,290	5,560	4,830	4,080	3,410	2,830
57,375 - 57,624	9,890	8,960	8,080	7,090	6,360	5,630	4,900	4,150	3,470	2,880
57,625 - 57,874	9,950	9,020	8,150	7,150	6,420	5,690	4,960	4,220	3,530	2,930
57,875 - 58,124	10,020	9,090	8,210	7,220	6,480	5,750	5,020	4,290	3,590	2,980
58,125 - 58,374	10,080	9,150	8,270	7,280	6,550	5,820	5,090	4,360	3,650	3,030
58,375 - 58,624	10,150	9,210	8,340	7,340	6,610	5,880	5,150	4,420	3,710	3,080
58,625 - 58,874	10,210	9,280	8,400	7,410	6,670	5,940	5,210	4,480	3,770	3,140
58,875 - 59,124	10,270	9,340	8,460	7,470	6,740	6,010	5,280	4,550	3,830	3,190
59,125 - 59,374	10,340	9,400	8,530	7,530	6,800	6,070	5,340	4,610	3,880	3,240
59,375 - 59,624	10,400	9,470	8,590	7,600	6,870	6,130	5,400	4,670	3,940	3,300
59,625 - 59,874	10,460	9,530	8,650	7,660	6,930	6,200	5,470	4,740	4,010	3,360

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	10,530	9,590	8,720	7,720	6,990	6,260	5,530	4,800	4,070	3,420
60,125 - 60,374	10,590	9,660	8,780	7,790	7,060	6,320	5,590	4,860	4,130	3,480
60,375 - 60,624	10,650	9,720	8,840	7,850	7,120	6,390	5,660	4,930	4,200	3,530
60,625 - 60,874	10,720	9,780	8,910	7,910	7,180	6,450	5,720	4,990	4,260	3,590
60,875 - 61,124	10,780	9,850	8,970	7,980	7,250	6,520	5,780	5,050	4,320	3,640
61,125 - 61,374	10,840	9,910	9,030	8,040	7,310	6,580	5,850	5,120	4,390	3,690
61,375 - 61,624	10,910	9,970	9,100	8,100	7,370	6,640	5,910	5,180	4,450	3,750
61,625 - 61,874	10,970	10,040	9,160	8,170	7,440	6,710	5,970	5,240	4,510	3,800
61,875 - 62,124	11,030	10,100	9,220	8,230	7,500	6,770	6,040	5,310	4,580	3,860
62,125 - 62,374	11,100	10,160	9,290	8,290	7,560	6,830	6,100	5,370	4,640	3,910
62,375 - 62,624	11,160	10,230	9,350	8,360	7,630	6,900	6,160	5,430	4,700	3,970
62,625 - 62,874	11,220	10,290	9,410	8,420	7,690	6,960	6,230	5,500	4,770	4,040
62,875 - 63,124	11,290	10,350	9,480	8,480	7,750	7,020	6,290	5,560	4,830	4,100
63,125 - 63,374	11,350	10,420	9,540	8,550	7,820	7,090	6,360	5,620	4,890	4,160
63,375 - 63,624	11,410	10,480	9,600	8,610	7,880	7,150	6,420	5,690	4,960	4,230
63,625 - 63,874	11,480	10,540	9,670	8,670	7,940	7,210	6,480	5,750	5,020	4,290
63,875 - 64,124	11,540	10,610	9,730	8,740	8,010	7,280	6,550	5,810	5,080	4,350
64,125 - 64,374	11,600	10,670	9,800	8,800	8,070	7,340	6,610	5,880	5,150	4,420
64,375 - 64,624	11,670	10,740	9,860	8,860	8,130	7,400	6,670	5,940	5,210	4,480
64,625 - 64,874	11,730	10,800	9,920	8,930	8,200	7,470	6,740	6,010	5,270	4,540
64,875 - 65,124	11,800	10,860	9,990	8,990	8,260	7,530	6,800	6,070	5,340	4,610
65,125 - 65,374	11,860	10,930	10,050	9,060	8,320	7,590	6,860	6,130	5,400	4,670
65,375 - 65,624	11,920	10,990	10,110	9,120	8,390	7,660	6,930	6,200	5,460	4,730
65,625 - 65,874	11,980	11,050	10,180	9,180	8,450	7,720	6,990	6,260	5,530	4,800
65,875 - 66,124	12,040	11,120	10,240	9,250	8,510	7,780	7,050	6,320	5,590	4,860
66,125 - 66,374	12,100	11,180	10,300	9,310	8,580	7,850	7,120	6,390	5,660	4,920
66,375 - 66,624	12,160	11,240	10,370	9,370	8,640	7,910	7,180	6,450	5,720	4,990
66,625 - 66,874	12,220	11,300	10,430	9,440	8,710	7,970	7,240	6,510	5,780	5,050
66,875 - 67,124	12,280	11,360	10,490	9,500	8,770	8,040	7,310	6,580	5,850	5,110
67,125 - 67,374	12,330	11,420	10,560	9,560	8,830	8,100	7,370	6,640	5,910	5,180
67,375 - 67,624	12,390	11,480	10,620	9,630	8,900	8,160	7,430	6,700	5,970	5,240
67,625 - 67,874	12,450	11,540	10,680	9,690	8,960	8,230	7,500	6,770	6,040	5,310
67,875 - 68,124	12,510	11,600	10,740	9,750	9,020	8,290	7,560	6,830	6,100	5,370
68,125 - 68,374	12,570	11,660	10,800	9,820	9,090	8,360	7,620	6,890	6,160	5,430
68,375 - 68,624	12,630	11,710	10,860	9,880	9,150	8,420	7,690	6,960	6,230	5,500
68,625 - 68,874	12,690	11,770	10,920	9,940	9,210	8,480	7,750	7,020	6,290	5,560
68,875 - 69,124	12,750	11,830	10,980	10,000	9,280	8,550	7,810	7,080	6,350	5,620
69,125 - 69,374	12,800	11,890	11,030	10,060	9,340	8,610	7,880	7,150	6,420	5,690
69,375 - 69,624	12,860	11,950	11,090	10,120	9,400	8,670	7,940	7,210	6,480	5,750
69,625 - 69,874	12,920	12,010	11,150	10,180	9,470	8,740	8,010	7,270	6,540	5,810

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	12,980	12,070	11,210	10,240	9,520	8,800	8,070	7,340	6,610	5,880
70,125 - 70,374	13,040	12,130	11,270	10,290	9,580	8,860	8,130	7,400	6,670	5,940
70,375 - 70,624	13,100	12,180	11,330	10,350	9,640	8,930	8,200	7,460	6,730	6,000
70,625 - 70,874	13,160	12,240	11,390	10,410	9,700	8,990	8,260	7,530	6,800	6,070
70,875 - 71,124	13,220	12,300	11,450	10,470	9,760	9,050	8,320	7,590	6,860	6,130
71,125 - 71,374	13,270	12,360	11,500	10,530	9,820	9,110	8,390	7,650	6,920	6,190
71,375 - 71,624	13,330	12,420	11,560	10,590	9,880	9,170	8,450	7,720	6,990	6,260
71,625 - 71,874	13,390	12,480	11,620	10,650	9,940	9,220	8,510	7,780	7,050	6,320
71,875 - 72,124	13,450	12,540	11,680	10,710	9,990	9,280	8,570	7,850	7,110	6,380
72,125 - 72,374	13,510	12,600	11,740	10,760	10,050	9,340	8,630	7,910	7,180	6,450
72,375 - 72,624	13,570	12,650	11,800	10,820	10,110	9,400	8,690	7,970	7,240	6,510
72,625 - 72,874	13,630	12,710	11,860	10,880	10,170	9,460	8,750	8,040	7,300	6,570
72,875 - 73,124	13,690	12,770	11,920	10,940	10,230	9,520	8,810	8,100	7,370	6,640
73,125 - 73,374	13,740	12,830	11,970	11,000	10,290	9,580	8,870	8,160	7,430	6,700
73,375 - 73,624	13,800	12,890	12,030	11,060	10,350	9,640	8,920	8,210	7,500	6,760
73,625 - 73,874	13,860	12,950	12,090	11,120	10,410	9,690	8,980	8,270	7,560	6,830
73,875 - 74,124	13,920	13,010	12,150	11,180	10,460	9,750	9,040	8,330	7,620	6,890
74,125 - 74,374	13,980	13,070	12,210	11,230	10,520	9,810	9,100	8,390	7,680	6,950
74,375 - 74,624	14,040	13,120	12,270	11,290	10,580	9,870	9,160	8,450	7,740	7,020
74,625 - 74,874	14,100	13,180	12,330	11,350	10,640	9,930	9,220	8,510	7,800	7,080
74,875 - 75,000	14,160	13,240	12,390	11,410	10,700	9,990	9,280	8,570	7,860	7,140
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***									

BILLING CODE 4000-01-C

Table B.—Expected Family Contribution for a Dependent Student From a One-Parent Family—1986–87

For a dependent student from a one-parent family, the educational institution determines the student's expected family contribution according to Table B. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table B, "Family members" include the student, the student's spouse and their dependents, and the student's parent and the parent's dependents.

Table B is based on the following assumptions:

- The parent is employed.
- No assets are considered
- All of the family income was earned by the parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following—

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as head of households;
—F.I.C.A. (Social Security) for one wage earner;
—Average State and other taxes (8%);
—An employment allowance of 35% of income, to a maximum of $2,000; and
—A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because the living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

BILLING CODE 4000-01-M

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	,	'2
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***										
30,001 - 30,124	2,430	1,950	1,450	1,020	520	150	0	0	0	0	0
30,125 - 30,374	2,480	1,990	1,480	1,050	560	180	0	0	0	0	0
30,375 - 30,624	2,520	2,020	1,510	1,080	590	220	0	0	0	0	0
30,625 - 30,874	2,560	2,060	1,550	1,110	620	250	0	0	0	0	0
30,875 - 31,124	2,600	2,100	1,580	1,140	660	280	0	0	0	0	0
31,125 - 31,374	2,650	2,140	1,610	1,170	690	320	0	0	0	0	0
31,375 - 31,624	2,700	2,180	1,640	1,210	720	350	0	0	0	0	0
31,625 - 31,874	2,750	2,220	1,680	1,240	750	380	10	0	0	0	0
31,875 - 32,124	2,800	2,270	1,710	1,270	780	420	40	0	0	0	0
32,125 - 32,374	2,840	2,310	1,750	1,300	810	450	80	0	0	0	0
32,375 - 32,624	2,890	2,350	1,790	1,330	840	480	110	0	0	0	0
32,625 - 32,874	2,930	2,390	1,820	1,360	870	510	140	0	0	0	0
32,875 - 33,124	2,980	2,430	1,860	1,390	910	540	180	0	0	0	0
33,125 - 33,374	3,020	2,470	1,890	1,430	940	570	210	0	0	0	0
33,375 - 33,624	3,070	2,510	1,930	1,460	970	600	240	0	0	0	0
33,625 - 33,874	3,110	2,550	1,960	1,490	1,000	630	270	0	0	0	0
33,875 - 34,124	3,160	2,590	2,000	1,520	1,030	670	300	0	0	0	0
34,125 - 34,374	3,200	2,630	2,030	1,550	1,060	700	330	0	0	0	0
34,375 - 34,624	3,260	2,680	2,070	1,580	1,090	730	360	0	0	0	0
34,625 - 34,874	3,310	2,720	2,110	1,610	1,130	760	400	30	0	0	0
34,875 - 35,124	3,360	2,770	2,150	1,650	1,160	790	430	60	0	0	0
35,125 - 35,374	3,420	2,810	2,180	1,680	1,190	820	460	90	0	0	0
35,375 - 35,624	3,470	2,860	2,220	1,720	1,220	850	490	120	0	0	0
35,625 - 35,874	3,520	2,900	2,260	1,750	1,250	890	520	160	0	0	0
35,875 - 36,124	3,580	2,950	2,300	1,780	1,280	920	550	190	0	0	0
36,125 - 36,374	3,630	2,990	2,340	1,820	1,310	950	580	220	0	0	0
36,375 - 36,624	3,680	3,040	2,380	1,850	1,340	980	610	250	0	0	0
36,625 - 36,874	3,730	3,080	2,410	1,880	1,370	1,010	650	280	0	0	0
36,875 - 37,124	3,790	3,130	2,450	1,920	1,400	1,040	680	310	0	0	0
37,125 - 37,374	3,840	3,170	2,490	1,950	1,430	1,070	710	340	0	0	0
37,375 - 37,624	3,890	3,220	2,530	1,980	1,460	1,100	740	370	10	0	0
37,625 - 37,874	3,950	3,270	2,570	2,020	1,490	1,130	770	410	40	0	0
37,875 - 38,124	4,010	3,330	2,610	2,050	1,520	1,160	800	440	70	0	0
38,125 - 38,374	4,070	3,380	2,660	2,090	1,550	1,190	830	470	100	0	0
38,375 - 38,624	4,130	3,430	2,700	2,120	1,570	1,220	860	500	140	0	0
38,625 - 38,874	4,180	3,490	2,750	2,160	1,600	1,250	890	530	170	0	0
38,875 - 39,124	4,240	3,530	2,790	2,200	1,640	1,280	920	560	200	0	0
39,125 - 39,374	4,300	3,580	2,840	2,240	1,670	1,310	950	590	230	0	0
39,375 - 39,624	4,360	3,630	2,880	2,280	1,700	1,340	980	620	260	0	0
39,625 - 39,874	4,420	3,690	2,930	2,320	1,740	1,370	1,010	660	290	0	0

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	4,490	3,750	2,980	2,360	1,780	1,400	1,040	690	330	0	0
40,125 - 40,374	4,560	3,800	3,030	2,410	1,810	1,430	1,080	720	360	0	0
40,375 - 40,624	4,620	3,860	3,070	2,450	1,850	1,470	1,110	750	400	30	0
40,625 - 40,874	4,690	3,920	3,120	2,490	1,890	1,500	1,140	790	430	70	0
40,875 - 41,124	4,760	3,990	3,170	2,530	1,930	1,530	1,180	820	460	110	0
41,125 - 41,374	4,830	4,050	3,220	2,580	1,960	1,560	1,210	850	500	140	0
41,375 - 41,624	4,890	4,120	3,280	2,620	2,000	1,600	1,240	890	530	170	0
41,625 - 41,874	4,960	4,190	3,340	2,670	2,040	1,630	1,280	920	560	210	0
41,875 - 42,124	5,030	4,250	3,400	2,720	2,080	1,670	1,310	950	600	240	0
42,125 - 42,374	5,090	4,320	3,450	2,770	2,120	1,710	1,340	990	630	270	0
42,375 - 42,624	5,160	4,390	3,510	2,820	2,160	1,750	1,370	1,020	660	310	0
42,625 - 42,874	5,230	4,450	3,570	2,870	2,200	1,780	1,410	1,050	700	340	0
42,875 - 43,124	5,290	4,520	3,620	2,910	2,240	1,820	1,440	1,080	730	370	20
43,125 - 43,374	5,360	4,590	3,680	2,960	2,280	1,860	1,470	1,120	760	410	50
43,375 - 43,624	5,430	4,650	3,740	3,010	2,320	1,890	1,510	1,150	790	440	80
43,625 - 43,874	5,500	4,720	3,790	3,060	2,370	1,930	1,540	1,180	830	470	120
43,875 - 44,124	5,560	4,790	3,850	3,110	2,410	1,960	1,570	1,220	860	500	150
44,125 - 44,374	5,630	4,860	3,910	3,160	2,450	2,000	1,600	1,250	890	540	180
44,375 - 44,624	5,700	4,920	3,980	3,210	2,490	2,030	1,640	1,280	930	570	210
44,625 - 44,874	5,760	4,990	4,040	3,260	2,530	2,070	1,670	1,320	960	600	250
44,875 - 45,124	5,830	5,060	4,110	3,320	2,570	2,110	1,710	1,350	990	640	280
45,125 - 45,374	5,900	5,120	4,180	3,380	2,620	2,150	1,740	1,380	1,030	670	310
45,375 - 45,624	5,960	5,190	4,240	3,440	2,670	2,200	1,780	1,410	1,060	700	350
45,625 - 45,874	6,030	5,260	4,310	3,490	2,720	2,240	1,820	1,440	1,090	740	380
45,875 - 46,124	6,100	5,320	4,380	3,550	2,770	2,280	1,850	1,470	1,120	770	410
46,125 - 46,374	6,170	5,390	4,440	3,610	2,810	2,320	1,890	1,500	1,160	800	450
46,375 - 46,624	6,230	5,460	4,510	3,660	2,860	2,360	1,920	1,540	1,190	830	480
46,625 - 46,874	6,300	5,530	4,580	3,720	2,910	2,400	1,960	1,570	1,220	870	510
46,875 - 47,124	6,370	5,590	4,650	3,780	2,960	2,440	1,990	1,600	1,250	900	540
47,125 - 47,374	6,430	5,660	4,710	3,830	3,010	2,480	2,030	1,630	1,280	930	580
47,375 - 47,624	6,500	5,730	4,780	3,890	3,060	2,530	2,070	1,670	1,310	960	610
47,625 - 47,874	6,570	5,790	4,850	3,950	3,100	2,570	2,110	1,700	1,340	990	640
47,875 - 48,124	6,630	5,860	4,910	4,020	3,150	2,610	2,150	1,740	1,370	1,030	680
48,125 - 48,374	6,700	5,930	4,980	4,090	3,200	2,660	2,190	1,780	1,410	1,060	710
48,375 - 48,624	6,770	5,990	5,050	4,160	3,260	2,710	2,230	1,810	1,440	1,090	740
48,625 - 48,874	6,830	6,060	5,110	4,220	3,320	2,760	2,270	1,850	1,470	1,120	770
48,875 - 49,124	6,890	6,130	5,180	4,290	3,370	2,810	2,310	1,880	1,500	1,150	800
49,125 - 49,374	6,950	6,200	5,250	4,360	3,430	2,860	2,360	1,920	1,530	1,180	830
49,375 - 49,624	7,010	6,260	5,310	4,420	3,490	2,900	2,400	1,950	1,560	1,210	860
49,625 - 49,874	7,070	6,330	5,380	4,490	3,550	2,950	2,440	1,990	1,590	1,250	900

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	7,120	6,380	5,450	4,560	3,600	3,000	2,480	2,020	1,630	1,280	930
50,125 - 50,374	7,180	6,440	5,520	4,620	3,660	3,050	2,520	2,060	1,660	1,310	960
50,375 - 50,624	7,240	6,500	5,580	4,690	3,720	3,100	2,560	2,100	1,700	1,340	990
50,625 - 50,874	7,300	6,560	5,650	4,760	3,770	3,150	2,610	2,140	1,730	1,370	1,020
50,875 - 51,124	7,360	6,620	5,710	4,830	3,830	3,200	2,660	2,180	1,770	1,400	1,050
51,125 - 51,374	7,420	6,680	5,760	4,890	3,890	3,250	2,700	2,230	1,810	1,430	1,080
51,375 - 51,624	7,480	6,740	5,820	4,960	3,950	3,310	2,750	2,270	1,840	1,460	1,120
51,625 - 51,874	7,540	6,800	5,880	5,030	4,020	3,370	2,800	2,310	1,880	1,500	1,150
51,875 - 52,124	7,590	6,850	5,940	5,080	4,080	3,420	2,850	2,350	1,910	1,530	1,180
52,125 - 52,374	7,650	6,910	6,000	5,140	4,150	3,480	2,900	2,390	1,950	1,560	1,210
52,375 - 52,624	7,710	6,970	6,060	5,200	4,220	3,540	2,950	2,430	1,980	1,590	1,240
52,625 - 52,874	7,770	7,030	6,120	5,260	4,290	3,600	3,000	2,470	2,020	1,620	1,270
52,875 - 53,124	7,830	7,090	6,180	5,320	4,340	3,650	3,040	2,520	2,060	1,660	1,300
53,125 - 53,374	7,890	7,150	6,230	5,380	4,400	3,710	3,090	2,560	2,100	1,690	1,340
53,375 - 53,624	7,950	7,210	6,290	5,440	4,460	3,770	3,140	2,600	2,140	1,730	1,370
53,625 - 53,874	8,010	7,270	6,350	5,500	4,520	3,820	3,190	2,650	2,180	1,770	1,400
53,875 - 54,124	8,060	7,320	6,410	5,550	4,580	3,870	3,250	2,700	2,220	1,800	1,430
54,125 - 54,374	8,120	7,380	6,470	5,610	4,640	3,930	3,300	2,750	2,260	1,840	1,460
54,375 - 54,624	8,180	7,440	6,530	5,670	4,700	3,990	3,360	2,800	2,300	1,870	1,490
54,625 - 54,874	8,240	7,500	6,590	5,730	4,760	4,040	3,420	2,840	2,340	1,910	1,520
54,875 - 55,124	8,300	7,560	6,650	5,790	4,810	4,100	3,470	2,890	2,390	1,940	1,550
55,125 - 55,374	8,360	7,620	6,700	5,850	4,870	4,160	3,520	2,940	2,430	1,980	1,590
55,375 - 55,624	8,420	7,680	6,760	5,910	4,930	4,220	3,570	2,990	2,470	2,020	1,620
55,625 - 55,874	8,480	7,740	6,820	5,970	4,990	4,280	3,620	3,040	2,510	2,050	1,650
55,875 - 56,124	8,530	7,790	6,880	6,020	5,050	4,340	3,670	3,080	2,550	2,090	1,690
56,125 - 56,374	8,590	7,850	6,940	6,080	5,110	4,400	3,720	3,130	2,600	2,130	1,730
56,375 - 56,624	8,650	7,910	7,000	6,140	5,170	4,460	3,770	3,170	2,640	2,170	1,760
56,625 - 56,874	8,710	7,970	7,060	6,200	5,230	4,510	3,820	3,210	2,690	2,220	1,800
56,875 - 57,124	8,770	8,030	7,120	6,260	5,280	4,570	3,870	3,260	2,740	2,260	1,830
57,125 - 57,374	8,830	8,090	7,170	6,320	5,340	4,630	3,920	3,310	2,780	2,300	1,870
57,375 - 57,624	8,890	8,150	7,230	6,380	5,400	4,690	3,980	3,360	2,820	2,340	1,900
57,625 - 57,874	8,950	8,210	7,290	6,440	5,460	4,750	4,040	3,410	2,870	2,380	1,940
57,875 - 58,124	9,000	8,260	7,350	6,490	5,520	4,810	4,100	3,460	2,910	2,420	1,970
58,125 - 58,374	9,060	8,320	7,410	6,550	5,580	4,870	4,160	3,510	2,950	2,460	2,010
58,375 - 58,624	9,120	8,380	7,470	6,610	5,640	4,930	4,210	3,560	2,990	2,490	2,050
58,625 - 58,874	9,180	8,440	7,530	6,670	5,700	4,980	4,270	3,610	3,040	2,530	2,090
58,875 - 59,124	9,240	8,500	7,590	6,730	5,750	5,040	4,330	3,660	3,080	2,570	2,130
59,125 - 59,374	9,300	8,560	7,640	6,790	5,810	5,100	4,390	3,710	3,120	2,610	2,160
59,375 - 59,624	9,360	8,620	7,700	6,850	5,870	5,160	4,450	3,760	3,160	2,650	2,200
59,625 - 59,874	9,420	8,680	7,760	6,910	5,930	5,220	4,510	3,810	3,210	2,690	2,240

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	9,470	8,730	7,820	6,960	5,990	5,280	4,570	3,860	3,260	2,730	2,270
60,125 - 60,374	9,530	8,790	7,880	7,020	6,050	5,340	4,630	3,910	3,310	2,780	2,310
60,375 - 60,624	9,590	8,850	7,940	7,080	6,110	5,400	4,680	3,970	3,360	2,820	2,340
60,625 - 60,874	9,650	8,910	8,000	7,140	6,170	5,450	4,740	4,030	3,410	2,860	2,380
60,875 - 61,124	9,710	8,970	8,060	7,200	6,220	5,510	4,800	4,090	3,460	2,900	2,420
61,125 - 61,374	9,770	9,030	8,110	7,260	6,280	5,570	4,860	4,150	3,510	2,950	2,450
61,375 - 61,624	9,830	9,090	8,170	7,320	6,340	5,630	4,920	4,210	3,560	2,990	2,490
61,625 - 61,874	9,890	9,150	8,230	7,380	6,400	5,690	4,980	4,270	3,610	3,030	2,530
61,875 - 62,124	9,940	9,200	8,290	7,430	6,460	5,750	5,040	4,330	3,660	3,070	2,560
62,125 - 62,374	10,000	9,260	8,350	7,490	6,520	5,810	5,100	4,380	3,710	3,120	2,600
62,375 - 62,624	10,060	9,320	8,410	7,550	6,580	5,870	5,150	4,440	3,760	3,160	2,640
62,625 - 62,874	10,120	9,380	8,470	7,610	6,640	5,920	5,210	4,500	3,810	3,200	2,690
62,875 - 63,124	10,180	9,440	8,530	7,670	6,690	5,980	5,270	4,560	3,860	3,250	2,730
63,125 - 63,374	10,240	9,500	8,580	7,730	6,750	6,040	5,330	4,620	3,910	3,300	2,770
63,375 - 63,624	10,300	9,560	8,640	7,790	6,810	6,100	5,390	4,680	3,970	3,350	2,810
63,625 - 63,874	10,360	9,620	8,700	7,850	6,870	6,160	5,450	4,740	4,030	3,400	2,860
63,875 - 64,124	10,410	9,670	8,760	7,900	6,930	6,220	5,510	4,800	4,080	3,450	2,900
64,125 - 64,374	10,470	9,730	8,820	7,960	6,990	6,280	5,570	4,850	4,140	3,500	2,940
64,375 - 64,624	10,530	9,790	8,880	8,020	7,050	6,340	5,620	4,910	4,200	3,550	2,980
64,625 - 64,874	10,590	9,850	8,940	8,080	7,110	6,390	5,680	4,970	4,260	3,600	3,030
64,875 - 65,124	10,650	9,910	9,000	8,140	7,160	6,450	5,740	5,030	4,320	3,650	3,070
65,125 - 65,374	10,710	9,970	9,050	8,200	7,220	6,510	5,800	5,090	4,380	3,700	3,110
65,375 - 65,624	10,760	10,030	9,110	8,260	7,280	6,570	5,860	5,150	4,440	3,750	3,150
65,625 - 65,874	10,820	10,090	9,170	8,320	7,340	6,630	5,920	5,210	4,500	3,800	3,200
65,875 - 66,124	10,870	10,140	9,230	8,370	7,400	6,690	5,980	5,270	4,550	3,850	3,250
66,125 - 66,374	10,930	10,200	9,290	8,430	7,460	6,750	6,040	5,320	4,610	3,900	3,300
66,375 - 66,624	10,980	10,260	9,350	8,490	7,520	6,810	6,090	5,380	4,670	3,960	3,350
66,625 - 66,874	11,040	10,310	9,410	8,550	7,580	6,860	6,150	5,440	4,730	4,020	3,400
66,875 - 67,124	11,090	10,370	9,470	8,610	7,630	6,920	6,210	5,500	4,790	4,080	3,450
67,125 - 67,374	11,150	10,420	9,520	8,670	7,690	6,980	6,270	5,560	4,850	4,140	3,500
67,375 - 67,624	11,200	10,480	9,580	8,730	7,750	7,040	6,330	5,620	4,910	4,200	3,550
67,625 - 67,874	11,260	10,530	9,640	8,790	7,810	7,100	6,390	5,680	4,970	4,260	3,600
67,875 - 68,124	11,310	10,590	9,690	8,840	7,870	7,160	6,450	5,740	5,020	4,310	3,650
68,125 - 68,374	11,370	10,640	9,750	8,900	7,930	7,220	6,510	5,790	5,080	4,370	3,700
68,375 - 68,624	11,420	10,700	9,800	8,960	7,990	7,280	6,560	5,850	5,140	4,430	3,750
68,625 - 68,874	11,480	10,750	9,860	9,010	8,050	7,330	6,620	5,910	5,200	4,490	3,800
68,875 - 69,124	11,530	10,810	9,910	9,070	8,100	7,390	6,680	5,970	5,260	4,550	3,850
69,125 - 69,374	11,590	10,870	9,970	9,120	8,160	7,450	6,740	6,030	5,320	4,610	3,900
69,375 - 69,624	11,640	10,920	10,020	9,180	8,220	7,510	6,800	6,090	5,380	4,670	3,960
69,625 - 69,874	11,700	10,980	10,080	9,230	8,270	7,570	6,860	6,150	5,440	4,730	4,010

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	11,760	11,030	10,130	9,290	8,330	7,630	6,920	6,210	5,490	4,780	4,070
70,125 - 70,374	11,810	11,090	10,190	9,350	8,390	7,690	6,980	6,260	5,550	4,840	4,130
70,375 - 70,624	11,870	11,140	10,240	9,400	8,440	7,740	7,030	6,320	5,610	4,900	4,190
70,625 - 70,874	11,920	11,200	10,300	9,460	8,500	7,800	7,090	6,380	5,670	4,960	4,250
70,875 - 71,124	11,980	11,250	10,350	9,510	8,550	7,850	7,150	6,440	5,730	5,020	4,310
71,125 - 71,374	12,030	11,310	10,410	9,570	8,610	7,910	7,210	6,500	5,790	5,080	4,370
71,375 - 71,624	12,090	11,360	10,460	9,620	8,660	7,960	7,270	6,560	5,850	5,140	4,430
71,625 - 71,874	12,140	11,420	10,520	9,680	8,720	8,020	7,320	6,620	5,910	5,200	4,480
71,875 - 72,124	12,200	11,470	10,570	9,730	8,770	8,080	7,380	6,680	5,960	5,250	4,540
72,125 - 72,374	12,250	11,530	10,630	9,790	8,830	8,130	7,430	6,730	6,020	5,310	4,600
72,375 - 72,624	12,310	11,580	10,680	9,840	8,880	8,190	7,490	6,790	6,080	5,370	4,660
72,625 - 72,874	12,360	11,640	10,740	9,900	8,940	8,240	7,540	6,850	6,140	5,430	4,720
72,875 - 73,124	12,420	11,690	10,790	9,950	8,990	8,300	7,600	6,900	6,200	5,490	4,780
73,125 - 73,374	12,470	11,750	10,850	10,010	9,050	8,350	7,650	6,960	6,260	5,550	4,840
73,375 - 73,624	12,530	11,800	10,910	10,060	9,100	8,410	7,710	7,010	6,320	5,610	4,900
73,625 - 73,874	12,580	11,860	10,960	10,120	9,160	8,460	7,770	7,070	6,370	5,670	4,950
73,875 - 74,124	12,640	11,910	11,020	10,170	9,210	8,520	7,820	7,120	6,430	5,720	5,010
74,125 - 74,374	12,690	11,970	11,070	10,230	9,270	8,570	7,880	7,180	6,480	5,780	5,070
74,375 - 74,624	12,750	12,020	11,130	10,280	9,320	8,630	7,930	7,230	6,540	5,840	5,130
74,625 - 74,874	12,800	12,080	11,180	10,340	9,380	8,680	7,990	7,290	6,590	5,900	5,190
74,875 - 75,000	12,860	12,140	11,240	10,390	9,430	8,740	8,040	7,340	6,650	5,950	5,250
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***										

BILLING CODE 4000-01-C

Table C.—Expected Family Contribution for a Married Independent Student—1986–87

For a married independent student, the education institution determines the student's expected family contribution according to Table C. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary education institution. The contributions set forth in Table C are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table C, "Family members" include the student, the student's spouse and their dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;
—F.I.C.A. (Social Security) for one wage earner; and
—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses of the student and his or her family because those expenses are included in the student's cost of attendance.

BILLING CODE 4000-01-M

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***										
30,001 - 30,124	22,500	22,760	23,020	23,260	23,480	23,710	23,940	24,160	24,340	24,530	24,720
30,125 - 30,374	22,660	22,920	23,180	23,420	23,650	23,880	24,110	24,330	24,520	24,710	24,890
30,375 - 30,624	22,820	23,080	23,340	23,590	23,820	24,050	24,280	24,510	24,700	24,880	25,070
30,625 - 30,874	22,980	23,240	23,500	23,760	23,990	24,220	24,440	24,670	24,870	25,060	25,250
30,875 - 31,124	23,140	23,400	23,660	23,920	24,150	24,380	24,610	24,840	25,050	25,240	25,430
31,125 - 31,374	23,300	23,560	23,820	24,080	24,320	24,550	24,780	25,010	25,230	25,420	25,600
31,375 - 31,624	23,460	23,720	23,980	24,240	24,490	24,720	24,950	25,170	25,400	25,590	25,780
31,625 - 31,874	23,620	23,880	24,140	24,400	24,660	24,880	25,110	25,340	25,570	25,770	25,960
31,875 - 32,124	23,780	24,040	24,300	24,560	24,820	25,050	25,280	25,510	25,740	25,950	26,140
32,125 - 32,374	23,940	24,200	24,460	24,720	24,980	25,220	25,450	25,680	25,910	26,130	26,310
32,375 - 32,624	24,100	24,360	24,620	24,880	25,140	25,390	25,620	25,840	26,070	26,300	26,490
32,625 - 32,874	24,260	24,520	24,780	25,040	25,300	25,550	25,780	26,010	26,240	26,470	26,670
32,875 - 33,124	24,420	24,680	24,940	25,200	25,460	25,720	25,950	26,180	26,410	26,640	26,850
33,125 - 33,374	24,580	24,840	25,100	25,360	25,620	25,880	26,120	26,350	26,580	26,800	27,020
33,375 - 33,624	24,730	25,000	25,260	25,520	25,780	26,040	26,290	26,510	26,740	26,970	27,200
33,625 - 33,874	24,880	25,160	25,420	25,680	25,940	26,200	26,450	26,680	26,910	27,140	27,370
33,875 - 34,124	25,030	25,320	25,580	25,840	26,100	26,360	26,620	26,850	27,080	27,310	27,540
34,125 - 34,374	25,190	25,480	25,740	26,000	26,260	26,520	26,780	27,020	27,240	27,470	27,700
34,375 - 34,624	25,340	25,630	25,900	26,160	26,420	26,680	26,940	27,180	27,410	27,640	27,870
34,625 - 34,874	25,490	25,780	26,060	26,320	26,580	26,840	27,100	27,350	27,580	27,810	28,040
34,875 - 35,124	25,640	25,930	26,220	26,480	26,740	27,000	27,260	27,520	27,750	27,980	28,200
35,125 - 35,374	25,800	26,090	26,380	26,640	26,900	27,160	27,420	27,680	27,910	28,140	28,370
35,375 - 35,624	25,950	26,240	26,530	26,800	27,060	27,320	27,580	27,840	28,080	28,310	28,540
35,625 - 35,874	26,100	26,390	26,680	26,960	27,220	27,480	27,740	28,000	28,250	28,480	28,710
35,875 - 36,124	26,250	26,540	26,830	27,120	27,380	27,640	27,900	28,160	28,420	28,650	28,870
36,125 - 36,374	26,400	26,700	26,990	27,280	27,540	27,800	28,060	28,320	28,580	28,810	29,040
36,375 - 36,624	26,560	26,850	27,140	27,430	27,700	27,960	28,220	28,480	28,740	28,980	29,210
36,625 - 36,874	26,710	27,000	27,290	27,580	27,860	28,120	28,380	28,640	28,900	29,150	29,380
36,875 - 37,124	26,860	27,150	27,440	27,740	28,020	28,280	28,540	28,800	29,060	29,310	29,540
37,125 - 37,374	27,010	27,310	27,600	27,890	28,180	28,440	28,700	28,960	29,220	29,480	29,710
37,375 - 37,624	27,170	27,460	27,750	28,040	28,330	28,600	28,860	29,120	29,380	29,640	29,880
37,625 - 37,874	27,320	27,610	27,900	28,190	28,480	28,760	29,020	29,280	29,540	29,800	30,050
37,875 - 38,124	27,470	27,760	28,050	28,350	28,640	28,920	29,180	29,440	29,700	29,960	30,210
38,125 - 38,374	27,620	27,910	28,210	28,500	28,790	29,080	29,340	29,600	29,860	30,120	30,380
38,375 - 38,624	27,780	28,070	28,360	28,650	28,940	29,230	29,500	29,760	30,020	30,280	30,540
38,625 - 38,874	27,930	28,220	28,510	28,800	29,090	29,380	29,660	29,920	30,180	30,440	30,700
38,875 - 39,124	28,070	28,370	28,660	28,950	29,250	29,540	29,810	30,070	30,330	30,590	30,850
39,125 - 39,374	28,210	28,520	28,820	29,110	29,400	29,690	29,970	30,230	30,490	30,750	31,010
39,375 - 39,624	28,350	28,680	28,970	29,260	29,550	29,840	30,130	30,390	30,650	30,910	31,170
39,625 - 39,874	28,500	28,840	29,130	29,420	29,710	30,000	30,300	30,560	30,820	31,080	31,340

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	28,650	29,000	29,300	29,590	29,880	30,170	30,470	30,740	31,000	31,260	31,520
40,125 - 40,374	28,810	29,150	29,470	29,760	30,050	30,340	30,640	30,920	31,180	31,440	31,700
40,375 - 40,624	28,970	29,310	29,640	29,930	30,220	30,510	30,810	31,100	31,360	31,620	31,880
40,625 - 40,874	29,130	29,470	29,810	30,100	30,390	30,680	30,980	31,270	31,530	31,790	32,050
40,875 - 41,124	29,280	29,630	29,970	30,270	30,560	30,850	31,150	31,440	31,710	31,970	32,230
41,125 - 41,374	29,440	29,780	30,130	30,440	30,730	31,020	31,320	31,610	31,890	32,150	32,410
41,375 - 41,624	29,600	29,940	30,290	30,610	30,900	31,190	31,490	31,780	32,070	32,330	32,590
41,625 - 41,874	29,760	30,100	30,440	30,780	31,070	31,360	31,660	31,950	32,240	32,500	32,760
41,875 - 42,124	29,910	30,260	30,600	30,940	31,240	31,530	31,830	32,120	32,410	32,680	32,940
42,125 - 42,374	30,070	30,410	30,760	31,100	31,410	31,700	32,000	32,290	32,580	32,860	33,120
42,375 - 42,624	30,230	30,570	30,920	31,260	31,580	31,870	32,170	32,460	32,750	33,040	33,300
42,625 - 42,874	30,390	30,730	31,070	31,420	31,750	32,040	32,340	32,630	32,920	33,210	33,470
42,875 - 43,124	30,540	30,890	31,230	31,570	31,920	32,210	32,510	32,800	33,090	33,380	33,650
43,125 - 43,374	30,700	31,040	31,390	31,730	32,070	32,380	32,680	32,970	33,260	33,550	33,830
43,375 - 43,624	30,860	31,200	31,550	31,890	32,230	32,550	32,850	33,140	33,430	33,720	34,010
43,625 - 43,874	31,020	31,360	31,700	32,050	32,390	32,720	33,020	33,310	33,600	33,890	34,180
43,875 - 44,124	31,170	31,520	31,860	32,200	32,550	32,890	33,190	33,480	33,770	34,060	34,350
44,125 - 44,374	31,330	31,670	32,020	32,360	32,700	33,050	33,360	33,650	33,940	34,230	34,520
44,375 - 44,624	31,490	31,830	32,180	32,520	32,860	33,200	33,530	33,820	34,110	34,400	34,690
44,625 - 44,874	31,650	31,990	32,330	32,680	33,020	33,360	33,700	33,990	34,280	34,570	34,860
44,875 - 45,124	31,800	32,150	32,490	32,830	33,180	33,520	33,860	34,160	34,450	34,740	35,030
45,125 - 45,374	31,960	32,300	32,650	32,990	33,330	33,680	34,020	34,330	34,620	34,910	35,200
45,375 - 45,624	32,120	32,460	32,810	33,150	33,490	33,830	34,180	34,500	34,790	35,080	35,370
45,625 - 45,874	32,280	32,620	32,960	33,310	33,650	33,990	34,340	34,670	34,960	35,250	35,540
45,875 - 46,124	32,430	32,780	33,120	33,460	33,810	34,150	34,490	34,840	35,130	35,420	35,710
46,125 - 46,374	32,590	32,930	33,280	33,620	33,960	34,310	34,650	34,990	35,300	35,590	35,880
46,375 - 46,624	32,750	33,090	33,440	33,780	34,120	34,460	34,810	35,150	35,470	35,760	36,050
46,625 - 46,874	32,910	33,250	33,590	33,940	34,280	34,620	34,970	35,310	35,640	35,930	36,220
46,875 - 47,124	33,060	33,410	33,750	34,090	34,440	34,780	35,120	35,470	35,810	36,100	36,390
47,125 - 47,374	33,220	33,560	33,910	34,250	34,590	34,940	35,280	35,620	35,970	36,270	36,560
47,375 - 47,624	33,380	33,720	34,070	34,410	34,750	35,090	35,440	35,780	36,120	36,440	36,730
47,625 - 47,874	33,540	33,880	34,220	34,570	34,910	35,250	35,600	35,940	36,280	36,610	36,900
47,875 - 48,124	33,690	34,040	34,380	34,720	35,070	35,410	35,750	36,100	36,440	36,780	37,070
48,125 - 48,374	33,850	34,190	34,540	34,880	35,220	35,570	35,910	36,250	36,600	36,940	37,240
48,375 - 48,624	34,010	34,350	34,700	35,040	35,380	35,720	36,070	36,410	36,750	37,100	37,410
48,625 - 48,874	34,170	34,510	34,850	35,200	35,540	35,880	36,230	36,570	36,910	37,260	37,580
48,875 - 49,124	34,320	34,670	35,010	35,350	35,700	36,040	36,380	36,730	37,070	37,410	37,750
49,125 - 49,374	34,480	34,820	35,170	35,510	35,850	36,200	36,540	36,880	37,230	37,570	37,910
49,375 - 49,624	34,640	34,980	35,330	35,670	36,010	36,350	36,700	37,040	37,380	37,730	38,070
49,625 - 49,874	34,800	35,140	35,480	35,830	36,170	36,510	36,860	37,200	37,540	37,890	38,230

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	34,940	35,300	35,640	35,980	36,330	36,670	37,010	37,360	37,700	38,040	38,390
50,125 - 50,374	35,090	35,450	35,800	36,140	36,480	36,830	37,170	37,510	37,860	38,200	38,540
50,375 - 50,624	35,230	35,610	35,960	36,300	36,640	36,980	37,330	37,670	38,010	38,360	38,700
50,625 - 50,874	35,380	35,770	36,110	36,460	36,800	37,140	37,490	37,830	38,170	38,520	38,860
50,875 - 51,124	35,520	35,920	36,270	36,610	36,960	37,300	37,640	37,990	38,330	38,670	39,020
51,125 - 51,374	35,670	36,060	36,430	36,770	37,110	37,460	37,800	38,140	38,490	38,830	39,170
51,375 - 51,624	35,810	36,210	36,590	36,930	37,270	37,610	37,960	38,300	38,640	38,990	39,330
51,625 - 51,874	35,960	36,350	36,740	37,090	37,430	37,770	38,120	38,460	38,800	39,150	39,490
51,875 - 52,124	36,100	36,500	36,890	37,240	37,590	37,930	38,270	38,620	38,960	39,300	39,650
52,125 - 52,374	36,250	36,640	37,040	37,400	37,740	38,090	38,430	38,770	39,120	39,460	39,800
52,375 - 52,624	36,390	36,790	37,180	37,560	37,900	38,240	38,590	38,930	39,270	39,620	39,960
52,625 - 52,874	36,540	36,930	37,330	37,720	38,060	38,400	38,750	39,090	39,430	39,780	40,120
52,875 - 53,124	36,680	37,080	37,470	37,870	38,220	38,560	38,900	39,250	39,590	39,930	40,280
53,125 - 53,374	36,830	37,220	37,620	38,010	38,370	38,720	39,060	39,400	39,750	40,090	40,430
53,375 - 53,624	36,970	37,370	37,760	38,160	38,530	38,870	39,220	39,560	39,900	40,250	40,590
53,625 - 53,874	37,120	37,510	37,910	38,300	38,690	39,030	39,380	39,720	40,060	40,410	40,750
53,875 - 54,124	37,260	37,660	38,050	38,450	38,840	39,190	39,530	39,880	40,220	40,560	40,910
54,125 - 54,374	37,410	37,800	38,200	38,590	38,990	39,350	39,690	40,030	40,380	40,720	41,060
54,375 - 54,624	37,550	37,950	38,340	38,740	39,130	39,500	39,850	40,190	40,530	40,880	41,220
54,625 - 54,874	37,700	38,090	38,490	38,880	39,280	39,660	40,010	40,350	40,690	41,040	41,380
54,875 - 55,124	37,840	38,240	38,630	39,030	39,420	39,820	40,160	40,510	40,850	41,190	41,540
55,125 - 55,374	37,990	38,380	38,780	39,170	39,570	39,960	40,320	40,660	41,010	41,350	41,690
55,375 - 55,624	38,130	38,530	38,920	39,320	39,710	40,110	40,480	40,820	41,160	41,510	41,850
55,625 - 55,874	38,280	38,670	39,070	39,460	39,860	40,250	40,640	40,980	41,320	41,670	42,010
55,875 - 56,124	38,420	38,820	39,210	39,610	40,000	40,400	40,790	41,140	41,480	41,820	42,170
56,125 - 56,374	38,570	38,960	39,360	39,750	40,150	40,540	40,940	41,290	41,640	41,980	42,320
56,375 - 56,624	38,710	39,110	39,500	39,900	40,290	40,690	41,080	41,450	41,790	42,140	42,480
56,625 - 56,874	38,860	39,250	39,650	40,040	40,440	40,830	41,230	41,610	41,950	42,300	42,640
56,875 - 57,124	39,000	39,400	39,790	40,190	40,580	40,980	41,370	41,770	42,110	42,450	42,800
57,125 - 57,374	39,150	39,540	39,940	40,330	40,730	41,120	41,520	41,910	42,270	42,610	42,950
57,375 - 57,624	39,290	39,690	40,080	40,480	40,870	41,270	41,660	42,060	42,420	42,770	43,110
57,625 - 57,874	39,440	39,830	40,230	40,620	41,020	41,410	41,810	42,200	42,580	42,930	43,270
57,875 - 58,124	39,580	39,980	40,370	40,770	41,160	41,560	41,950	42,350	42,740	43,080	43,430
58,125 - 58,374	39,730	40,120	40,520	40,910	41,310	41,700	42,100	42,490	42,890	43,240	43,580
58,375 - 58,624	39,870	40,270	40,660	41,060	41,450	41,850	42,240	42,640	43,030	43,400	43,740
58,625 - 58,874	40,020	40,410	40,810	41,200	41,600	41,990	42,390	42,780	43,180	43,560	43,900
58,875 - 59,124	40,160	40,560	40,950	41,350	41,740	42,140	42,530	42,930	43,320	43,710	44,060
59,125 - 59,374	40,310	40,700	41,100	41,490	41,890	42,280	42,680	43,070	43,470	43,860	44,210
59,375 - 59,624	40,450	40,850	41,240	41,640	42,030	42,430	42,820	43,220	43,610	44,010	44,370
59,625 - 59,874	40,600	40,990	41,390	41,780	42,180	42,570	42,970	43,360	43,760	44,150	44,530

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	40,740	41,140	41,530	41,930	42,320	42,720	43,110	43,510	43,900	44,300	44,690
60,125 - 60,374	40,890	41,280	41,680	42,070	42,470	42,860	43,260	43,650	44,050	44,440	44,840
60,375 - 60,624	41,030	41,430	41,820	42,220	42,610	43,010	43,400	43,800	44,190	44,590	44,980
60,625 - 60,874	41,180	41,570	41,970	42,360	42,760	43,150	43,550	43,940	44,340	44,730	45,130
60,875 - 61,124	41,320	41,720	42,110	42,510	42,900	43,300	43,690	44,090	44,480	44,880	45,270
61,125 - 61,374	41,470	41,860	42,260	42,650	43,050	43,440	43,840	44,230	44,630	45,020	45,420
61,375 - 61,624	41,610	42,010	42,400	42,800	43,190	43,590	43,980	44,380	44,770	45,170	45,560
61,625 - 61,874	41,760	42,150	42,550	42,940	43,340	43,730	44,130	44,520	44,920	45,310	45,710
61,875 - 62,124	41,900	42,300	42,690	43,090	43,480	43,880	44,270	44,670	45,060	45,460	45,850
62,125 - 62,374	42,050	42,440	42,840	43,230	43,630	44,020	44,420	44,810	45,210	45,600	46,000
62,375 - 62,624	42,190	42,590	42,980	43,380	43,770	44,170	44,560	44,960	45,350	45,750	46,140
62,625 - 62,874	42,340	42,730	43,130	43,520	43,920	44,310	44,710	45,100	45,500	45,890	46,290
62,875 - 63,124	42,480	42,880	43,270	43,670	44,060	44,460	44,850	45,250	45,640	46,040	46,430
63,125 - 63,374	42,630	43,020	43,420	43,810	44,210	44,600	45,000	45,390	45,790	46,180	46,580
63,375 - 63,624	42,770	43,170	43,560	43,960	44,350	44,750	45,140	45,540	45,930	46,330	46,720
63,625 - 63,874	42,920	43,310	43,710	44,100	44,500	44,890	45,290	45,680	46,080	46,470	46,870
63,875 - 64,124	43,060	43,460	43,850	44,250	44,640	45,040	45,430	45,830	46,220	46,620	47,010
64,125 - 64,374	43,210	43,600	44,000	44,390	44,790	45,180	45,580	45,970	46,370	46,760	47,160
64,375 - 64,624	43,350	43,750	44,140	44,540	44,930	45,330	45,720	46,120	46,510	46,910	47,300
64,625 - 64,874	43,490	43,890	44,290	44,680	45,080	45,470	45,870	46,260	46,660	47,050	47,450
64,875 - 65,124	43,620	44,040	44,430	44,830	45,220	45,620	46,010	46,410	46,800	47,200	47,590
65,125 - 65,374	43,760	44,180	44,580	44,970	45,370	45,760	46,160	46,550	46,950	47,340	47,740
65,375 - 65,624	43,890	44,330	44,720	45,120	45,510	45,910	46,300	46,700	47,090	47,490	47,880
65,625 - 65,874	44,030	44,460	44,870	45,260	45,660	46,050	46,450	46,840	47,240	47,630	48,030
65,875 - 66,124	44,160	44,600	45,010	45,410	45,800	46,200	46,590	46,990	47,380	47,780	48,170
66,125 - 66,374	44,300	44,730	45,160	45,550	45,950	46,340	46,740	47,130	47,530	47,920	48,320
66,375 - 66,624	44,430	44,870	45,300	45,700	46,090	46,490	46,880	47,280	47,670	48,070	48,460
66,625 - 66,874	44,570	45,000	45,440	45,840	46,240	46,630	47,030	47,420	47,820	48,210	48,610
66,875 - 67,124	44,700	45,140	45,580	45,990	46,380	46,780	47,170	47,570	47,960	48,360	48,750
67,125 - 67,374	44,840	45,270	45,710	46,130	46,530	46,920	47,320	47,710	48,110	48,500	48,900
67,375 - 67,624	44,970	45,410	45,850	46,280	46,670	47,070	47,460	47,860	48,250	48,650	49,040
67,625 - 67,874	45,110	45,540	45,980	46,420	46,820	47,210	47,610	48,000	48,400	48,790	49,190
67,875 - 68,124	45,240	45,680	46,120	46,550	46,960	47,360	47,750	48,150	48,540	48,940	49,330
68,125 - 68,374	45,380	45,810	46,250	46,690	47,110	47,500	47,900	48,290	48,690	49,080	49,480
68,375 - 68,624	45,510	45,950	46,390	46,820	47,250	47,650	48,040	48,440	48,830	49,230	49,620
68,625 - 68,874	45,650	46,080	46,520	46,960	47,390	47,790	48,190	48,580	48,980	49,370	49,770
68,875 - 69,124	45,780	46,220	46,660	47,090	47,530	47,940	48,330	48,730	49,120	49,520	49,910
69,125 - 69,374	45,920	46,350	46,790	47,230	47,660	48,080	48,480	48,870	49,270	49,660	50,060
69,375 - 69,624	46,050	46,490	46,930	47,360	47,800	48,230	48,620	49,020	49,410	49,810	50,200
69,625 - 69,874	46,190	46,620	47,060	47,500	47,930	48,370	48,770	49,160	49,560	49,950	50,350

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	46,320	46,760	47,200	47,630	48,070	48,510	48,910	49,310	49,700	50,100	50,490
70,125 - 70,374	46,460	46,890	47,330	47,770	48,200	48,640	49,060	49,450	49,850	50,240	50,640
70,375 - 70,624	46,590	47,030	47,470	47,900	48,340	48,780	49,200	49,600	49,990	50,390	50,780
70,625 - 70,874	46,730	47,160	47,600	48,040	48,470	48,910	49,350	49,740	50,140	50,530	50,930
70,875 - 71,124	46,860	47,300	47,740	48,170	48,610	49,050	49,480	49,890	50,280	50,680	51,070
71,125 - 71,374	47,000	47,430	47,870	48,310	48,740	49,180	49,620	50,030	50,430	50,820	51,220
71,375 - 71,624	47,130	47,570	48,010	48,440	48,880	49,320	49,750	50,180	50,570	50,970	51,360
71,625 - 71,874	47,270	47,700	48,140	48,580	49,010	49,450	49,890	50,320	50,720	51,110	51,510
71,875 - 72,124	47,400	47,840	48,280	48,710	49,150	49,590	50,020	50,460	50,860	51,260	51,650
72,125 - 72,374	47,540	47,970	48,410	48,850	49,280	49,720	50,160	50,600	51,010	51,400	51,800
72,375 - 72,624	47,670	48,110	48,550	48,980	49,420	49,860	50,290	50,730	51,150	51,550	51,940
72,625 - 72,874	47,810	48,240	48,680	49,120	49,550	49,990	50,430	50,870	51,300	51,690	52,090
72,875 - 73,124	47,940	48,380	48,820	49,250	49,690	50,130	50,560	51,000	51,440	51,840	52,230
73,125 - 73,374	48,080	48,510	48,950	49,390	49,820	50,260	50,700	51,140	51,570	51,980	52,380
73,375 - 73,624	48,210	48,650	49,090	49,520	49,960	50,400	50,830	51,270	51,710	52,130	52,520
73,625 - 73,874	48,350	48,780	49,220	49,660	50,090	50,530	50,970	51,410	51,840	52,270	52,670
73,875 - 74,124	48,480	48,920	49,360	49,790	50,230	50,670	51,100	51,540	51,980	52,410	52,810
74,125 - 74,374	48,620	49,050	49,490	49,930	50,360	50,800	51,240	51,680	52,110	52,550	52,960
74,375 - 74,624	48,750	49,190	49,630	50,060	50,500	50,940	51,370	51,810	52,250	52,680	53,100
74,625 - 74,874	48,890	49,320	49,760	50,200	50,630	51,070	51,510	51,950	52,380	52,820	53,250
74,875 - 75,000	49,020	49,460	49,900	50,330	50,770	51,210	51,640	52,080	52,520	52,950	53,390
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***										

BILLING CODE 4000-01-C

Table D. Expected Family Contribution for a Single Independent Student—1986–87

For a single independent student, the educational institution determines the student's expected family contribution according to Table D. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table D are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table D, "Family members" include the student and the student's dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households;

—F.I.C.A. (Social Security) for one wage earner; and

—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses for the student and his or her family because those expenses are included in the student's cost of attendance.

BILLING CODE 4000-01-M

Table D: Expected Family Contribution for a Single Independent Student--1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***											
30,001 - 30,124	21,460	21,750	22,050	22,340	22,630	22,890	23,140	23,390	23,640	23,890	24,120	24,330
30,125 - 30,374	21,610	21,910	22,200	22,490	22,780	23,050	23,300	23,550	23,800	24,050	24,300	24,500
30,375 - 30,624	21,770	22,060	22,350	22,640	22,930	23,220	23,460	23,710	23,960	24,210	24,460	24,680
30,625 - 30,874	21,920	22,210	22,500	22,790	23,080	23,380	23,630	23,880	24,130	24,380	24,630	24,850
30,875 - 31,124	22,070	22,360	22,650	22,950	23,240	23,530	23,790	24,040	24,290	24,540	24,790	25,020
31,125 - 31,374	22,210	22,520	22,810	23,100	23,390	23,680	23,950	24,200	24,450	24,700	24,950	25,190
31,375 - 31,624	22,360	22,670	22,960	23,250	23,540	23,830	24,110	24,360	24,610	24,860	25,110	25,360
31,625 - 31,874	22,500	22,820	23,110	23,400	23,690	23,990	24,280	24,530	24,780	25,030	25,280	25,520
31,875 - 32,124	22,640	22,970	23,260	23,560	23,850	24,140	24,430	24,690	24,940	25,190	25,440	25,690
32,125 - 32,374	22,780	23,120	23,420	23,710	24,000	24,290	24,580	24,850	25,100	25,350	25,600	25,850
32,375 - 32,624	22,930	23,260	23,570	23,860	24,150	24,440	24,730	25,010	25,260	25,510	25,760	26,010
32,625 - 32,874	23,070	23,400	23,720	24,010	24,300	24,590	24,890	25,180	25,430	25,680	25,920	26,170
32,875 - 33,124	23,210	23,540	23,870	24,160	24,460	24,750	25,040	25,330	25,590	25,840	26,090	26,340
33,125 - 33,374	23,350	23,690	24,020	24,320	24,610	24,900	25,190	25,480	25,750	26,000	26,250	26,500
33,375 - 33,624	23,500	23,830	24,160	24,470	24,760	25,050	25,340	25,630	25,910	26,160	26,410	26,660
33,625 - 33,874	23,640	23,970	24,300	24,620	24,910	25,200	25,500	25,790	26,080	26,320	26,570	26,820
33,875 - 34,124	23,780	24,110	24,450	24,770	25,070	25,360	25,650	25,940	26,230	26,490	26,740	26,990
34,125 - 34,374	23,920	24,260	24,590	24,920	25,220	25,510	25,800	26,090	26,380	26,650	26,900	27,150
34,375 - 34,624	24,070	24,400	24,730	25,060	25,370	25,660	25,950	26,240	26,530	26,810	27,060	27,310
34,625 - 34,874	24,210	24,540	24,870	25,210	25,520	25,810	26,100	26,400	26,690	26,970	27,220	27,470
34,875 - 35,124	24,350	24,680	25,020	25,350	25,670	25,970	26,260	26,550	26,840	27,130	27,390	27,640
35,125 - 35,374	24,490	24,830	25,160	25,490	25,820	26,120	26,410	26,700	26,990	27,280	27,550	27,800
35,375 - 35,624	24,640	24,970	25,300	25,630	25,970	26,270	26,560	26,850	27,140	27,440	27,710	27,960
35,625 - 35,874	24,780	25,110	25,440	25,780	26,110	26,420	26,710	27,010	27,300	27,590	27,870	28,120
35,875 - 36,124	24,920	25,250	25,590	25,920	26,250	26,580	26,870	27,160	27,450	27,740	28,030	28,290
36,125 - 36,374	25,060	25,400	25,730	26,060	26,390	26,730	27,020	27,310	27,600	27,890	28,180	28,450
36,375 - 36,624	25,200	25,540	25,870	26,200	26,540	26,870	27,170	27,460	27,750	28,050	28,340	28,610
36,625 - 36,874	25,340	25,680	26,010	26,350	26,680	27,010	27,320	27,620	27,910	28,200	28,490	28,770
36,875 - 37,124	25,480	25,820	26,160	26,490	26,820	27,150	27,480	27,770	28,060	28,350	28,640	28,930
37,125 - 37,374	25,610	25,960	26,300	26,630	26,960	27,300	27,630	27,920	28,210	28,500	28,790	29,080
37,375 - 37,624	25,750	26,110	26,440	26,770	27,110	27,440	27,770	28,070	28,360	28,650	28,950	29,240
37,625 - 37,874	25,880	26,240	26,580	26,920	27,250	27,580	27,910	28,220	28,520	28,810	29,100	29,390
37,875 - 38,124	26,010	26,380	26,720	27,060	27,390	27,720	28,060	28,380	28,670	28,960	29,250	29,540
38,125 - 38,374	26,150	26,510	26,870	27,200	27,530	27,870	28,200	28,530	28,820	29,110	29,400	29,690
38,375 - 38,624	26,280	26,650	27,010	27,340	27,670	28,010	28,340	28,670	28,970	29,260	29,560	29,850
38,625 - 38,874	26,420	26,780	27,150	27,480	27,820	28,150	28,480	28,820	29,130	29,420	29,710	30,000
38,875 - 39,124	26,550	26,920	27,280	27,630	27,960	28,290	28,630	28,960	29,280	29,570	29,860	30,150
39,125 - 39,374	26,690	27,050	27,420	27,770	28,100	28,430	28,770	29,100	29,430	29,720	30,010	30,300
39,375 - 39,624	26,820	27,190	27,550	27,910	28,240	28,580	28,910	29,240	29,580	29,870	30,160	30,460
39,625 - 39,874	26,970	27,330	27,700	28,060	28,400	28,730	29,060	29,400	29,730	30,040	30,330	30,620

Table D: Expected Family Contribution for a Single Independent Student--1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	27,120	27,490	27,850	28,210	28,560	28,890	29,220	29,560	29,890	30,210	30,500	30,790
40,125 - 40,374	27,270	27,640	28,000	28,370	28,720	29,050	29,380	29,720	30,050	30,380	30,670	30,960
40,375 - 40,624	27,430	27,790	28,150	28,520	28,880	29,210	29,540	29,880	30,210	30,540	30,840	31,130
40,625 - 40,874	27,580	27,940	28,310	28,670	29,040	29,370	29,700	30,040	30,370	30,700	31,010	31,300
40,875 - 41,124	27,730	28,100	28,460	28,820	29,190	29,530	29,860	30,200	30,530	30,860	31,180	31,470
41,125 - 41,374	27,880	28,250	28,610	28,980	29,340	29,690	30,020	30,360	30,690	31,020	31,350	31,640
41,375 - 41,624	28,040	28,400	28,760	29,130	29,490	29,850	30,180	30,520	30,850	31,180	31,510	31,810
41,625 - 41,874	28,190	28,550	28,920	29,280	29,650	30,010	30,340	30,680	31,010	31,340	31,670	31,980
41,875 - 42,124	28,340	28,710	29,070	29,430	29,800	30,160	30,500	30,840	31,170	31,500	31,830	32,150
42,125 - 42,374	28,490	28,860	29,220	29,590	29,950	30,310	30,660	31,000	31,330	31,660	31,990	32,320
42,375 - 42,624	28,650	29,010	29,370	29,740	30,100	30,470	30,820	31,160	31,490	31,820	32,150	32,490
42,625 - 42,874	28,800	29,160	29,530	29,890	30,260	30,620	30,980	31,320	31,650	31,980	32,310	32,650
42,875 - 43,124	28,950	29,320	29,680	30,040	30,410	30,770	31,140	31,480	31,810	32,140	32,470	32,810
43,125 - 43,374	29,100	29,470	29,830	30,200	30,560	30,920	31,290	31,640	31,970	32,300	32,630	32,970
43,375 - 43,624	29,260	29,620	29,980	30,350	30,710	31,080	31,440	31,800	32,130	32,460	32,790	33,130
43,625 - 43,874	29,410	29,770	30,140	30,500	30,870	31,230	31,590	31,960	32,290	32,620	32,950	33,290
43,875 - 44,124	29,560	29,930	30,290	30,650	31,020	31,380	31,750	32,110	32,450	32,780	33,110	33,450
44,125 - 44,374	29,710	30,080	30,440	30,810	31,170	31,530	31,900	32,260	32,610	32,940	33,270	33,610
44,375 - 44,624	29,870	30,230	30,590	30,960	31,320	31,690	32,050	32,410	32,770	33,100	33,430	33,770
44,625 - 44,874	30,020	30,380	30,750	31,110	31,480	31,840	32,200	32,570	32,930	33,260	33,590	33,930
44,875 - 45,124	30,170	30,540	30,900	31,260	31,630	31,990	32,360	32,720	33,080	33,420	33,750	34,090
45,125 - 45,374	30,320	30,690	31,050	31,420	31,780	32,140	32,510	32,870	33,240	33,580	33,910	34,250
45,375 - 45,624	30,480	30,840	31,200	31,570	31,930	32,300	32,660	33,020	33,390	33,740	34,070	34,410
45,625 - 45,874	30,630	30,990	31,360	31,720	32,090	32,450	32,810	33,180	33,540	33,900	34,230	34,570
45,875 - 46,124	30,780	31,150	31,510	31,870	32,240	32,600	32,970	33,330	33,690	34,060	34,390	34,730
46,125 - 46,374	30,930	31,300	31,660	32,030	32,390	32,750	33,120	33,480	33,850	34,210	34,550	34,890
46,375 - 46,624	31,090	31,450	31,810	32,180	32,540	32,910	33,270	33,630	34,000	34,360	34,710	35,050
46,625 - 46,874	31,240	31,600	31,970	32,330	32,700	33,060	33,420	33,790	34,150	34,520	34,870	35,210
46,875 - 47,124	31,390	31,760	32,120	32,480	32,850	33,210	33,580	33,940	34,300	34,670	35,030	35,370
47,125 - 47,374	31,540	31,910	32,270	32,640	33,000	33,360	33,730	34,090	34,460	34,820	35,180	35,530
47,375 - 47,624	31,700	32,060	32,420	32,790	33,150	33,520	33,880	34,240	34,610	34,970	35,340	35,690
47,625 - 47,874	31,840	32,210	32,580	32,940	33,310	33,670	34,030	34,400	34,760	35,130	35,490	35,850
47,875 - 48,124	31,970	32,370	32,730	33,090	33,460	33,820	34,190	34,550	34,910	35,280	35,640	36,010
48,125 - 48,374	32,110	32,520	32,880	33,250	33,610	33,970	34,340	34,700	35,070	35,430	35,790	36,160
48,375 - 48,624	32,240	32,670	33,030	33,400	33,760	34,130	34,490	34,850	35,220	35,580	35,950	36,310
48,625 - 48,874	32,380	32,810	33,190	33,550	33,920	34,280	34,640	35,010	35,370	35,740	36,100	36,460
48,875 - 49,124	32,510	32,950	33,340	33,700	34,070	34,430	34,800	35,160	35,520	35,890	36,250	36,620
49,125 - 49,374	32,650	33,080	33,490	33,860	34,220	34,580	34,950	35,310	35,680	36,040	36,400	36,770
49,375 - 49,624	32,780	33,220	33,640	34,010	34,370	34,740	35,100	35,460	35,830	36,190	36,560	36,920
49,625 - 49,874	32,920	33,350	33,790	34,160	34,530	34,890	35,250	35,620	35,980	36,350	36,710	37,070

Table D: Expected Family Contribution for a Single Independent Student--1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	33,050	33,490	33,920	34,310	34,680	35,040	35,410	35,770	36,130	36,500	36,860	37,230
50,125 - 50,374	33,190	33,620	34,060	34,470	34,830	35,190	35,560	35,920	36,290	36,650	37,010	37,380
50,375 - 50,624	33,320	33,760	34,190	34,620	34,980	35,350	35,710	36,070	36,440	36,800	37,170	37,530
50,625 - 50,874	33,460	33,890	34,330	34,770	35,140	35,500	35,860	36,230	36,590	36,960	37,320	37,680
50,875 - 51,124	33,590	34,030	34,460	34,900	35,290	35,650	36,020	36,380	36,740	37,110	37,470	37,840
51,125 - 51,374	33,730	34,160	34,600	35,040	35,440	35,800	36,170	36,530	36,900	37,260	37,620	37,990
51,375 - 51,624	33,860	34,300	34,730	35,170	35,590	35,960	36,320	36,680	37,050	37,410	37,780	38,140
51,625 - 51,874	34,000	34,430	34,870	35,310	35,740	36,110	36,470	36,840	37,200	37,570	37,930	38,290
51,875 - 52,124	34,130	34,570	35,000	35,440	35,880	36,260	36,630	36,990	37,350	37,720	38,080	38,450
52,125 - 52,374	34,270	34,700	35,140	35,580	36,010	36,410	36,780	37,140	37,510	37,870	38,230	38,600
52,375 - 52,624	34,400	34,840	35,270	35,710	36,150	36,570	36,930	37,290	37,660	38,020	38,390	38,750
52,625 - 52,874	34,540	34,970	35,410	35,850	36,280	36,720	37,080	37,450	37,810	38,180	38,540	38,900
52,875 - 53,124	34,670	35,110	35,540	35,980	36,420	36,860	37,240	37,600	37,960	38,330	38,690	39,060
53,125 - 53,374	34,810	35,240	35,680	36,120	36,550	36,990	37,390	37,750	38,120	38,480	38,840	39,210
53,375 - 53,624	34,940	35,380	35,810	36,250	36,690	37,130	37,540	37,900	38,270	38,630	39,000	39,360
53,625 - 53,874	35,080	35,510	35,950	36,390	36,820	37,260	37,690	38,060	38,420	38,790	39,150	39,510
53,875 - 54,124	35,210	35,650	36,080	36,520	36,960	37,400	37,830	38,210	38,570	38,940	39,300	39,670
54,125 - 54,374	35,350	35,780	36,220	36,660	37,090	37,530	37,970	38,360	38,730	39,090	39,450	39,820
54,375 - 54,624	35,480	35,920	36,350	36,790	37,230	37,670	38,100	38,510	38,880	39,240	39,610	39,970
54,625 - 54,874	35,620	36,050	36,490	36,930	37,360	37,800	38,240	38,670	39,030	39,400	39,760	40,120
54,875 - 55,124	35,750	36,190	36,620	37,060	37,500	37,940	38,370	38,810	39,180	39,550	39,910	40,280
55,125 - 55,374	35,890	36,320	36,760	37,200	37,630	38,070	38,510	38,940	39,340	39,700	40,060	40,430
55,375 - 55,624	36,020	36,460	36,890	37,330	37,770	38,210	38,640	39,080	39,490	39,850	40,220	40,580
55,625 - 55,874	36,160	36,590	37,030	37,470	37,900	38,340	38,780	39,210	39,640	40,010	40,370	40,730
55,875 - 56,124	36,290	36,730	37,160	37,600	38,040	38,480	38,910	39,350	39,790	40,160	40,520	40,890
56,125 - 56,374	36,430	36,860	37,300	37,740	38,170	38,610	39,050	39,480	39,920	40,310	40,670	41,040
56,375 - 56,624	36,560	37,000	37,430	37,870	38,310	38,750	39,180	39,620	40,060	40,460	40,830	41,190
56,625 - 56,874	36,700	37,130	37,570	38,010	38,440	38,880	39,320	39,750	40,190	40,620	40,980	41,340
56,875 - 57,124	36,830	37,270	37,700	38,140	38,580	39,020	39,450	39,890	40,330	40,760	41,130	41,500
57,125 - 57,374	36,970	37,400	37,840	38,280	38,710	39,150	39,590	40,020	40,460	40,900	41,280	41,650
57,375 - 57,624	37,100	37,540	37,970	38,410	38,850	39,290	39,720	40,160	40,600	41,030	41,440	41,800
57,625 - 57,874	37,240	37,670	38,110	38,550	38,980	39,420	39,860	40,290	40,730	41,170	41,590	41,950
57,875 - 58,124	37,370	37,810	38,240	38,680	39,120	39,560	39,990	40,430	40,870	41,300	41,740	42,110
58,125 - 58,374	37,510	37,940	38,380	38,820	39,250	39,690	40,130	40,560	41,000	41,440	41,870	42,260
58,375 - 58,624	37,640	38,080	38,510	38,950	39,390	39,830	40,260	40,700	41,140	41,570	42,010	42,410
58,625 - 58,874	37,780	38,210	38,650	39,090	39,520	39,960	40,400	40,830	41,270	41,710	42,140	42,560
58,875 - 59,124	37,910	38,350	38,780	39,220	39,660	40,100	40,530	40,970	41,410	41,840	42,280	42,720
59,125 - 59,374	38,050	38,480	38,920	39,360	39,790	40,230	40,670	41,100	41,540	41,980	42,410	42,850
59,375 - 59,624	38,180	38,620	39,050	39,490	39,930	40,370	40,800	41,240	41,680	42,110	42,550	42,990
59,625 - 59,874	38,320	38,750	39,190	39,630	40,060	40,500	40,940	41,370	41,810	42,250	42,680	43,120

Table D: Expected Family Contribution for a Single Independent Student--1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	38,450	38,890	39,320	39,760	40,200	40,640	41,070	41,510	41,950	42,380	42,820	43,260
60,125 - 60,374	38,590	39,020	39,460	39,900	40,330	40,770	41,210	41,640	42,080	42,520	42,950	43,390
60,375 - 60,624	38,720	39,160	39,590	40,030	40,470	40,910	41,340	41,780	42,220	42,650	43,090	43,530
60,625 - 60,874	38,860	39,290	39,730	40,170	40,600	41,040	41,480	41,910	42,350	42,790	43,220	43,660
60,875 - 61,124	38,990	39,430	39,860	40,300	40,740	41,180	41,610	42,050	42,490	42,920	43,360	43,800
61,125 - 61,374	39,130	39,560	40,000	40,440	40,870	41,310	41,750	42,180	42,620	43,060	43,490	43,930
61,375 - 61,624	39,260	39,700	40,130	40,570	41,010	41,450	41,880	42,320	42,760	43,190	43,630	44,070
61,625 - 61,874	39,400	39,830	40,270	40,710	41,140	41,580	42,020	42,450	42,890	43,330	43,760	44,200
61,875 - 62,124	39,530	39,970	40,400	40,840	41,280	41,720	42,150	42,590	43,030	43,460	43,900	44,340
62,125 - 62,374	39,670	40,100	40,540	40,980	41,410	41,850	42,290	42,720	43,160	43,600	44,030	44,470
62,375 - 62,624	39,800	40,240	40,670	41,110	41,550	41,990	42,420	42,860	43,300	43,730	44,170	44,610
62,625 - 62,874	39,940	40,370	40,810	41,250	41,680	42,120	42,560	42,990	43,430	43,870	44,300	44,740
62,875 - 63,124	40,070	40,510	40,940	41,380	41,820	42,260	42,690	43,130	43,570	44,000	44,440	44,880
63,125 - 63,374	40,210	40,640	41,080	41,520	41,950	42,390	42,830	43,260	43,700	44,140	44,570	45,010
63,375 - 63,624	40,340	40,780	41,210	41,650	42,090	42,530	42,960	43,400	43,840	44,270	44,710	45,150
63,625 - 63,874	40,480	40,910	41,350	41,790	42,220	42,660	43,100	43,530	43,970	44,410	44,840	45,280
63,875 - 64,124	40,610	41,050	41,480	41,920	42,360	42,800	43,230	43,670	44,110	44,540	44,980	45,420
64,125 - 64,374	40,740	41,180	41,620	42,060	42,490	42,930	43,370	43,800	44,240	44,680	45,110	45,550
64,375 - 64,624	40,870	41,320	41,750	42,190	42,630	43,070	43,500	43,940	44,380	44,810	45,250	45,690
64,625 - 64,874	41,000	41,450	41,890	42,330	42,760	43,200	43,640	44,070	44,510	44,950	45,380	45,820
64,875 - 65,124	41,120	41,590	42,020	42,460	42,900	43,340	43,770	44,210	44,650	45,080	45,520	45,960
65,125 - 65,374	41,250	41,720	42,160	42,600	43,030	43,470	43,910	44,340	44,780	45,220	45,650	46,090
65,375 - 65,624	41,380	41,850	42,290	42,730	43,170	43,610	44,040	44,480	44,920	45,350	45,790	46,230
65,625 - 65,874	41,510	41,970	42,430	42,870	43,300	43,740	44,180	44,610	45,050	45,490	45,920	46,360
65,875 - 66,124	41,630	42,100	42,560	43,000	43,440	43,880	44,310	44,750	45,190	45,620	46,060	46,500
66,125 - 66,374	41,760	42,230	42,700	43,140	43,570	44,010	44,450	44,880	45,320	45,760	46,190	46,630
66,375 - 66,624	41,890	42,360	42,830	43,270	43,710	44,150	44,580	45,020	45,460	45,890	46,330	46,770
66,625 - 66,874	42,020	42,480	42,950	43,410	43,840	44,280	44,720	45,150	45,590	46,030	46,460	46,900
66,875 - 67,124	42,140	42,610	43,080	43,540	43,980	44,420	44,850	45,290	45,730	46,160	46,600	47,040
67,125 - 67,374	42,270	42,740	43,210	43,680	44,110	44,550	44,990	45,420	45,860	46,300	46,730	47,170
67,375 - 67,624	42,400	42,870	43,340	43,800	44,250	44,690	45,120	45,560	46,000	46,430	46,870	47,310
67,625 - 67,874	42,530	42,990	43,460	43,930	44,380	44,820	45,260	45,690	46,130	46,570	47,000	47,440
67,875 - 68,124	42,650	43,120	43,590	44,060	44,520	44,960	45,390	45,830	46,270	46,700	47,140	47,580
68,125 - 68,374	42,780	43,250	43,720	44,190	44,650	45,090	45,530	45,960	46,400	46,840	47,270	47,710
68,375 - 68,624	42,910	43,380	43,850	44,310	44,780	45,230	45,660	46,100	46,540	46,970	47,410	47,850
68,625 - 68,874	43,040	43,500	43,970	44,440	44,910	45,360	45,800	46,230	46,670	47,110	47,540	47,980
68,875 - 69,124	43,160	43,630	44,100	44,570	45,040	45,500	45,930	46,370	46,810	47,240	47,680	48,120
69,125 - 69,374	43,290	43,760	44,230	44,700	45,160	45,630	46,070	46,500	46,940	47,380	47,810	48,250
69,375 - 69,624	43,420	43,890	44,360	44,820	45,290	45,760	46,200	46,640	47,080	47,510	47,950	48,390
69,625 - 69,874	43,550	44,010	44,480	44,950	45,420	45,890	46,340	46,770	47,210	47,650	48,080	48,520

Table D: Expected Family Contribution for a Single Independent Student--1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	43,670	44,140	44,610	45,080	45,550	46,010	46,470	46,910	47,350	47,780	48,220	48,660
70,125 - 70,374	43,800	44,270	44,740	45,210	45,670	46,140	46,610	47,040	47,480	47,920	48,350	48,790
70,375 - 70,624	43,930	44,400	44,870	45,330	45,800	46,270	46,740	47,180	47,620	48,050	48,490	48,930
70,625 - 70,874	44,060	44,520	44,990	45,460	45,930	46,400	46,860	47,310	47,750	48,190	48,620	49,060
70,875 - 71,124	44,180	44,650	45,120	45,590	46,060	46,520	46,990	47,450	47,890	48,320	48,760	49,200
71,125 - 71,374	44,310	44,780	45,250	45,720	46,180	46,650	47,120	47,580	48,020	48,460	48,890	49,330
71,375 - 71,624	44,440	44,910	45,380	45,840	46,310	46,780	47,250	47,720	48,160	48,590	49,030	49,470
71,625 - 71,874	44,570	45,030	45,500	45,970	46,440	46,910	47,370	47,840	48,290	48,730	49,160	49,600
71,875 - 72,124	44,690	45,160	45,630	46,100	46,570	47,030	47,500	47,970	48,430	48,860	49,300	49,740
72,125 - 72,374	44,820	45,290	45,760	46,230	46,690	47,160	47,630	48,100	48,560	49,000	49,430	49,870
72,375 - 72,624	44,950	45,420	45,890	46,350	46,820	47,290	47,760	48,230	48,690	49,130	49,570	50,010
72,625 - 72,874	45,080	45,540	46,010	46,480	46,950	47,420	47,880	48,350	48,820	49,270	49,700	50,140
72,875 - 73,124	45,200	45,670	46,140	46,610	47,080	47,540	48,010	48,480	48,950	49,400	49,840	50,280
73,125 - 73,374	45,330	45,800	46,270	46,740	47,200	47,670	48,140	48,610	49,080	49,540	49,970	50,410
73,375 - 73,624	45,460	45,930	46,400	46,860	47,330	47,800	48,270	48,740	49,200	49,670	50,110	50,550
73,625 - 73,874	45,590	46,050	46,520	46,990	47,460	47,930	48,390	48,860	49,330	49,800	50,240	50,680
73,875 - 74,124	45,710	46,180	46,650	47,120	47,590	48,050	48,520	48,990	49,460	49,930	50,380	50,820
74,125 - 74,374	45,840	46,310	46,780	47,250	47,710	48,180	48,650	49,120	49,590	50,050	50,510	50,950
74,375 - 74,624	45,970	46,440	46,910	47,370	47,840	48,310	48,780	49,250	49,710	50,180	50,650	51,090
74,625 - 74,874	46,100	46,560	47,030	47,500	47,970	48,440	48,900	49,370	49,840	50,310	50,780	51,220
74,875 - 75,000	46,220	46,690	47,160	47,630	48,100	48,560	49,030	49,500	49,970	50,440	50,900	51,360
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***											

[FR Doc. 86-7062 Filed 3-28-86; 8:45 am]

BILLING CODE 4000-01-C

federal register

Tuesday,
April 15, 1986

Part III

Copyright Royalty Tribunal

1983 Cable Royalty Distribution Proceeding; Notice of Final Determination

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 84-1 83CD]

1983 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of final determination.

SUMMARY: The Copyright Royalty Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of royalty fees paid by cable systems for secondary transmissions during 1983.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION:

Authority

17 U.S.C. 111(d)(5)(B) requires the Copyright Royalty Tribunal (Tribunal) after the first day of August to determine whether a controversy exists concerning the distribution of cable royalty fees deposited by cable systems with the Copyright Office. Upon determination that a controversy exists, 17 U.S.C. 804(d) requires the Chairman of the Tribunal to publish in the Federal Register a notice announcing the commencement of distribution proceedings.

17 U.S.C.111(d)(4) states:

(4) The Royalty fees thus deposited shall, in accordance with the procedures provided by clause (5), be distributed to those among the following copyright ownes who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (2)(A); and

(C) any such owner whose work was included in nonnetwork programming consisting of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

This Proceeding

In this proceeding, the Tribunal takes up the distribution of the royalty fees deposited by cable operators for the calendar year 1983. The Tribunal has made cable royalty distributions suosequent to fully litigated proceedings for calendar years 1978, 1979, and 1980. For 1981, all Phase I parties settled based upon the allocations for 1980; a Phase II hearing was held among Motion Picture Association of America, Inc. (MPAA), the National Association of Broadcasters (NAB) and Multimedia Entertainment, Inc. (Multimedia) in the Program Supplier category. For 1982, all Phase I parties settled, except the Devotional Claimants, again based on the 1980 allocations. In Phase II, Multimedia and MPAA litigated their claim in the Program Suppliers catetory, and the Tribunal allocated between the Joint Sports Claimants and Spanish International Network (SIN) in the Sports category. SIN has reached a full settlement for the 1983 proceeding. Therefore, the questions presented the Tribunal in the 1983 proceeding were: Have there been any factual changes since 1980, or in the case of the Devotional Claimants and Multimedia, since 1982, which justify a change in the awards peviously made? Has any party presented better evidence to entitlement than in the past? Or, do the cases presented confirm the cumulative experience and expertise developed by the Tribunal since 1978?

The cable royalty fund for 1983 differs significantly from any of the cable royalty funds the Tribunal previously considered. The cable royalty funds for 1978–1982 were derived entirely from the payments made by cable systems based on the rates set by Congress in Section 111 of the Copyright Act of 1976 (Act), as adjusted for inflation by the Tribunal. The 1983 cable royalty fund includes, for the first time, payments by cable systems based upon the 3.75% rate and the syndicated exclusivity surcharge adopted by the Tribunal in 1982 after deregulation of certain rules by the Federal Communications Commission (FCC). The question thus presented was: should the Tribunal continue to distribute the cable royalty fund as one fund, or does a basis exist, either in fact or in law, to justify the Tribunal dividing the fund into separate pools and making separate allocations?

The Claimants

680 individual or joint claims were filed with the Tribunal for the 1983 cable royalty fund. Section 111(d)(5)(A) of the Act states, ". . . any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them . . ." Pursuant to this provision, the claimants, except for Multimedia, coalesced into eight claimant groups.

Motion Picture Association of America, Inc. (MPAA). MPAA is a trade association which represents 83 producers and/or syndicators of syndicated movies, television series and specials. *Prehearing Statement of Program Suppliers.*

The Joint Sports Claimants (JSC). The Joint Sports Claimants consist of Major League Baseball, the National Basketball Association, the National Hockey League, the North American Soccer League, and the National Collegiate Athletic Association. *Prehearing Statement of the Joint Sports Claimants.*

Public Broadcasting Service (PBS). PBS is part of the noncommercial television claimant group consisting of PBS and 240 claimant member television stations, and 17 producers of public television programs. *Prehearing Statement of Public Broadcasting Service, as amended.*

National Association of Broadcasters (NAB). NAB is a trade association which represents 435 claimant United States television and radio stations. *Prehearing Statement of NAB, as amended.*

The Music Claimants (Music). The Music Claimants consist of three performing rights societies, The American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. *Prehearing Statements of the Music Claimant.*

The Devotional Claimants (DC). The Devotional Claimants consist of the Christian Broadcasting Network, Inc. (CBN), Old Time Gospel Hour (OTGH) and PTL Television Network (PTL). *Prehearing Statement of the Devotional Claimants, as amended.*

The Canadian Claimants (CC). The Canadian Claimants represent Canadian program broadcast by Canadian television stations. The Canadian Claimants consist of Canadian Broadcasting Corporation (CBC), CTV Television Network, Ltd. (CTV), Glen-Warren Productions Limited, CFTO-TV Limited, The Ontario Educational Communications Authority (CICA–TV, CICO–TV), Tele-Metropole, Inc. (CFTM–TV), Global Communications (CFAC–TV, Toronto) and New Wilderness Productions, Inc. *Prehearing Statement of the Canadian Claimants.*

National Public Radio (NPR). NPR represents NPR and 134 member noncommercial radio stations. *Prehearing Statement of NPR.*

Multimedia Entertainment, Inc. (Multimedia) Multimedia consists of Multimedia Entertainment, Inc. and Cox Communications, Inc. (CCI) which produce and distribute syndicated television series and films. *Prehearing Statement of Multimedia.*

Background and Chronology

On October 15, 1984, the Tribunal published a notice directing claimants to inform the Tribunal by November 15, 1984 whether a controversy existed with regard to the distribution of the 1983 cable royalty fees. Claimants were also advised to submit comments concerning hearing schedules and procedures. 49 FR 3930. In addition, the Tribunal sought recommendations from an independent law firm regarding changes in Tribunal hearing procedures. The report was submitted December 31, 1984.

After receiving the procedural recommendations from the parties, the Tribunal ordered the parties to produce a single joint memorandum identifying stipulated proposals, and, where the procedures could not be stipulated, the position of each party. 50 FR 9484. On March 26, 1985, the Tribunal held a pre-hearing conference to consider the joint memorandum. On April 8, 1985, the Tribunal published a notice announcing its determination that a controversy did exist concerning the distribution of the 1983 cable royalty fees, effective April 15, 1985. In the notice, the Tribunal adopted the schedule and the procedures which would apply to presentation of the 1983 Phase I direct cases. 50 FR 13845.

The Phase I parties filed their written direct cases on May 13, 1985. Evidentiary objections were filed by the parties on May 29, 1985. Oral argument on the objections were heard at a pre-hearing conference June 7, 1985. The Tribunal issued its rulings on the objections June 14, 1985, and on June 19, 1985 the Tribunal commenced hearing the direct cases of Phase I parties.

In response to a joint motion of all the Phase I parties, the Tribunal determined that 50% of the 1983 cable royalty fund could be distributed, while still retaining sufficient funds to satisfy all amounts in controversy. 50 FR 23350. The Tribunal made the partial distribution on June 27, 1985.

On July 29, 1985, the Tribunal approved a settlement for NPR reached by all parties. The settlement stipulated an award of 0.18% of the 1983 cable royalty fund to NPR. In response to a motion by NPR, the Tribunal published an order granting complete distribution to NPR amounting to 0.18% of the fund as of September 30, 1985. 50 FR 33617. The motion by NPR waived all interest in the growth of the fund after September 30, 1985.

Presentation of the Phase I parties' direct cases concluded on October 9, 1985 after 36 days of hearings. The Phase I written rebuttal cases were filed November 4, 1985. The hearing of the rebuttal cases commenced on November 18, 1985 and concluded on December 18, 1985 after 17 days of hearings. The Phase I record was closed December 23, 1985.

The parties filed Phase I Proposed Findings of Fact and Conclusions of Law on January 15, 1986. Reply findings were filed January 21, 1986, and oral argument was heard on January 24, 1986.

The Tribunal published its determination of the Phase I allocations on February 5, 1986. 51 FR 4415.

On February 18, 1986 the parties to Phase II filed their written direct cases. Evidentiary objections were filed February 26, 1986, and between March 6, 1986 and March 19, 1986 the Tribunal conducted hearings on Phase II allocations. The Phase II record was closed April 4, 1986.

The parties filed Phase II Proposed Findings of Facts and Conclusions of Law on March 28, 1986. Reply findings were filed April 2, 1986.

Structure and Criteria of Tribunal Analysis

In accordance with past procedure, the Tribunal resolved that the 1983 distribution proceeding would be conducted in two phases. Phase I would determine the allocation of cable royalties to specific categories of claimants. Phase II would allocate cable royalties to individual claimants within a category. The Phase I categories were: Program Suppliers, Sports, Public Broadcasting Service, U.S. Commercial Television, Music, Devotional Programs, Canadian Programs, Noncommercial Radio, and Commercial Radio. There were no disputes within the categories except for the Program Suppliers. In Phase II, the Tribunal took evidence from MPAA, NAB, and Multimedia to allocate cable royalties within the category of Program Suppliers.

Also, in accordance with past procedure, the Tribunal took evidence based on the criteria established by the Tribunal in the 1978 cable distribution proceeding: (a) The harm caused to copyright owners by secondary transmissions of copyrighted works by cable systems, (b) the benefit derived from the secondary transmission of certain copyrighted work, (c) the marketplace value of the works transmitted; and to a secondary degree, (d) the quality of copyrighted program material, and (e) time-related considerations.

For the first time, the Tribunal took evidence on factual or legal reasons why the funds derived from the 3.75% rate, or the syndicated exclusivity surcharge should be allocated differently than the basic fund. Four parties took the position that three different allocations should be made: Program Suppliers, JSC, NAB, and Music. Three parties took the position that the Tribunal should treat the 1983 cable royalties as one fund: PBS, the Devotional Claimants, and the Canadian Claimants.

Phase I

The Tribunal's task in Phase I is to allocate among various program types their proper share of the copyright royalties paid by cable systems for the retransmission of nonnetwork programming on distant broadcast signals. The Tribunal's goal, as it has stated in the 1978 proceeding, is "to stimulate market valuation." 45 FR 63036. The achievement of this goal is frustrated by one consideration: cable operators do not obtain distant signal programming on a program-by-program basis. The operator "purchases" by compulsory license entire broadcast signals consisting of a variety of program types. Operators must take the distant signal as is or not at all. Therefore, the Tribunal must perform a judgment that does not occur in the distant signal marketplace. It assigns relative values among program types; the cable operator does not.

Phase I parties have attempted to give the Tribunal the evidence they consider the most relevant to the assignment of relative values. The Program Suppliers have submitted a special Nielsen study of the viewing by cable subscribers of distant signals in 1983 on the theory that cable subscribers' viewing habits are key elements in determining relative value among program types. Other parties argue that the Nielsen survey is not the most relevant evidence, because the "consumption" of distant signal programs by subscribers does not translate coextensively to a cable operator's decision to obtain a distant signal. They argue that cable systems sell subscriptions to an entire range of program offerings: local signals, distant signals, and non-broadcast programming services. Their ultimate concern is whether the whole package of cable services satisfies the subscribers. They will, therefore, be more interested in adding diverse programs to their offerings or responding to particular interests of segments of their market than in responding to raw viewing data. Consequently, four parties in this proceeding have presented "attitudinal" surveys which each ask cable operators to perform an assignment of relative values among program types.

In addition, the Phase I parties have addressed themselves to presenting

better evidence in areas where the Tribunal has found against them in prior proceedings. Further, some parties have offered evidence of changes in the distant signal marketplace from the last litigated calendar year. In the findings of fact which follow, we state the various facts that were found relevant to our determination. However, as in all our past determinations, the conclusions of the Tribunal have been based on all the data and evidence presented before us.

Findings of Fact—Phase I

Program Suppliers

The Nielsen Study. In two previous cable distribution proceedings, 1979 and 1980, MPAA, representing the Program Suppliers, offered a special Nielsen study as the centerpiece of its presentations. The study measured the number of hours of distant signal programming viewed by cable households. In both proceedings, MPAA calculated the percentage of subscriber viewing hours according to program category, and then offered the percentage representing syndicated television movies and series as a key element to its entitlement. 47 FR 9880; 48 FR 9554.

In the 1979 proceeding, MPAA chose 25 independent U.S. commercial stations and 25 network affiliated U.S. commercial stations, and requested from Nielsen distant viewing data on these 50 stations during four national "sweep" periods—February, May, July and November. The 1979 study was given validity by the Tribunal, but was criticized for the small number of stations in the sample, the method of section of those stations, and the fact that use of "sweep" periods in which program "hyping" occurs could have given the program suppliers an advantage. 47 FR 9881, 9892.

In the 1980 proceeding, MPAA selected for its study all U.S. commercial broadcast stations which were carried by Form 3 cable systems whose aggregate subscribers were 75,000 or more, rather than resort to a statistical selection requiring weighting. This resulted in a selection of 82 commercial stations—41 independent stations, 35 network affiliated stations, and 6 specialty stations. 48 FR 9553. Again, the study was based on four national "sweep" periods. MPAA responded to the criticism regarding use of "sweep" periods by offering certain viewing data compiled by the Warner-Amex QUBE system which sought to establish that there are not significant differences in viewing between sweep and nonsweep weeks. The Tribunal stated that the 1980 Nielsen survey did have probative value, but the Tribunal rejected the results of the QUBE cable system data because of the uniqueness of the system. 48 FR 9564.

The results of the 1980 Nielsen study were: syndicated series and movies—81.96% of total viewing, major and minor sports—7.62%, local programming—7.41%, devotional programming—0.92%, Other and unknown—2.09%. MPAA Ex. 17.

In this 1983 proceeding, MPAA selected all United States commercial and noncommercial television broadcast stations reaching a minimum average of 95,000 Form 3 cable television subscribers on a full-time distant signal basis during 1983. Kessler, MPAA Direct, p. 2. Using data from Cable Data Corporation available as of May, 1984, MPAA determined that there were 101 commercial and 16 noncommercial broadcast television stations which met the criteria. *Id.*, p. 4. During 1983, there were 622 U.S. broadcast television stations which were carried on a distant signal basis by at least one cable system. NAB Ex. 17X. MPAA stated that because of cost restraints, it was necessary to choose a limited sample and not to survey the entire universe of broadcast stations. Kessler, MPAA Direct, p. 2. MPAA believes that 117 stations is an appropriate stopping point, that the significance of information obtained by adding stations diminishes rapidly and only adds to MPAA's costs. Cooper, MPAA Direct, p. 12. Supporting its contention that 117 stations represents the great majority of distant signal broadcasting, MPAA noted that they represented 2.9 billion viewing hours, and that they accounted for 79.4% of the basic royalties, 90.0% of the 3.75% royalties, and 95.7% of the syndex royalties. *Id.*, p. 5; MPAA Ex. 19. However, MPAA conceded that it did not have knowledge of the total amount of viewing hours of distant broadcast signals which occurred in 1983. Tr. 786. MPAA further conceded that the Nielsen study measures viewing of only the 117 stations, and cannot be perfectly projected to the other stations. MPAA Proposed Findings, p. 66.

In response to previous Tribunal criticism, MPAA added two more viewing cycles to its study,—"partial sweeps" conducted in January and October. Cooper, MPAA Direct, p. 4. The Nielsen Station Index measures local television audiences in approximately 220 markets. The methodology used to generate ratings on a local basis is a viewing diary. Four times a year Nielsen conducts all market measurements. Each all market measurement, commonly called "sync cycles" or "sweeps" nets over 100,000 diaries. Lindstrom, MPAA Direct, p. 5. The "partial sweeps" in January and October measured 18 markets and 23 markets, respectively. Tr. 473. These "partial sweeps" representing the larger television markets, cover approximately 50% and 59% of television households, respectively. Tr. 497. For the two "partial sweep" periods, a procedure was used to adjust the viewing for the markets that were not surveyed and to project the results to the 220 markets of the country. Tr. 548.

Of the 117 stations, 60 were measured for six cycles, 13 stations were measured for five cycles, and 44 were measured for four cycles. MPAA Ex. 16. MPAA provided the Tribunal with the results of the Nielsen study based on four-cycle data solely, and based on combined data from all cycles. MPAA Ex. 17. The combined results were a simple summing up of data, so that the data of stations for which MPAA had four-cycle data was added to stations for which MPAA had five-cycle data, and stations for which MPAA had six-cycle data. Tr. 672–674. MPAA witness Allen Cooper indicated that Program Suppliers had no objection to relying on four-cycle data rather than the six-cycle data. Tr. 761–762.

The results of MPAA's 1983 Nielsen study were:

	Percent		
	4-Period cycles	2-Period cycles Jan. & Oct.	6-Period cycles
Syndicated Series	53.24	54.95	53.64
Movies	25.62	30.03	26.66
Major Sports	10.75	4.47	9.26
Minor Sports	1.79	2.10	1.87
Local	4.61	3.70	4.39
Educational	2.64	2.56	2.62
Devotional	0.65	0.63	0.65
Specialty	0.52	1.34	0.72
Other	0.18	0.21	0.19

NAB Ex. 18X.

Cooper stated that the major reason why syndicated series and movies went up in viewing during the two partial sweep months, January and October, was that major sports programming is at a lower level in January and October due to the absence of nonnetwork major league baseball. Tr. 770–772. Cooper further stated that the Nielsen survey which includes only 16 of 117 PBS stations carried on a distant signal basis probably understates PBS viewing. Tr. 1178. Cooper conceded that the programming on the three special stations were not subcategorized among the seven major claimant groups and could have included devotional programming. Tr. 1225–1229. Cooper

stated that the Nielsen survey does not take into account music, Canadian stations, or radio. Tr. 664–665.

Harm. Jack Valenti, President of MPAA, testified on the harm to program syndicators of distant signal retransmission by cable operators. Valenti, MPAA Direct. The license fees paid by the networks to the creators of first run television programs are less than what it costs to produce them. Tr. 311. Valenti cited typical examples of new network series with yearly deficits of $8 to $9 million. Tr. 311–313, 316. Not all programs go into syndication. To attain the desired number of episodes, a program must enjoy a network run of four to six years. If a program does not reach the necessary run for syndication, the deficit is borne by the program supplier. Tr. 319. The revenues from those programs that do make it into syndication must cover not only their own deficits, but the accumulated deficits of cancelled programs. Tr. 321–322.

Broadcast stations can experience audience decline for a program as a result of cable importation. Tr. 2622. MPAA witness Stanley Besen, an economist, stated that lost audience due to cable importation will lower syndication revenues. Tr. 6891–6892. MPAA argues that it is the Nielsen study which shows the widespread availability and viewership of syndicated program by distant signals on cable systems, thus harming syndicators attempts to sell their programs to broadcast stations. Cooper, MPAA Direct, p. 2.

Benefit. MPAA presented John Ridall, General Manager of Viacom Cablevision of Cleveland, to testify on the benefit of movies and syndicated series to cable operators. Ridall, MPAA Direct. Viacom Cablevision of Cleveland is the franchisee of 22 contiguous communities in the Cleveland area serving approximately 69,000 subscribers. Ridall, MPAA Direct, p. 1. The system provides 28 channels of basic service including three distant television broadcast stations: CFPL, London, Ontario, carried since 1971, WTBS, Atlanta, Georgia, carried since 1979, and WOR, Secaucus, New Jersey, carried since the late 1970's. *Id.*, pp. 1–2. Ridall attributed the value of these distant signals to movies, syndicated series and sports. *Id.*, p. 2. Specifically, in the case of CFPL, Ridall rated hockey most important. For WTBS and WOR, Ridall rated movies and series as most important. *Id.* Ridall gave no importance to local news programs on distant signals or to devotional programming. Ridall stated that these program types were adequately supplied by Cable Network News, CNN Headline News, and satellite-delivered religious networks. *Id.*, pp. 3–4.

On cross-examination, Ridall stated his system subscribed to Nielsen. Tr. 421. However, Ridall's system has never looked to Nielsen viewing on distant signals to make a decision about whether to replace a signal. Tr. 423. Ridall stated his system sometimes looks to surveys as one method to plan for changes in programming. Tr. 423–424. Ridall stated his system cares about the viewing patterns of subscribers to develop habits of viewing and induce the subscriber to retain his or her subscription. Tr. 424–425. Further, on cross-examination, Ridall stated his system carried distant signal radio, and further, he would include music as an element in the programs that were important to him. Tr. 450, 455, 458.

Criticisms of the Attitudinal Surveys. MPAA presented two witnesses, Stanley Besen and Alan Rubin, economists, to criticize the attitudinal studies performed by the other parties. Besen, MPAA Rebuttal, Rubin, MPAA Rebuttal. The criticisms by Rubin of survey methodology are incorporated later in the findings of the four other surveys.

Rubin criticized the reliability of the surveys. Rubin stated that they asked cable operators and/or subscribers to recall their behavior and sentiments two years previous to the time the question was asked. Rubin found the recall problem so great as to make the surveys unreliable. Rubin, MPAA Rebuttal, pp. 3–5. Rubin also criticized the constant-sum technique. Rubin stated that operators and subscribers were asked to break out specific categories of programs and to report how valuable each type of program was to them. This he found to be an activity that neither cable operators nor subscribers do in actuality; operators program whole signals and subscribers subscribe to whole packages. Rubin believed that this type of exercise conducted in a few minutes over the telephone would not accomplish the goals of the survey. *Id.*, pp. 5–6.

Besen criticized the attitudinal surveys on two grounds: they do not take into account the supply side of the marketplace equation and they measure the total value of the program types, not their marginal values. Besen, MPAA Rebuttal, pp. 4–17. Besen found it critical in ascertaining how much operators would pay for different program types to know the amount of supply of different programs and whether the supplier was willing to sell dearly, cheaply, or offer the programs for nothing. *Id.*, pp. 14–17. Besen also believed that when operators or subscribers were asked to valuate programs they were valuating programs and not valuating the marginal value of the program type on distant broadcast signals. *Id.*, pp. 5–13.

Joint Sports Claimants

The Brown, Bortz and Coddington (BBC) Attitudinal Survey

In each of the fully litigated cable distribution proceedings, 1978, 1979, 1980, and 1983, the Joint Sports Claimants (JSC) have presented "attitudinal" surveys, that is, surveys designed to measure the attitude of cable operators to the value of sports, and other categories of programming.

In the 1978 proceeding, JSC presented a survey of major cable MSO (multiple system operators) executives. This "industry leader" survey, designed and conducted by the advertising agency of Batten, Barten, Durstine and Osborne (BBDO), purported to demonstrate that the cable industry would spend 27 percent of their distant signal programming dollars on sports. 45 FR 63029. The Tribunal found there were deficiencies in the BBDO survey. 45 FR 63038.

In response to the Tribunal's concerns, BBDO made certain changes in the survey for the 1979 proceeding. The survey endeavored to distinguish between distant signal programming and made for cable programming, and between network and nonnetwork sports. The study also focused on only distant signal programming that was actually imported. Interviews were conducted by telephone and embraced 31 of the Nation's 50 largest MSO's and 53 out of 108 randomly selected Form 3 cable system managers. The method of the study was to ask each respondent what dollar value, out of $100, he or she would place upon each type of programming. 47 FR 9882. Reviewing the 1979 survey, the Tribunal stated that the expressions of preference as to the value of sports or any other category of programming cannot be directly quantified or converted into a royalty share allocation. 47 FR 9893.

In the 1980 proceeding, JSC's BBDO survey was a telephone interview survey of the senior marketing or program executives of 34 of the 50 largest MSO's, representing 53.6% of the cable subscribers in the United States. 48 FR 9555. The Tribunal repeated its view that the survey percentages could not be directly converted into a royalty share allocation. 48 FR 9563.

In this proceeding, JSC retained Browne, Bortz & Coddington, Inc. (BBC)

to conduct its attitudinal survey. Bortz, JSC Direct, p. 1. BBC reviewed the previous studies conducted for JSC by BBDO and made certain changes in methodology. *Id.*, pp. 2–3. Instead of MSO executives, BBC interviewed cable system operators because of their more detailed knowledge of programming value at the local level. JSC Ex. 1, p. 1. A stratified random sampling approach was used with the stratification based on copyright royalty payments during the second half of 1983. JSC Ex. 1, App. A., p. 19. Only Form III systems were surveyed, recognizing that these systems account for approximately 97 percent of the total 1983 copyright royalty payments. *Id.;* JSC Ex. 3, p. 4. The sample design included five strata of royalty classes: systems paying $100,000 and over in royalties, $42,000 to $99,999 in royalties, $21,000 to $41,999 in royalties, $9,000 to $20,000 in royalties, and $0 to $8,999 in royalties. JSC Ex. 1, App. A., p. 20. In the highest strata, $100,000 and over, BBC chose to take a complete census of the cable systems within that strata, or 51 systems out of 51. In the other strata, BBC chose to survey between 31 and 34 systems each. *Id.* The rationale for using a stratified survey was that BBC was attempting to measure the program valuation of cable operators in accord with their dollar contribution to the copyright royalty pool, and that if the program valuation characteristics of large systems were different than program valuation characteristics of small systems, the survey would reflect it. Bortz, JSC Direct, p. 3; Tr. 831.

Of the 183 cable systems in BBC's sample, 169 responded, yielding a response rate of 92.9%. JSC Ex. 1, App. A., p. 21.

The actual surveying was subcontracted to Burke Marketing Research. BBC did not inform Burke Marketing Research of the name of the party commissioning the study, or that the objective of the study related to copyright distribution. Tr. 833. Interviewing took place from March 5 to March 20, 1985. JSC Ex. 1, App. A, p. 21. The interviewers were instructed to speak only to those persons at the cable system "most familiar with programming carried by the system during 1983." *Id.*

The former BBDO survey used by JSC asked respondents to divide 100 hours of programming and $100 of "total" distant signal program value, in both cases using the constant-sum approach. In response to certain criticism from other claimant parties, BBC changed to approach for 1983 and asked respondents to think of the total value of distant signal nonnetwork programming as representing 100 percent, and then asked them to divide among five categories of programs, JSC Ex. 1, p. 4.

In each interview, the cable system employee was informed which distant signals his or her cable system carried in 1983. JSC Ex. 1, App. B., p. 26. The respondent was then asked, "Assume that the total value of all non-network programming on the (distant signal) stations I mentioned equals 100 percent. . . . What percentage, if any, of the 100 percent reflects the value of movies, live professional and college sports, syndicated shows and series, news and public affairs, and PBS and educational to your system in 1983 in terms of subscriber attraction and retention?" JSC Ex. 1, App. B., p. 28.

The results to the question were:

Category	Percent valuation	Absolute confidence interval (Percent)
Live professional and colege sports	36.1	+2.4
Movies	30.2	2.0
Syndicated shows and series	18.6	1.5
News and public affairs	12.1	1.5
PBS, educational and other public television	3.1	1.0

JSC Ex. 1, App. A, p. 23.

If a system did not carry a PBS station on a distant signal basis in 1983, PBS was not included among the categories the respondent was asked to valuate. Tr. 845–846. 41 of the 169 responding cable systems, or 24 percent, carried PBS in 1983. Among those 41 systems, PBS received a valuation of 12.7%. Tr. 846. The 24 percent in the BBC sample corresponds to the 24 percent of the universe of Form 3 systems which carried PBS stations in 1983. *Id.*

BBC did not ask the respondents to valuate devotional or Canadian programming, or music. Tr. 969. JSC Witness Paul Bortz stated that in response to the open-ended question on the questionnaire referring to valued program types, only 3 out of 169 systems mentioned devotional programs. Tr. 847. In Mr. Bortz' opinion, this confirmed his pre-test results that devotional programming would be of very small value. Tr. 9968. In Mr. Bortz' opinion, this confirmed his pre-test results that devotional programming would be a very small value. TR. 968. Mr. Bortz stated that in designing the survey, it was his opinion that it was "realy these five categories . . . that drove the business." Tr. 969. As for the left-out category of devotional programming, Mr. Bortz stated that his study makes no attempt at valuation. *Id.* The questionnaire did not provide definitions for the five program categories. JSC Ex. 1, App. B.

Harm. David J. Stern, the Commissioner of the National Basketball Association, testified for JSC on the harm criterion. Stern, JSC Direct. Distant signal telecasts harm the exclusivity sold by teams in the local markets. Stern gave the example that in 1983, WKBD–TV in Detroit carried 15 Detroit Piston games; those telecasts had to compete with the importation of 113 basketball games over the three satellite-delivered superstations. Stern, JSC Direct, p. 3. The saturation of a club's home market with additional sports telecasts can fractionalize the viewing audience for the local team's telecast. When fewer people watch the local telecasts, advertisers will pay less for the right to sponsor the local team's games. *Id.* The NAB's 23 teams share in the copyright to each televised game. Tr. 724. JSC presented no evidence on the financial degree of this harm. Tr. 732.

Benefit. Richard Loftus, President of Trident Communications Group, testified on the benefit criterion for JSC. Loftus, JSC Direct. Loftus has worked in cable television for twenty five years including a ten year period with AmVideo, an MSO in Maryland, Virginia, and New Jersey, and eight years as a director of the Natonal cable Television Association. Loftus, JSC Direct, pp. 2–7. Loftus stated that sports and movies are the primary considerations for cable operators in choosing a distant signal. *Id.*, p. 10 Loftus considered PBS stations a necessary distant signal if the local market does not have a PBS station as a must-carry. *Id.*, p. 15. Loftus stated that a cable operator wants news and public affairs from the city most closely identified to the cable system; it does not consider distant signal news important. *Id.* pp. 15–16. Loftus believed devotional programs were available locally and through satellite services, and a cable operator did not need a distant signal for that purpose. *Id.* p.16. Loftus felt Canadian stations were attractive for their sports and movies. *Id.*, p. 17.

On cross-examination. Loftus considered syndicated series a minor element in decision-making. Tr. 1044. Loftus also considered the cost of importing the signal by tower, microwave or satellite, and the requirements of local franchising authorities to have an impact on decision-making. Tr. 1047–1049, 1062.

Changed Circumstances. Dr. Peter H. Lemieux performed an analysis of the 1983 cable royalty fund based on information compiled by Cable Data

Corporation and compared the analysis to the 1980 cable royalty fund. JSC Ex. 3. 6,454 cable systems filed statements of accounts with the Copyright Office for the first semiannual period of 1983; 6,896 systems filed for the second semiannual period. *Id.* p. 3. Of the 6,896 systems who filed in the second semiannual period, 1,573 were Form 3 cable systems (systems which grossed more than $214,000 semiannually and which paid royalties based on the type of distant signal they carried), and they accounted for 96.6% of all royalties paid into the fund. *Id.*, p. 5. These Form 3 systems carried, on average, 3.56 distant signals for a total of 5,606 different instances of distant signal carriage. *Id.*, p. 8. The type of distant signal carriage was broken down by Lemieux as follows:

INSTANCES OF CARRIAGE

	1980 2nd half	Percent	1983 2nd half	Percent
Superstations	1,322	24.0	2,201	39.3
Other Independents	1,466	26.6	1,307	23.3
All U.S. Independents	2,788	50.6	3,508	62.6
U.S. Networks	2,075	37.7	1,538	27.4
Noncommercial Stations	491	8.9	427	7.6
Canadian	133	2.4	114	2.0
Mexican	18	0.3	19	0.3
Totals	5,505		5,606	

JSC Ex. 3, p.9, 11; NAB Ex. 26X.

Between 1980 and 1983, superstations were carried a total of 879 more instances, an increase of 66.5%. During the same period, network affiliates were carried in 537 fewer instances, representing a decline of 25.9%. *Id.* Each of the three superstations, WTBS, WOR, WGN, is a professional sports "flagship" station, that is, one that originates the live telecasts of a professional sports team's events. All together, in 1983 the three superstations originated 553 live telecasts of professional baseball, basketball and hockey. JSC Ex. 3, p. 16. The promotion of these superstations to operators and subscribers is based on their sports programming. JSC Ex. 2, Superstation Promotional Material. JSC urged the Tribunal to consider the increased carriage of superstations as a changed circumstance justifying an increase in the award to the sports category. JSC Proposed Findings, para. 20–25.

PBS

The McHugh and Hoffman Attitudinal Survey

For the first time in any distribution proceeding, PBS presented an attitudinal survey. The most significant question of the survey asked cable operators to allocate $100 between distant signal commercial television and distant signal public television. PBS Ex. 29, p. 9. If an operator did not carry a distant PBS station, he was asked simply to allocate the $100 between commercial television and public television. *Id.*

PBS commissioned McHugh and Hoffman, Inc. (M & H), a communications consulting firm to conduct a survey of cable operators to reflect the value of distant signal public television programming. PBS Ex. 30, p. 1. The survey was subcontracted to KPR Associates, Inc. (KPR), a marketing research firm. *Id.*

M & H, in conjunction with KPR, determined that the survey's objectives could be adequately addressed by a random sample of 409 complete telephone interviews. PBS requested that 80% of these telephone interviews should be of Form 3 cable systems and that 20% should be Form 1 and Form 2 cable systems. A total of 409 completed interviews were conducted, of which, 325 (79.5%) were of Form 3 operators, and 84 (20.5%) were of Form 1 and Form 2 cable operators. PBS Ex. 30, p. 2. The response rate was approximately 80%. *Id.*

The survey results showed that operators carrying only a local PBS signal allocated, on average, $36.67 to "public television." Operators carrying at least one distant PBS station, in contrast, allocated an average of $27.50 to distant public television signals. Tr. 1697–1699. M & H believes that the results of the Form 3 operator interviews has a confidence factor of ±6%, and that of the Form 1 and Form 2 operator interviews has a confidence factor of ±11%. *Id.*

The interviews were conducted from February to April, 1985. PBS Ex. 30, p. 1. The first nine questions did not refer to the calendar year 1983. PBS witness Peter Hoffman (Hoffman) stated that he was interested in "top of mind awareness," to get the interviewee to give his or her personal feeling as of 1985. Hoffman stated, "It is a little hard to project what you thought several years ago, in terms of your current thinking." Tr. 1652. Questions 10b, 18b, and 19b attempted to relate the respondents thinking to 1983. Question 10b asked, "If you were answering this question on uniqueness in 1983, would you have answered in the same way as you just did, or differently?" PBS Ex. 30, App. C, p.3. 89 percent said they would answer it the same way. Tr. 1653. Questions 18b and 19b asked whether the respondent's answer regarding dilution of value due to duplication of cable originated programs for movies and sports would have been different in 1983. PBS Ex. 30, App. C., p. 6. 92% and 89% responded no difference, respectively. Tr. 1654.

The cable system employee responding to the survey was first told, "The study we are doing is concerned mainly with Public Television stations and how they fit into your thinking about cable channels." PBS Ex. 30, App. C., p. 1. The respondent was then asked a number of aided questions about PBS. *Id.*, p. 3. Question 8a asked the respondent to comment on the value of PBS programs such as Mister Rogers Neighborhood, Masterpiece Theater, NOVA, MacNeil/Lehrer, the Brain, etc. *Id.* Only after many aided questions about PBS was the respondent asked to valuate PBS programming. *Id.*, p. 4. On cross examination, Hoffman conceded that asking many questions about a subject prior to asking the respondent to rate that subject would probably raise the subject's rating. Tr. 1712–1713.

M & H asked the cable system employee whether his or her cable system carried any PBS as a distant signal. Distant signal was defined in the questionnaire as "those which originate outside your home market," and local was defined as a signal "that . . . originate(s) in your community." PBS Ex. 30, App. A, p. 2. 45% of all Form 3 cable operators said they carried at least one PBS distant signal. PBS Ex. 30, p. 4. However, according to Cable Data Corporation, only 24% of Form 3 cable operators actually carried at least one PBS distant signal in 1983. JSC Ex. 3, p. 22. Hoffman attributed the discrepancy to a belief that operators may have been only thinking of their local community and not of the entire metropolitan area. Tr. 1657–1658.

Some cross examination addressed whether the respondent was asked to simulate a business decision. When asked, what criteria did M & H expect the respondent to follow when asked to divide up the $100 of value, Hoffman stated, "this is a projective technique to give a feeling of worth or balance . . ." Tr. 1696–97. When asked, "It didn't say what value are these to you in your business," Hoffman replied, "No, it just says—the question just says what it says." Tr. 1697.

Harm. PBS President Bruce L. Christensen testified on the harm criterion. PBS does not produce its own programs. They are produced by local PBS-affiliated stations or independent producers. Tr. 1735. PBS puts together a schedule of programs and feeds them by satellite to its affiliates. Tr. 1725. Approximately one in ten public television viewers contribute to fund the program costs. Tr. 1743. Christensen

testified that when a viewer subscribes to a cable system, the viewing of public television goes up, but the likelihood of their contributing to public television goes down, because from information obtained from PBS surveys, some viewers believe their cable subscription fees go to contribute to public television. Tr. 1743. However, the extension of public television signals into additional areas by means of distant cable carriage serves the objectives of public television and PBS concedes there is no record basis to say that it causes any discernable harm to the copyright owners of the programs. Tr. 1576–79, 1630–34, 1600–01; PBS Proposed Findings, par. 11.

Benefit. PBS presented James Barthman, owner of a Form 1 cable system in Telluride, Colorado. PTV Ex. 32. Bartham testified as to the large sums his system plans to expend to obtain a public television signal based on ascertainment of subscriber interest. Tr. 1470–1472. PBS presented Steven Vedro, an official of public television station WHA–TV, Madison, Wisconsin, who testitied as to the benefit of several public television stations on the same cable system. PTV. Ex. 26. The Madison cable system had intended to drop one of its public television stations, but after a subscriber survey showing great interest in public television, they decided to retain the two stations and add another public television station. Tr. 1522. In 1983, the public television stations in Madison, Wisconsin, had the same programs but at different times, offering time diversity. Tr. 1526.

Instance of carriage percentage figures for PBS were 7.6% for Form 3 systems and 7.3% for Form 2 systems. JSC Ex. 3, p. 9, p. 11; PTV Ex. 21.

Marketplace value. Suzanne Weil, PBS Senior Vice President in charge of programming, Aida Barrera, a producer of PBS programs, Ossie Davis, a producer-performer of PBS programs, and John P. Madigan, Jr., an underwriter of PBS programs, testified that PBS programming is unique and has value which cannot be replicated by commercial television. PTV Exs. 6, 10–14, 18.

Duplication. The pattern for carriage of distant educational signals in the second half of 1983 was as follows:

Number of logical educational signals carried	Number of district educational signals carried			
	None	One	Two or more	Total
None	8	172	24	204
One	642	137	8	787
Two or more	539	35	8	582
Totals	1,189	344	40	1,573

JSC, Ex. 3, p. 22. Table 9.

Christensen testified that there is a certain amount of duplication of public television programs when two or more public television stations are carried by a given cable system, but that duplication is a conscious programming decision to give the viewing public the opportunity to view telecasts at different times, and, in the case of children's programming, to reinforce the child's learning process. PTV Ex. 19, pp. 5–6.

In approximately 50% of the instances of importation of a distant public television signal, in 1983, cable operators elected to provide a distant public television signal. JSC Ex. 3, p. 22, Table 9, PTV Ex. 23, p. 1.

NAB

The ELRA attitudinal surveys

In the 1980 proceeding, NAB presented an attitudinal survey of approximately 400 Form 2 and Form 3 cable operators who were asked to rate the value of station-produced programming in attracting and keeping subscribers on a scale from 1 to 5. 48 FR 9556. In this proceeding, NAB changed the format of its surveying technique and presented two attitudinal surveys. In the first survey, cable operators were asked to allocate $100 amon five to seven program categories (depending on whether the system carried, in addition to five basic program categories, distant PBS and/or Canadian stations). Abel, NAB Direct, pp. 20–22. In the second survey, cable subscribers were asked to perform the same allocation task, except they were asked to divide $10, not $100. *Id.*, pp. 25–26. Comparing the two surveys, NAB argued that it is the cable operator's selection of distant signals which is the relevant marketplace, and therefore urged the Tribunal to give the greater significance to the operator surveys, and to view the subscriber survey as confirmation. NAB Proposed Findings, par. 92.

The result of the cable operator survey was as follows:

Program category	Mean value	95 percent confidence interval	
		High	Low
Sports programs	$35.66	$37.41	$33.91
Movies	25.02	26.27	23.77
Syndicated series	15.84	16.88	14.80
Station produced programs	13.33	14.34	12.32
Devotional programs	7.24	7.93	6.55
Public broadcasting	2.51	3.18	1.84
Canadian station programs	.40	.84	.00

NAB Ex. 9, p. 17

The result of the cable subscriber survey was as follows:

Program category	Mean value	95 percent confidence interval	
		High	Low
Sports programs	$2.54	$2.75	$2.33
Movies	2.62	2.80	2.45
Station produced programs	1.71	1.86	1.56
Syndicated series	1.70	1.83	1.56
Devotional programs	.78	.92	.63
Public broadcasting	.58	.80	.37
Canadian station programs	.07	.15	.00

NAB Ex. 10, p. 18.

John D. Abel, Senior Vice President of Research and Planning at National Association of Broadcasters (Abel) and Robert LaRose, Senior Vice President for Research of the ELRA Group (LaRose), testified regarding the ELRA surveys. Abel, NAB Direct; LaRose NAB Direct.

In 1979, Abel founded ELRA (East Lansing Research Associates) to do broadcast and cable consulting. Tr. 2004. ELRA started out conducting ascertainment surveys for broadcast stations, and then cable systems. Tr. 2005. In 1982, ELRA began to do a quarterly nationwide cable subscriber telephone survey measuring programming satisfaction called CableMark Probe. Tr. 2350; NAB Ex. 9, p. 8. For this proceeding, NAB retained the ELRA Group to perform random sample surveys of cable system operators and cable subscribers. Abel, NAB Direct, pp. 19–25.

Methodology—cable operator survey.—A random sample of 400 systems were drawn from those filing Form 3 statement of accounts with the Copyright Office for the second half of calendar year 1983. NAB Ex. 9, p. 5, p. 8. Interviewing took place between April 15, 1985, and April 24, 1985. Id., p. 8. ELRA completed 286 interviews out of 400, yielding a response rate of 71.5%. Id. Interviewers asked to speak to the system manager. After reaching the system manager, they asked if the system manager was with the system in 1983 and was familiar with programming decisions that were made in that year. If not, the interviewer asked to be referred to a person who was. If no such person could be located, the interview was terminated. This happened in 15 instances. Id., p. 5, p. 8.

Respondents were read a list of the distant stations carried by their system in 1983. Question 7 asked, "Thinking back to 1983, I would like to know about the value of the different types of programming that these distant stations carried. By value, I mean their value to your system in attracting and keeping subscribers. It might be helpful if you jot down the types of programs as I read them. Assume that the value of all non-network programs on the distant stations you carried in 1983 was $100. I would like to know how many of the 100 dollars you would allocate for: a. Live sports broadcast by the distant stations, b. News and other programs produced by commercial television stations, c. Syndicated series, d. Movies broadcast by distant stations, e. Religious programming broadcast by the distant stations, and if the system carried a distant PBS and/or Canadian station, f. Public Broadcasting programs, g. Canadian station programs." NAB Ex. 9, App. A., Q 7. If the system did not carry a PBS and/or Canadian station, a zero allocation was assigned. Id., p. 2.

Live sports was defined as not including "games distributed by the three television networks, news and other programs produced by commercial television stations was defined as including "children's programs, public affairs programs and talk shows hosted by the station's own personalities." It was further defined as not including "network news, or Independent Network News." Syndicated series was defined as including "series programs previously shown on the three television networks as well as non-network cartoons, game shows and talk shows hosted by national personalities." Movies were defined as not including those "distributed by the three television networks." Religious programming was defined as "specifically including the Old Time Gospel Hour, the 700 Club and PTL Club." Id.

Methodology—cable subscriber survey.—ELRA started with the list of cable subscribers it had contacted in conjunction with the CableMark Probe cable satisfaction surveys conducted in 1983. Tr. 2243. In 1983, ELRA had chosen a random sample of 100 cable systems out of a universe of all cable systems listed in the 1982 edition of the Cable Sourcebook. Another 10 systems under construction were also selected to represent the 10 percent increase in cable operations in 1983. NAB Ex. 10, App. B., p. 109.

The response rate for the 1983 CableMark Probe was approximately 60%. One quarter of the number of cable subscribers contacted in 1983 were randomly excluded to yield a sample of 3,358. NAB Ex. 10, p. 6.

Of the 3,358 in the sample, ELRA completed 1,099 interviews. NAB Ex. 10, p. 12. Interviewing took place from April 12, 1985 to April 21, 1985. Id., p. 10. Respondents were informed of the distant stations carried on his or her cable system in 1983. NAB, Ex. 10, App. A, Q. 3. The respondent was then asked how much of the monthly cable payment would the subscriber have spent to receive only the nonnetwork programming on the distant stations. Id., Q. 5, Q. 6. On the average, respondents stated they would pay slightly over $4 monthly in 1983 to receive the nonnetwork programming on the distant signals which their cable system carried. JSC/NAB Stipulation, October 31, 1985; Tr. 2267–70.

Of the 1099 who were interviewed, 7 respondents refused to make the allocations of $10 to program types, 13 failed to make the allocations correctly, and 265 respondents allocated zero value to distant signals or allocated all distant signal value to network programs. This left 821 respondents who made non-zero allocations to nonnetwork distant station programming and who correctly made the $10 allocations. NAB Ex. 10, p. 15.

The cable subscriber was asked to allocate $10 among program categories. The category definitions given the subscriber were: "(a) Live sports games broadcast by the distant stations. This includes regional broadcasts of pro basketball, baseball, hockey and soccer games, college sports, and games on the superstations like Braves, Cubs and Mets baseball. It does not include network sports such as the NBC Game of the Week, NFL football or the NCAA basketball tournament. (b) News and other programs hosted by the station's own personalities, including children's programs, public affairs programs and talk shows. This includes the WTBS Evening News and the 9 O'clock News from WGN. (c) Series Programs. This includes entertainment shows that used to be on the three television networks as well as non-network cartoons, game shows and talk shows. Examples are M.A.S.H., Flintstones, Tic Tac Dough, and PM Magazine. (d) Movies broadcast by the distant stations, not including those broadcast by the three television networks such as prime time movies of the week. It does include all other movies on these distant stations, such as Movie 17 on WTBS and the WGN Prime Movie. (e) Religious programming on these stations, specifically including the Old Time Gospel Hour, the 700 Club and PTL Club. (f) Public Broadcasting programs. (g) Canadian station programs not including the American Network programs they carry." NAB Ex. 10, App. A, Q. 7. Cable subscribers were asked to allocate value to PBS and Canadian stations only if their systems carried a distant PBS and/or Canadian station. Otherwise, PBS and Canadian stations were given a zero allocation. NAB Ex. 10, p. 2.

Of the 821 respondents, 59.3% were female and 40.7% were male. NAB Ex. 10, p. 16, Table 27. Males allocated 33% of their $10 to sports; females allocated 20% to sports. JSC Ex. 6X.

Television Compilation.—Harold E. Protter, President of Channel 38 Associates, Inc. licensee of WNOL-TV, New Orleans, Louisiana, testified on television compilation. Protter, NAB Direct. Protter attributed the success of one station versus another station in the same market with similar series and feature films to the superior scheduling of those programs and their promotion. Id. pp. 17–18. NAB witness John Abel testified that by importing a distant television station, the cable operator is spared the time and expense in creating his or her own compilation of programs. Abel, NAB Direct, p. 30. However, Protter stated that compilation is not done for and has no effect on contiguous markets. Tr. 2605.

When asked whether the compilation may nevertheless have utility in distant markets, Protter surmised that the "program schedule aspect of it may have some value in other places," but it was not something about which he worried. Id.

Commercial radio and radio compilation.—NAB presented the testimony of Raymond Nordstrand, general manager of WFMT(FM), Chicago, Illinois, and Studs Terkel, host of the Studs Terkel Show on WFMT(FM), to testify on the value of commercial radio and radio compilation. Nordstrand, NAB Direct; Terkel, NAB Direct. WFMT(FM) is carried outside of the Chicago area through United Video, Inc.'s satellite service by approximately 179 cable systems in 39 states. Nordstrand, NAB Direct, p. 1. These cable systems have 800,000 subscribers, but Nordstrand could not represent how many of the 800,000 subscribers, in fact, received WFMT in 1983. Tr. 2181. An additional 99 cable systems outside of the Chicago area in Illinois, Indiana, Iowa, Ohio and Wisconsin, not subscribing to the United Video satellite service, serving approximately 300,000 subscribers, carried WFMT(FM). Nordstrand, NAB Direct, pp. 1–2.

WFMT(FM) aired sport announcments during August and September, 1983 asking listeners to write in to respond to a questionnaire which would "enable WFMT(FM) to better know and serve listeners outside the Chicago area." Tr. 2823, 2826, 1,222 listeners responded. Tr. 2825. WFMT mailed these listeners the survey and 588 individuals responded. Tr. 2827. Nordstrand conceded that this was not a random sample undertaken to project the responses to the whole universe of those who have access to WFMT. Tr. 2827. Of the 588 respondents, 52.2% said they paid a surcharge to receive radio on their system, 37.6% said they did not, and 10.2% did not answer the question. NAB Ex. 14, p. 3; Tr. 2832.

The programming on WFMT, by time, is approximately 80% music and 20% non-music. Music Ex. 47X; Tr. 2759, 2760. The non-music programming consists of the Studs Terkel Show, Arts and Artists, News, Critics Choice, Writing and Writers, Fine Arts Calendar, Literary Features, Public Affairs, and commentary and interviews in musical programs. Nordstrand, pp. 4–6. Of the literary readings performed on WFMT, Nordstrand represented he had obtained a license to perform the works, but not the copyrights. Tr. 2743. In the survey, 35.4% said they heard and enjoyed the Studs Terkel Show, 70.0% said they found the newscasts interesting, 42.7% found the literary features interesting, and 32.8% found the advertising messages interesting. NAB Ex. 14, p. 5. Letters were submitted that praised the non-music portions of WFMT. NAB Ex. 15. On cross-examination, letters were introduced by Music citing disc jockey chatter, and talk as a reason to "tune out" the radio programming. Music Ex. 51X. Nordstrand attributed the appeal of WFMT to its creation of a special tone and texture due to its compilation of music and commentary. Nordstrand, NAB Direct, pp. 7–8.

Terkel testified that his show, broadcast on WFMT six time per week for one hour, contains discussions, interviews, commentary, documentaries, readings, and music. Terkel, NAB Direct, p. 2; Music Ex. 55X.

Criticism of Nielsen Data.—NAB criticized the Nielsen study as not being a valid measurement of the universe of distant signal viewing, especially as it applies to local programming. Abel, NAB Rebuttal, pp. 1–10. NAB first criticized the mix of independent stations and network affiliated stations in the Nielsen Survey. Id., p. 2. Local programming accounted for approximately 2.9% of the total viewing hours on the 42 independent stations Nielsen measured, and 29.1% of the viewing hours on the 56 network affiliated stations Nielsen measured. Cooper, MPAA Direct, p. 6. Of the 404 commercial stations which were carried by at least one cable system on a distant signal basis in 1983 which MPAA did not survey, 339 were network affiliates, and 65 were independents. Abel, NAB Rebuttal, p. 3 Therefore, NAB argues that the remainder of the distant signal universe which MPAA did not measure contained substantially higher local programming viewing, requiring an upward adjustment for local programming. Id., pp. 4–9.

NAB's second cirticism concerned the method by which MPAA Incorporated the data for the "partial sweep" months of January and October. The "partial sweeps" are in the largest markets, and in those large markets, there are a higher percentage of independent stations. NAB attributed the difference between 4.61% of the viewing in the four-cycle data and 3.70% of the viewing in the two-cycle data to the change in the mix of independent and network affiliated stations. Tr. 6258–6260; NAB Ex. 18.

NAB performed a straight line projection from the MPAA data for 117 stations to the universe of 622 stations for the four-cycle data only. Tr. 6268; NAB Ex. 23X. NAB's adjusted viewing figure for local programming was 6.07%. NAB Ex. 23X. MPAA witness Allen Cooper rejected the validity of NAB's projection because he stated that local programming on major market network affiliates was much higher than local programming on smaller market network affiliates, and that all that remained in the universe to be measured were the smaller market network affiliates. Tr. 1168–1169. In response to Cooper's criticism, NAB stratified the MPAA Nielsen data. Data was divided into four quartiles and NAB used viewing data for the included stations in each Quartile to estimate viewing for omitted stations in the same Quartile. Abel, NAB Rebuttal, p. 9; Tr. 6270.

The results of NAB's projection to the universe of broadcast signals were:

	117 stations 4-cycle dataa (Percent)	622 station projection (Percent)
Syndicated series	53.24	52.29
Movies	25.62	24.48
Major sports	10.75	10.01
Minor sports	1.79	1.70
Local	4.61	5.59
Educational	2.64	4.61
Devotional	0.65	0.67
Specialty stations	.52	.48
Other	.18	.17

Nab Ex. 30R.

NAB also believed that MPAA had misclassified a number of programs. Abel, NAB Rebuttal, p. 6. NAB reclassified seveal programs appearing on WTBS, Atlanta, Georgia in 1983. NAB reclassified the following programs as local (MPAA classification is in parenthesis): "World Championship Wrestling" (Minor Sports);[1] "Good News" (Devotional); "Nice People" (Syndicated Series); "24-Hours Daytona" (Minor Sports); "Atlanta 500" (Minor Sports); "Riverside 500" (Minor Sports); "Richmond" (Minor Sports); "Portrait of Oregon" (Syndicated Series); Tr. 6272–6273. As a result of NAB's reclassification, the NAB projected viewing percentages for all 622 stations for local went up to 7.24%, for Syndicated Series went down to 51.87%, for Minor Sports went down to 0.50%, and for Devotional programming went down to 0.65%. NAB Ex. 31R.

Upon cross-examination, NAB witness Abel conceded that the projections NAB made were based on certrain assumptions regarding average subscriber viewing hours which might not necessarily be true for the stations not measured by Nielsen. Abel conceded this impaired the accuracy of the projection. Tr. 6684.

Music

Marketplace value. Hal David, songwriter and President of ASCAP, testified that feature songs contribute to the success of movies. David, Music Direct. Earle Hagen, a composer primarily for television, testified that music is an important contribution to syndicated series. Hagen, Music Direct. Frank Lewin, a composer of film, television, and theater scores, testified that background music in movies and syndicated series conveys the meaning of the works by non-visual, non-verbal means. Lewin, Music Direct.

Commercial Radio. The carriage of distant radio stations is almost exclusively of FM stations. Fagan, Music Direct, p. 10. In rebuttal of NAB's testimony regarding WFMT–FM, Music introduced a breakdown by time of programming on WFMT–FM in 1983 which yielded a ratio of music programs

[1] World Championship Wrestling was the subject of a stipulation and a Tribunal order. It was determined that a two-hour program called "World Championship Wrestling" and a program called "The Best of World Championship Wrestling" were local programs belonging in the NAB category, and that a one-hour program called "World Championship Wrestling" and a program called "Georgia Championship Wrestling" were syndicated series belonging in the Program Supplier category. Stipulation, dated December 16, 1985; *Order*, Docket No. 84–1 83CD, dated February 11, 1986.

to non-music programs of approximately 80–20. Music Ex. 47X. Music argued that earlier Tribunal proceedings established an 80–20 ratio as typical of the average commercial FM station. Fagan, Music Rebuttal, p. 4.

Changed Circumstances. Don Biederman, Vice President of Legal and Business Affairs for Warner Brothers Music, testified on the introduction of music videos as a new program type in 1983. Biederman, music Direct. In the mid to late 1970's, record companies began producing music videos and promotional aids to sell records and tapes and began supplying them to record stores, clubs and discotheques. The QUBE cable system in Cincinnati, owned by Warner Communications, had originally used music videos as fillers between programs. Finding them very popular, Warner created MTV in 1981, a 24-hour cable channel devoted entirely to music videos. Id., pp. 7–8.

The success of MTV led to the creation of music video programs on broadcast stations in 1983. WTBS began broadcasting videos in a program called "Night Tracks" every Friday and Saturday night for 6 hours each night in June, 1983. *Id.* p. 13. Superstation WOR added "FM TV" in 1983; Superstation WPIX added music videos to its music programs, "Solid Gold" and "Midnight Special." Id. "Night Tracks" on WTBS ranked 47th on MPAA's Nielsen list of most viewed distant cable programs in 1983. MPAA Ex. 21. The Nielsen study did not count viewing between the hours of 2:00 a.m. and 6:00 a.m., while "Night Tracks" was still on. Tr. 1218–21. Other broadcast stations also began airing music video programs, such as WPHL–TV, Philadelphia, and WDVM–TV, Washington, D.C. Music Ex. 16.

Devotional Claimants

ASI Market Research, Inc. attitudinal surveys. The Devotional Claimants presented two attitudinal surveys. The first survey asked cable operators to rate the importance of various program categories in the operators decision to carry a distant signal, and to estimate the value in the operator's opinion to their subscribers of various program categories carried on distant signals. Virts, DC Direct, p. 2; Ex. 6A, Ex. 6B. The second survey asked cable subscribes the importance of various program categories carried on distant signals and how often these program categories were actually viewed by the subscriber, Virts, DC Direct, p. 2. Ex. 13A, Ex. 13B. The results of the cable operator survey were:

IMPORTANCE OF VARIOUS PROGRAM CATEGORIES TO CABLE OPERATORS IN DECISION TO CARRY DISTANT SIGNALS

	Very important		Somewhat important	
Movies	59%	±6.2	35%	±6.0
Locally originated sports	44%	±6.3	35%	±6.0
Classic comedy programs	28%	±5.7	57%	±6.3
Local news	24%	±5.4	26%	±5.6
Classic dramatic programs	22%	±5.2	59%	±6.2
Religious programming	15%	±4.5	38%	±6.1

DC Ex. 6A; Tr. 4293–94.

CABLE OPERATOR'S OPINION AS TO VALUE TO THEIR SUBSCRIBERS OF VARIOUS PROGRAM CATEGORIES CARRIED AS DISTANT SIGNALS

	Very important		Somewhat important	
Movies	61%	±6.1	35%	±6.0
Locally originates sports	48%	±6.3	41%	±6.2
Local news	29%	±5.7	40%	±6.2
Classic comedy programs	28%	±5.7	63%	±6.1
Classic Dramatic programs	24%	±5.4	65%	±6.0
Religous programming	15%	±4.5	53%	±6.3

DC Ex. 6B; Tr. 4294.

The results of cable subscriber survey were:

IMPORTANCE OF VARIOUS PROGRAM CATEGORIES CARRIED AS DISTANT SIGNALS TO CABLE SUBSCRIBERS

	Very important		Somewhat important	
Movies	41.53	±5.6%	38.34	±5.5%
Local news	27.71	±5.1%	18.79	±4.4%
Classic Comedy programs	24.28	±4.9%	30.67	±5.2%
Local originated sports	22.61	±4.7%	21.02	±4.6%
Classic dramatic programs	18.59	±4.4%	36.54	±5.5%
Religious programming	13.14	±3.8%	12.18	±3.7%

DC Ex. 13A, Tr. 4294–95.

INCIDENCE OF VIEWING VARIOUS PROGRAM CATEGORIES AS DISTANT SIGNALS BY CABLE SUBSCRIBERS

	3 or more times per week		Once or twice per week		1–3 times times per month	
Movies	43.91	±5.7	30.45	±5.2	16.67	±4.2
Local news	33.66	±5.4	14.56	±4.7	9.86	±3.4
Classic comedy	28.29	±5.1	23.15	±4.8	16.67	±4.2
Local originated sports	26.13	±5.0	17.74	±4.4	10.65	±3.5
Classic Dramatic programs	21.04	±4.6	15.52	±4.1	22.01	±4.7
Religious programming	7.12	+2.9	9.39	+3.3	7.44	+3.0

DC Ex. 13B; Tr. 4295.

Addressing the relevance of these figures, Dr. Paul Virts, witness for the Devotional Claimants, performed an analysis based on the relative strengths of the six categories. Tr. 4286–4289. Virts concluded that translating the value in the surveys resulted in an entitlement of approximately 7 percent for the Devotional Claimants. Tr. 4289.

Methodology of cable operator survey. Dr. Paul Virts, Manager of Research Services for the Christian Broadcasting Network, testified on behalf of the Devotional Claimants, regarding the methodology of the attitudinal surveys. Virts, DC Direct. In April, 1985, Virts designed the surveys working in consultation with ASI Market Research, Inc. (ASI). Virts, DC Direct, p. 1. In selecting the cable operators to be interviewed, systems were divided into two groups: systems with more that 12,000 subscribers, and systems with 3,000 to 11,999 subscribers. *Id.* p. 3. Virts and ASI decided that 70% of the cable operators would be interviewed from the larger systems, and 30% would be interviewed from the smaller systems. *Id.* The survey's goal was to reach 250 operators. Tr. 4215. ASI contacted 941 systems in order to get its goal. 252 responded yielding a response rate of 26.8%. Tr. 4218. ASI employees conduced the interviews. Tr. 4221–4222. The ASI employees know they were conducting the cable operator survey for CBN. Tr. 4265. 65% of the operators surveyed carried CBN Cable Network. Tr. 4104–08. However, the majority of Form 3 cable systems do not carry CBN Cable Network. Tr. 5757.

The first question asked the operator was to identify which distant signal his or her system currently imported. MPAA Ex.57X, Q. 1. Some of the answers were incorrect. Tr. 4111. The interviewer did not correct the operator if he or she incorrectly identified the distant signals. MPAA Ex. 57X. No attempt was made in the survey to have the operator recall the distant signal carriage for 1983. *Id.*; Tr. 4110–4111.

No attempt was made to ascertain whether the operator was an employee of the system in 1983. MPAA Ex. 57X. Cable operators were asked for each program type, whether it was important or unimportant in their decision to carry a distant signal. The follow-up question asked, "Is that very or somewhat (un)

important?" *Id.* A. 3. In making their evaluations, the operators were not informed about the distinction between net work programming and nonnetwork programming on distant signals. Tr. 4125. The six program categories in the operator survey were: locally originated sports, local news, movies, religious programming, reruns of classic comedy programs, reruns of classic dramatic programs. MPAA Ex. 57X, Q. 3, Q. 4. No definitions were provided the cable operators of these program categories. *Id.*

Methodology of Cable Subscriber Survey. ASI has access through cable system operators to cable subscriber lists in eight or ten cities nationwide for research purposes. Tr. 4063. ASI selected eight systems to do its study—Tidewater, Virginia; Riverside, California; Oklahoma City, Oklahoma; Las Vegas, Nevada; Louisville, Kentucky; Jefferson County, Kentucky; (surrounding Louisville, Kentucky); Omaha, Nebraska; and Wakefield, Massachusetts. Tr. 4063. MPAA Ex. 60X.

ASI called cable subscribers on a random basis in these eight systems. Virts, DC Direct, p. 3. Virts represented that the results of the random sample are projectable to the eight cable systems, but could not represent that the results are projectable to the entire cable universe of the United States. Tr. 4149. However, Virts believes that demographically, the eight systems are representative of cable systems nationwide. Tr. 4148–4151. Virts conceded, however, that all eight systems might be in the tope 100 markets and that all might have 35-channel capacity or greater, which would make them unrepresentative. Tr. 4151–52. Virts acknowledged that all eight system carried CBN Satellite Network. Tr. 4152–4153.

The cable subscriber questionnaire did not refer to the calendar year 1983, nor was any attempt made to ascertain whether the respondent subscribed to cable in 1983. Tr. 4110–4111; Tr. 4299.

The respondent was told, "Today we are talking to people about what are called distant stations. These are local television stations from *other* (emphasis theirs) cities that are shown over cable television. Distant stations are not the premium services you pay extra for, and are not the local television stations you can get with an antenna. Please tell me all of the distant stations you get with your cable subscription." MPAA Ex. 60X, Q. 1

On cross examination, Virts conceded that sometimes a distant station is on a premium channel, so that that part of the definition of distant stations, "not the premium services you pay extra for" was incorrect. Tr. 4159–4161. Confusion on the part of the subscriber as to what were distant broadcast stations and what were local broadcast station or non-broadcast services were apparent from the responses to Question 1. Tr. 4164–4165. 65 percent of the respondents identified a non-broadcast service or did not identify any distant signals. MPAA Ex. 63X.

Question 2 was an aided question in which the respondent was asked, "Do you receive X Channel?" MPAA, Ex. 60X, Q. 2. The subscriber was asked to state how often he or she watch that distant station and how often someone in the respondents' household watch the distant station. *Id.* Q. 3. The respondent was next asked how often he or she watch certain program types on the distant stations. When asked why measuring actual behavior was important, Virts said, "It's fairly widely known in the industry that when one asks people what they like and then you go and see what they actually watch, they may be two different things. . . . We watch attitudes, we listen to attitudes, but it is the actual viewing behavior which we really pay attention to . . . " Tr. 4186.

The categories were: locally originated sports, local news, movies, religious programs, reruns of classic comedy, reruns of classic dramatic programs. No definitions of these categories were provided the subscriber. *Id.*

Then the respondent was asked, "Is it important or unimportant to you to have *(READ TYPE)* available over these cable channels? Is that very or somewhat (un)important? *Id.* Q. 5, Q. 6.

Benefit. The Devotional Claimants presented two cable operators to testify on the benefit of devotional programming, E. Harold Munn, Jr., president of Coldwater Cablevision, Inc., Coldwater, Michigan and Columbia Cable, Inc., Jackson County, Michigan, and Victor C. Bosiger, part owner of cable systems in Myrtle Beach, South Carolina and Elgin, South Carolina. DC Ex. 3; DC Ex. 4.

Munn testified that in 1983, Coldwater Cablevision carried the distant signals of WKBD, Detroit, Michigan; WFFT–TV, Fort Wayne, Indiana; and for a brief period, CBET, Windsor, Ontario. In March, 1983, WFSL–TV, Lansing, Michigan was substituted for CBET. Tr. 3800–3823. It also carried a PBS distant station from East Lansing, Michigan. Tr. 3816. The system carried no superstations. In the judgment of the Coldwater cable operators, Coldwater, a vacation center, attracts people from Detroit, Lansing, and Fort Wayne, and they would be more interested in their home town stations than superstations. Tr. 3802. Munn stated that the section of Michigan where Coldwater is located has 23 or 24 identifiable denominations and it was his belief that the devotional programming his system offers accounts for approximately 5 percent of the subscribership his system has. Tr. 3809. On cross-examination, Munn acknowledged a good deal of duplication of local signal devotional programming and distant signal programming. MPAA Ex. 55X; Tr. 3843. This, he conceded, diminished his earlier stated 5% figure. Tr. 3844. The Coldwater system also carried the CBN Family Network. This second duplication of the 700 Club on the Coldwater system was conceded to lessen the value of devotional programming on distant signals. Tr. 3854.

Victor Bosiger testified on his ascertainment of programming preferences in the Lynchburg area of Virginia. He found that religious influence in that community is very high. DC Ex. 4, p. 7. Bosiger found significant demand for devotional programming in the system he was planning for Crewe, Virginia. Tr. 3956. The survey was not limited to demand for distant signals; it included demand for local signals, distant signals, and non-broadcast programming services. Tr. 3956. Crewe went on-the-air in January, 1983. It had a capacity of 12 channels. WGN and WTBS were two distant signals chosen to be carried among the superstations under consideration. Tr. 3957, 4027. WTBS had 2% devotional programming, by time, in 1983, and WGN had 1%. The superstation that was not chosen, WOR, had 10% devotional programming. DC Ex. 7–A; Tr. 4027. WGN and WTBS were chosen over WOR because that was the choice indicated by a random sample of subscribers and by opinions voiced at public hearings. Tr. 4028.

Time Plus Fee Generation. The Devotional Claimants presented a time-plus-fee generation formula for allocating value among program types on distant signals. DC Ex. 12. The fees generated by each broadcast station were calculated, and multiplied by the percentages each station carried devotional programming, by time. By this method, the Devotional Claimants calculated an entitlement of 4.63% for the first half of 1983, and 4.36% for the second half of 1983. DC Ex. 12A, p. 3, Ex. 12b, p. 4.

Criticism of the Nielsen Study. The Devotional Claimants criticized the Nielsen study because it was based on the diaries kept by the viewers. DC Ex. 4–R, pp. 3–9. Virts testified that people

experience recall problems and report in diaries only what they remember. *Id.*, p. 3. Virts believed that under-reporting exists in diaries and hurts devotional program ratings. A 1985 Nielsen study based on meters was introduced to illustrate that a meter-study shows greater viewing of devotional programming than a diary-based study. *Id.*, Table 1. No evidence was introduced to show whether devotional programming was comparatively disadvantages versus other program types by the diary method. *Id.*

Canadian Claimants

The Burke Qualitative Survey. For the first time in any distribution proceeding, the Canadian Claimants presented a "qualitative" survey of cable operations. Unlike the attitudinal surveys presented by the other parties in this proceeding, the purpose of the Canadian Claimants' was not to provide the Tribunal with any specific percentage figure as a measure of benefit to cable operators or marketplace value of Canadian programming or any other programming type. Its primary purpose was to respond to two findings of the Tribunal in the 1980 distribution proceeding: that record evidence did not show that there was an appeal to American audiences for Canadian programming in 1980, and that the Canadian Claimants did not show that French programming is of particular interest to American cable subscribers. CC Proposed Findings, paras. 65–66.

Methodology of the Cable Operator Survey. Don Lytle, Director of Corporate Program Services for the Canadian Broadcasting Corporation, commissioned Burke Marketing Research (Burke) to conduct a survey of cable operators. Lytle, CC Direct, para. 5, 11. Deidre Moulliet supervised the survey for Burke. *Id.* par. 11. Lytle provided Burke with a list of the ten Canadian stations most frequently carried on Form 3 systems in the United States in 1983 and the 96 individual cable systems which carried them. Tr. 4925. Burke sent out an introductory letter to between 50 and 57 of the 96 identified cable systems stating that Burke was working on a project to examine and evaluate attitudes toward Canadian programmers and that a Burke researcher would be calling to conduct an interview. Tr. 4802; CC Direct, Ex. CDN–S, App.

Burke completed 25 interviews during December 1984 and January 1985. CC Ex. CDN–S, Management Summary. The reason why many operators could not be interviewed was attributed by Moulliet to the holiday season. Tr. 4803.

The 25 respondents were asked if they had responsibility for deciding which distant signal to import in 1983. CC Ex. CDN–S, App., p. 2. 22 out of 25 said they were decision makers in 1983. *Id.*, Table 1.

The respondents were told, "The purpose of our research is to examine attitudes toward Canadian programming. To help us assess these attitudes, we will be asking you various questions about Canadian programming and the appeal or benefit of that programming to your cable system and to your subscribers. By Canadian Programming we mean programming which is Canadian-produced and broadcast on Canadian stations that are carried as distant signals by cable systems in the United States. Therefore, please focus your responses only on "Canadian Programming" which does not include U.S. network, U.S. syndicated, Major League Baseball or NHL Hockey programs. *Id.* App., p. 1.

After being reminded of the Canadian distant signal(s) the respondent's cable system carried in 1983, the respondent's was asked, "Do the Canadian signals offer benefits to the subscribers?" *Id.* 23 answered yes, 2 answered no. Tr. 4808. The respondents who answered yes were then asked to name three benefits of carrying Canadian signals. The most often named benefits were: Variety of programming/diversity (11 times), News/News slant (10 times), French-language programs (7 times), sports (5 times), hockey (3 times), movies/uncut movies (3 times). CC Ex. CDN–S, Table VI.

Moulliet stated this study was qualitative research and not a random sample survey which could be projected to the universe of cable systems carrying Canadian distant signals. Tr. 4798. However, Moulliet believed that one could say, based on this research, that operators have positive reactions to Canadian signals. Tr. 4798–4799.

Harm. CTV Television Network Ltd. (CTV) is a private Canadian national television network owned by its 16 affiliate stations. Fillingham, CC Direct, p. 3. Glen-Warren Productions, Ltd. is a program supplier for CTV and has produced most of the Canadian television programs on prime time on the CTV Network. *Id.*, pp. 5–6. Glen-Warren syndicates some of its programs in the United States. CC Ex. CDN–G. The CBC English network syndication entity, CBC Enterprises, exported $1,179,000 in programs to the U.S., CC Ex. CDN–0, Tr. 4661. More programs are syndicated to the U.S. via barter transactions, such as Sesame Street and the Journal. TR. 4666 Glen-Warren and CBC are grouped with the Program Suppliers for programming that it sells and syndicates in the U.S. Tr. 4868. Prehearing Statement of Program Suppliers. The Canadian Claimants allege harm in their attempts to sell Canadian programming to U.S. television stations because Canadian programming already reached 2 million cable subscribers in the U.S. by distant signal. Tr. 4896; CC Ex. CDN–EE.

Marketplace Value of Canadian Content Programming. Excluding U.S. network programming, CFTO–TV, Toronto, Ontario, carried 56.7% Canadian-content programming in 1983. CC Ex. CDN–C, Tr. 4869. This includes 99.5 hours of Toronto Blue Jay baseball for which the Canadian Claimants do not claim. *Id.* The content requirement for commercial stations in Canada is 60% Canadian content overall from 6 a.m. to midnight and at least 50% Canadian content from 6 p.m. to midnight. Tr. 4875–76.

On the Canadian Broadcasting Corporation stations, 73% of the prime time schedule was Canadian-content in 1983, and 63% of the entire programming schedule is Canadian. Tr. 4589; CC Ex. CBN–J. There are approximately 44 CBC owned and operated stations and affiliates. Of them, 10 stations were carried by 48 cable systems as a distant signal in 1983. Tr. 4607; CC Ex. CDN–FF. Included in the 63% Canadian-content figure was the Montreal Expos baseball broadcasts, Hockey Night in Canada, and the 1983 Stanley Cup Playoffs. Tr. 4609–4613. All ten CBC stations carried the Montreal Expos, Hockey Night in Canada and the 1983 Stanley Cup Playoffs. *Id.* These represent about 250 hours of programming a year. Tr. 4644.

To show the appeal of Canadian programs to American audiences, 38 letters from U.S. viewers, 11 of which represented distant viewing, were filed. CC Ex. CDN–Q; JSC/NAB/CC stipulation, October 29, 1985. Canadian witnesses Robin Fillingham (representing CTV, the private Canadian television network), Trina McQueen (representing CBC's English Television Network), Robert Roy (representing CBC's French Television Network), and Mark Starowicz (representing one program on CBC, The Journal) testified that their programming was unique and offered cable systems diversity. Fillingham, CC Direct; McQueen, CC Direct, Roy, CC Direct; Starowicz, CC Direct.

In 1983, there were 29 instances of full-time carriage of French-language Canadian stations by Form 3 cable operators. CC Ex., CDN–FF revised. In rebuttal of MPAA's witness John Ridall,

who said cable operators were interested in Canadian stations for the hockey games they carry, the Canadian Claimants presented Maurice Violette, an Augusta, Maine cable subscriber who stated that in Augusta, 35% of which is French speaking, a French-language station is important. Violette, CC Rebuttal.

Testimony of cable operators presented by other parties supported hockey programming as the important factor in choosing a Canadian station. John Ridall, an MPAA witness and Cleveland cable operator, stated "(U)nquestionably the National Hockey League programming [on the imported Canadian signal] is the major appeal to us and the subscribers." Tr. 439–40. E. Harold Mann, a Devotional Claimant witness and a Michigan operator stated that dropping CBET of Windsor, Ontario disappointed some subscribers because, "some people like the hockey games available from Canada." Tr. 3801. Richard Loftus, a JSC witness, cited sports as the sources of Canadian station appeal. Loftus, JSC Direct, p. 17.

Findings of Fact—3.75% Fund

The Act provides that if, after April 15, 1976, FCC should ever changes its regulations regarding the permitted carriage by cable systems of television broadcast signals beyond the local service area of the television signal, the royalty rates for the additional distant signal carriage may be established by the Tribunal, provided that no adjustment in royalty rates could be made for signals already permitted by the FCC. 17 U.S.C. 801(b)(2)(B).

In July 1980, the FCC deleted all restrictions on the importation of distant signals. *Report and Order*, 79 F.C.C. 2d (1980). The FCC decision was affirmed in June, 1981. *Malrite T.V. of New York, Inc.* v. *F.C.C.*, 652 F. 2d 1140 (2d Cir. 1981). The Tribunal instituted a proceeding and in November, 1982 set a royalty rate for newly permitted distant signals of 3.75% of gross receipts. 47 FR 52146. The new rate applied only to Form 3 systems located within a television market. The first year for which royalties were collected for the newly permitted distant signals was 1983. *Id.*

The FCC's distant signal rules, as they existed on April 15, 1976, allowed unlimited carriage of noncommercial educational television stations. 47 CFR 76.59(d), 76.61(d), 76.63(d). In addition, cable systems could carry any specialty stations, and any station while it is broadcasting a foreign language, religious or automated program. 47 CFR 76.59(d)(1), 76.61(e)(1). A specialty station was defined as any commercial station which broadcasted foreign-language, religious and/or automated programming during at least one-third of the average broadcast week and one-third total weekly prime-time hours. 47 CFR 76.5(kk).

In adopting the 3.76% rate, the Tribunal found, "The evidence also shows that while not conclusive, there is sufficient merit to the argument that copyright owners, particularly program syndicators, will suffer further harm as cable systems increase their penetration of metropolitan markets. Again, though not conclusive, the evidence indicates to a degree that audience diversion does have an economic impact primarily on the ability of syndicators to sell their product at a premium price. 47 FR 52157.

In MPAA's special Nielson study, viewing data was broken out for those broadcast stations in the survey which were carried at 3.75%. 32 stations in the Nielsen sample were carried at 3.75%. 16 were independent stations, 16 were network-affiliated stations. They were carried in 218 instances. The 32 broadcast stations, carried in 218 instances, accounted for 90.6% of the 3.75% royalties. MPAA Ex. 20.

Using six-cycle data, the viewing data was as follows: movies and syndicated series: 80.65%, major sports: 12.04%, local: 3.65%, minor sports: 2.37%, devotional 0.8%. *Id.* No other parties proposed corrections to this data, except for their criticisms which applied to all the Nielsen data.

JCS performed an analysis of the statements of accounts filed with the Copyright Office. They found 305 instances of carriage by 199 cable systems but performed no instance of carriage study. JSC believed that though the 3.75% payment resulted from the addition to television signals that could not formerly be carried under FCC rules, the 3.75% cannot always be attributed only to the added signal. JSC Ex. 4, App. B, p. 2. To illustrate its point, JSC posited this situation: a cable operator has been carrying two distant signals under former FCC rules, and is now permitted to add more. If the operator chooses to add another stations, he or she can drop one of the signals already being carried to avoid the 3.75% rate, or can carry three stations and pay one 3.75% rate. JSC thus chose to conceive of the cable operator's action as paying a 3.75% royalty for the right to carry all three signals and attributed an equal share of the royalty paid to each stations. *Id.* JSC believes this analysis is only proper where there is the choice of free substitution for the cable operator. Where there is not that choice, such as in the case where an operator is carrying a "grandfathered" station, and must pay 3.75% for the newly added signal, JSC allocated the entire 3.75% royalty to the new signal and none to the grandfathered signal. *Id.* Based upon that type of analysis, JSC reported that independent stations accounted for 88.8% of the 3.75% royalties, network affiliates accounted for 10.3%, Canadian stations account for 0.9%, and educational stations and specialty stations accounted for none of the 3.75% royalties. JSC Ex. 4, p. 9, Table 2.

JSC also found that the three superstations, WTBC, WOR, and WGN accounted for 62.9% of the 3.75% royalties and at least one superstation was carried by 156 of the 199 cable systems reporting carriage of a 3.75% station. *Id.*, p. 11, Table 3; p. 14, Table 4. Other flagship stations, accounted for 21.8% of the 3.75% royalties. *Id.*, p. 11, Table 3.

NAB provided a breakdown of their ELRA attitudinal survey of cable operators. Of the 284 cable operators who made the $100 allocation, 36 carried one or more stations at the 3.75% royalty rate. Their allocation among program types was reported as follows:

Program category	Does not carry a 3.75% station (248)	Carries a 3.75% station(s) (36)
Sports programs	35.70	35.37
Movies	25.16	24.07
Syndicated series	15.86	15.73
Station produces programs	13.10	14.93

NAB Ex. 9, p. 18, Table 3.2.

ELRA did not ask in its survey whether the cable operator viewed his or her allocation for stations carried at the 3.75% rate differently than for stations carried at the statutory rate. NAB Ex. 9, App. A.

The Canadian claimants performed an incidence of carriage study, and a percentages of fees study. In these studies, the Canadian Claimants credited a station with being a 3.75% rate station if it was the actual station named by the cable operator; no allocation to stations carried at the statutory rate was made:

	Instances	Percent of instances	Percent of fees
First Accounting Period			
U.S. independent stations	185	69.8	91.8
U.S. network stations	74	27.9	7.3
Canadian stations	3	1.1	0.6
U.S. educational stations	3	1.1	0.3
Total	265		

	Instances	Percent of instances	Percent of fees
Second Accounting Period			
U.S. independent stations	192	69.8	89.5
U.S. network stations	81	29.5	10.1
Canadian stations	2	0.7	0.4
U.S. educational stations	0	0.0	0.0
Total	275		

Because the Canadian Claimants felt that making no allocation to stations carried at the statutory rate underrepresented the carriage of Canadian stations, they provided a second analysis. In the first accounting period of 1983, there were 15 cable systems which carried a Canadian signal(s) and paid a 3.75% fee. These 15 cable systems carried 20 Canadian signals in all. CC Ex. CDN–GC. In the second accounting period of 1983, there were 17 cable systems which carried 21 Canadian signals in all. *Id.* An across-the-board allocation would raise the contribution of Canadian stations to the 3.75% fees to 2.43% for the first accounting period and 2.85% for the second accounting period, but the Canadian Claimants did not distinguish between situations where the cable operator has the option of free substitution and where the cable operator does not. *Id.*, Tr. 4977–4981.

Findings of Facts—The Syndex Fund

Background of the Syndicated Exclusivity Rules

In the 1960's, the FCC's concern regarding the cable industry was that the additional viewing options provided by cable systems and their ability to introduce distant signals in the local market introduced competition that was potentially "both inequitable and destructive" to broadcast stations. *Report and Order*, 79 F.C.C. 2d 663, 667 (1980). This was considered the "unfair competition" issue. *Report*, 71 FCC 951, 957 (1979).

The FCC also was concerned about copyright. The FCC first imposed restrictions on cable carriage of a program being exhibited on a local station in the *First Report and Order*, Dockets 14895, 15233, 38 F.C.C. 683 (1965), stating "(w)e think it apparent . . . that the creation of a reasonable measure of exclusivity is an entirely appropriate and proper way for program suppliers to protect the value of their product and for stations to protect their investment in programs." *Id.*, p. 706.

In 1968, the Supreme Court found that cable operators did not violate the 1909 Copyright Act by retransmitting television broadcast signals, but urged the Congress to resolve the issue. *Fortnightly Corporation* v. *United Artists Television, Inc.*, 392 U.S. 390 (1968).

Concerns over competition and copyright converged at the FCC in the early 1970's, and was characterized by the Commission:

"The industries involved have variously argued—the cable industry, that cable technology will bring extra programming and other services to the public, both on distant signals and on locally originated channels; the broadcast industry, that distant signal importation will lead to smaller audiences and reduced revenues and thus threaten the existence of some broadcast stations or inhibit their ability to produce local public service programs; the television programming industry, that suppliers of programming should receive compensation for the use of their product by cable systems and that the exclusive sales of such programs in particular markets should be honored. *Cable Television Report and Order*, 36 F.C.C. 2d 143, 164 (1972).

A Consensus Agreement was reached among the three industries in November, 1971, with the participation of the Chairman of the FCC and the Director of the Office of Telecommunications Policy. *Id.*, p. 165, 291. Its central features were must-carry of local signals, a limitation on the import of distant signals, and protection for the exclusivity of nonnetwork programming against distant signals. The FCC stated, "The additional program exclusivity rules are designed both to protect local broadcasters and to insure the continued supply of television programming." 36 F.C.C. 2d 269. Chairman Burch, in a concurring statement, stated, "(T)he core of the consensus agreement, is the exclusivity protection for local broadcasters against distant stations, and more fundamentally, for the owner's rights to control the use of his product." *Id.*, p. 292. the Commission stated that since a consensus had been "hammered out by the principal industries . . . they ha(d) agreed to support legislation that resolves the remaining aspect of the copyright issue, that of copyright payments." *Id.*, p. 166.

Description of the Syndicated Exclusivity Rules. In the top 50 television markets of the country, program suppliers could demand that cable systems refrain from carrying a syndicated program on distant stations for one year after the first syndicated sale of that program anywhere in the United States; broadcast stations which had exclusive exhibition rights (both over-the-air and by cable) in the local market could demand that cable systems refrain from carrying a syndicated program on distant stations for the entire run of the contract. 47 CFR 76.151 (a) and (b). In the second fifty television markets, only broadcast stations had the right to prohibit cable retransmissions. However, distant syndicated programs did not have to be deleted if broadcast in prime time unless the requesting local station also planned to air the program in prime time. Also, exclusivity rights in these markets expired at specific time periods or on the occurrence of a specified event, depending on the type of programming. 47 CFR 76.151(b)(2) to (6).

The syndicated exclusivity rules did not extend to foreign stations. 47 CFR 76.5(b); 36 F.C.C. 2d at 181, fn. 51. The rules applied only to commercial stations. 47 CFR 76.151(b). The rules did not apply to live programming. 47 CFR 76.5(p). Sports programming is governed by another section of the FCC's rules. 47 CFR 76.67. Devotional programmers did not, as a practice, syndicate their programs on an exclusivity basis. Protter, NAB Direct, p. 4; Tr. 4484–4487.

Passage of the Copyright Act of 1976. Congress resolved the question of cable copyright liability in 1976. Cable retransmissions were defined as performances. "(A) cable television system is performing when it retransmits the broadcast to its subscribers . . ." H.R. Report No. 94–1476, p. 63. A compulsory license scheme was adopted for the carriage of signals comprising the secondary transmission by cable systems permitted under the rules, regulations, or authorizations of the FCC. 17 U.S.C. 111(c). Where the carriage of the signal comprising the secondary transmission was not permissible by the FCC, the cable system was liable for infringement. 17 U.S.C. 111(c)(2).

17 U.S.C 801(b)(2)(C) stated that, "In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(2)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change."

Congress stated that "copyright royalties should be paid by cable operators to the creators of such programs." H.R. Rep. No. 1476, 94th Cong. 2d Session, at p. 89 (1976) (House Report). Congress further found that "the transmission of distant non-network programming by cable systems

causes damage to the copyright owner by distributing the program in an area beyond which it has been licensed. Such retransmissions adversely affect the ability of the copyright owner to exploit the work in a distant market." *Id.*, p. 90.

Repeal of the Syndicated Exclusivity Rules. On October 19, 1976, Congress enacted the Copyright Act of 1976. Pub. L. 94–553. (94th Cong.) On November 4, 1976, the FCC adopted a Notice of Inquiry. Citing pleadings from the broadcast industry and the cable television, and the passage of the Copyright Act, the FCC stated, "We have now reached a point that calls for us to step back and reassess our syndicated exclusivity rules." *Notice of Inquiry*, Docket No. 20988, 61 F.C.C. 2d 746 (1976).

On April 25, 1979, the FCC adopted the results of its review of the purpose, effect, and desirability of the syndicated exclusivity rules. *Report*, Docket No. 20988, 71 F.C.C. 2d 951 (1979). The FCC found:

"The intent of the syndicated exclusivity rules plainly was 'to permit copyright holders to distribute programming in particular markets either by broadcast alone or, if they wish, by both broadcast and through distant signal carriage . . . The legal effect was to ascribe a property right to copyright owners—the right to license a television broadcast exhibition of a copyrighted work and simulaneously to preclude its presentation in other markets through the mechanism of cable television—at a time when the existence of the right as a matter of copyright law was very much in doubt. The practical effect was to superimpose . . . this agency's view of the proper balance to be struck between protecting the public's interest in obtaining reasonable access to creative (copyrighted) works while providing sufficient incentive to artists (copyright owners) to stimulate further creativity." *Id.*, p. 963.

The FCC went on further to say, "To the extend that the 'unfair competition' argument rests on cable television's operation outside the traditional marketplace . . . we believe that the new copyright law, . . . resolves the question. The 'unfair competition' issue of previous years is and always was, it is now quite evident, a copyright issue and nothing more . . . With Congressional resolution of the copyright issues and own findings . . . that deletion of these rules will not result in 'debilitating economic competition,' we believe that the 'unfair competition' argument cannot support a continuation or expansion of rules found to be unnecessary." *Id.*, p. 969. In the Report, the FCC proposed to delete the syndicated exclusivity rules. *Id.* On July 22, 1980, the FCC adopted a Report and Order deleting the syndicated exclusivity rules, effective October 14, 1980. *Report and Order*. 79 F.C.C. 2d 663 (1980). The effective date was stayed pending Court of Appeals review of the decision.

The 1978 Cable Copyright Distribution Proceeding. In the 1978 cable copyright distribution proceeding, NAB argued that cable royalty fees must be awarded to broadcasters within the Program Supplier category whenever broadcasters had obtained market exclusivity from the program supplier. The broadcasters argued, "(S)ection 201(d)(2) of the Act gives explicit statutory recognition to the principle of divisibility of copyright, and that the owner of any particular exclusive right is entitled to all the remedies accorded a copyright owner . . . including the right to receive compulsory fees." 45 FR 63032.

In its final determination published September 23, 1980, the Tribunal rejected NAB's argument:

"We find that section 111 and its legislative history reflects the Congressional intent, and the understanding of interested parties, that television stations are to be compensated only for eligible locally produced programs. We find, with regard to synidicated programming, that Congress intended for royalties to be distributed to program syndicators and not to local stations.

The legislative history speaks decisively as to the understanding of the drafters and interested parties as to scope of compensation to broadcaster claimants. This understanding was shared by the leading spokesmen for the broadcast industry during the legislative proceedings on the copyrighted revision legislation. Mr. Vincent Wasilewski, President of the National Association of Broadcasters testified:

The broadcasters are not per se in that proposed legislation, asking for payments to them for the use of their signal per se. They are asking for payment to the copyright proprietor for the use of that programming material by the CATV, by the copyright proprietor, a motion picture producer, special sports interest, or what have you.'

The final text of section 111 was constructed by the House of Representatives Subcommittee as a substitute for the version passed by the Senate. In recommending this language to the House, Congressman Tom Railsback, the ranking minority member of the Subcommittee, stated:

'All parties are now satisfied with section 111, except the National Association of Broadcasters. They were not a party to the compromise bacause they are not a major party of interest.' " *Id.* pp. 63032–63033.

FCC and Tribunal Actions Affirmed; Adjustment of Royalty Rates

On June 16, 1981, the FCC decision to delete the syndicated exclusivity rules was affirmed by the Court of Appeals. *Malrite T.V. of New York, Inc.* v. *FCC*, 652 f. 2d 1140 (2d Cir. 1981). The stay of the effective date of the repeal of the rules was vacated on June 25, 1981. *Id.*

On April 9, 1982, the Court of Appeals affirmed the Tribunal's rejection of NAB's claim in the 1978 proceeding. *National Association of Broadcasters* v. *Copyright Royalty Tribunal*, 675 F.2d 367, 379, fn. 21 (1982).

On November 19, 1982, the Tribunal issued its final determination adjusting the cable copyright royalty rates to reflect the FCC's repeal of the syndicated exclusivity rules. 47 FR 52146. In the preceeding, NAB had proposed a rate of 5% of gross receipts for the importation of newly permitted signals, but "offered on proposal regarding rates for signal carriage resulting from the FCC's repeal of its syndicated exclusivity rules." *Id.*., p. 52149. The Tribunal's analysis of the proper adjustment to be made was in response to evidence presented by the suppliers of broadcast programs and it found, "audience diversion does have an economic impact primarily of syndicators to sell their product at a premium price." *Id.*, p. 52157. The Tribunal adjusted the cable copyright rates, effective January 1, 1983. *Id.*., p. 52159.

NAB's Claim—This Proceeding

NAB presented two witnesses: Arthur Miller to testify on the Copyright Act and Harold Protter to testify on the harm incurred by broadcasters. Miller, NAB Direct; Miller, NAB Rebuttal; Protter, NAB Direct. NAB's claim in the 1983 proceeding can be summarized as follows: Under the 1909 Copyright Act, the purchase of an exclusive right in a work did not become a copyright owner of that work. Rather, the bundle of rights which accrued to a copyright owner were indivisible, that is, incapable of assignment in parts. The 1976 Copyright Act changed this situation, making exclusive rights holders copyright owners with respect to those exclusive rights. One of the exclusive rights which may be transferred is the right to perform publicly a motion picture or audiovisual work. 17 U.S.C. 201 (d), 106.

Except for the "pre-clearance" portion of the syndicated exclusivity rules, the only instances in which the syndicated exclusivity rules could be invoked was when a broadcast station had acquired an exclusive exhibition right against all other stations and cable systems in its market. Only the broadcast station could require the cable operator to delete the programming. Only the broadcast station would suffer the financial harm of duplication, because presumably, the broadcaster had

contracted for and paid the program supplier for market exclusivity.

The legislative history of the Act and the provisions of the Act recognizes the ability of a broadcast station to contract for a subdivided copyright in the exclusive exhibition rights in its market. The House and Senate reports state: "It is thus clear, for example, that a local broadcasting station holding an exclusive license to transmit a particular work within a particular geographic area and for a particular period of time, could sue, in its own name as copyright owner, someone who infringed that particular right." Senate Report at 107, House Report at 123.

Sections 501 (b) (c) and (d) read as follows:

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement of that particular right committed while he or she is the owner of it. . . .

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

Hubbard broadcasting v. *Southern Satellite Systems*, 593 F. Supp. 808 (D. Minn. 1984), *aff'd*, 777 F.2d 393 (8th Cir. 1985), is the only reported decision to address section 501(b) of the Copyright Act. Hubbard Broadcasting sued a cable television system and a television superstation for copyright infringements arising out of the retransmissions of five works it had obtained an exclusive license to perform in its market. The Court found that the plaintiff was the owner of the exclusive rights in the five works in particular geographic areas and that it had standing under 501(b) of the Act to sue. The question of standing under 501(c) was not reached because standing was recognized under 501(b). *Id.*, p. 811. The Court also found copyright ownership one of the five prima facie elements necessary for the plaintiff to establish infringement. The Court found that Hubbard had the necessary copyright ownership to establish a prima facie case, but found ultimately for the defendants on the ground that the defendant cable system had obtained a valid compulsory license. *Id.*

NAB urges that its claimant broadcast stations are the only relevant copyright owners for the purpose of the syndex fund, and that this has been affirmed by *Hubbard*, a decision occurring after the repeal of the syndicated exclusivity rules.

Program Suppliers Claim—This Proceeding

Jon Baumgarten, Nina Cornell, Henry Geller, and Paul Goldstein testified for the Program Suppliers regarding the syndex fund. Baumgarten, MPAA Direct and Rebuttal; Geller, MPAA Direct; Cornell, MPAA Rebuttal; Goldstein, MPAA Rebuttal. The position of the Program Suppliers may be summarized as follows:

The entire syndex fund, except for a portion for Music, should go to the Program Suppliers. Geller testified that the rulemaking history of the syndicated exclusivity rules demonstrates that they were designed to protect the ability of the program suppliers to control the exploitation of their product. Cornell testified that the repeal of the syndicated exclusivity rules were based on the belief by the FCC that Congress had resolved the copyright question and exclusivity protection for programmers were no longer necessary.

Baumgarten testified that the legislative history of the Act shows that Section 111 was intended to make whole the harm incurred by the suppliers of programs; that the Tribunal determined in the 1978 proceeding that obtaining an exclusive exhibition right from the program suppliers did not qualify the broadcast station to receive the royalties for that syndicated series.

Baumgarten rejected that the "divisibility" argument advanced by NAB to support their claim to Section 111 royalties. Section 201 affords the owner of any particular right the full protection of the Act to the extent of that right, but a television station cannot be an exclusive licensee against exhibitions by cable systems which comply with Section 111, so that the broadcasters' arguments must ultimately fail.

Goldstein testified that the FCC's definition for syndicated exclusivity purposes—against all other television stations licensed to the same city, and against all cable carriage of the same program in cable communities within 35 miles of that city—falls short of the exclusivity required by the Act as a condition of ownership of a particular right. There would be a likelihood that in almost all situations there would be signals which the broadcaster's contract did not prohibit coming into its geographic area which would act to deprive the broadcaster of the exclusivity necessary for an exclusive performance right.

Music's Position—This Proceeding

Only the Music Claimants, among all other claimants, expressed a position in its proposed findings about the relative merits of NAB's and the Program Suppliers' positions. They argue that the exclusive copyright at issue is not equivalent to the exclusive rights required by the FCC for exercise of the blackout right. The exclusive right is the right to collect Section 111 compulsory license royalties. The Program Suppliers initially own the exclusive copyright to collect Section 111 royalties. If that particular right was transferred to the broadcasters, the transferee has the burden of proving the transfer. No written transfer agreements were submitted and therefore the bulk of the syndex fund should be awarded to the Program Suppliers. Music, Proposed Findings, paras. 155–176.

Conclusions of Law—Three Funds

The Tribunal concludes that there are different factors underlying the royalties which derive from the statutory rates, the 3.75% rate, and the syndicated exclusivity surcharge, and that this justifies dividing the 1983 cable royalty fund and making three separate allocations.

The Devotional Claimants argue in their proposed findings that the Act does not sanction the treatment of either the 3.75% rate or the syndicated exclusivity surcharge as a separate fund. However, the legislative history of the Act specifically gives the Tribunal wide discretion: "The Committee recognizes that the bill does not include specific provisions to guide the [Tribunal] . . . The Committee concluded that it would not be appropriate to specify particular, limiting standards for distribution. Rather, the Committee believes that the [Tribunal] should consider all pertinent data and considerations presented by the claimants." House Report No. 94–1476, p. 97. We have concluded after consideration of all pertinent data that a single analysis treating all royalties together would be inadequate, and that a separate analysis for the basic fund, the 3.75% fund, and the syndicated exclusivity surcharge would yield better decision-making and is fully warranted.

PBS and the Devotional Claimants assert that creating three funds is a "fee generation" approach, and that "fee

generation" has been consistently eschewed by the Tribunal in the past. It is accurate to say that we have rejected fee generation formulas as a mechanical means toward making our allocations, but we have also consistently held that our distributions are based on all the relevant data presented before us, including the amount that program types were carried and the degree to which cable systems were willing to pay for them. We believe it would be inconsistent with past actions to disregard now the different amount of carriage of program types which occurred pursuant to the new rates, or to ignore the different factors and rationale underlying the deleted FCC regulations. Consequently, we have made different allocations for the basic fund, the 3.75% fund, and the syndex fund, as follows.

Conclusions of Law—The Basic Fund

As earlier stated, the litigation of the 1983 cable copyright fund was marked by three distinctive features: the advancing of either viewing studies or attitudinal surveys as the most relevant evidence, relitigation of issues on which the Tribunal adversely held in the past, and changed circumstances.

Regarding the controversy between the Nielsen viewing study and attitudinal surveys, we stated in the 1979 cable distribution hearing, "We regard [the Nielsen report] as the single most important piece of evidence in this record. . . . It is a useful 'starting point' for the application of the criteria to the record evidence, but we have not accepted it as a talisman which fully reveals and determines the application of the criteria. A major reason for the Tribunal being unable to accord the Nielsen 'hard numbers' the weight urged upon us by MPAA is that we share the views advanced by certain other claimants, notably Joint Sports and NAB, that cable operators are interested in selling subscriptions and that viewership is of limited relevance to cable operators." 47 FR 9892.

After reviewing the evidence of the 1983 record, we reaffirm that conclusion. We recognize the positions advanced by those conducting the attitudinal surveys that cable operators are not so much influenced by the sheer viewing numbers as they are in offering a diverse slate of programs and satisfying small, but intense, segments of the viewership. However, for reasons we shall shortly spell out, the Nielsen study has features to it that are superior to an attitudinal survey, which have led us to give it far greater weight than any other piece of evidence. Secondly, to acknowledge that cable operators have narrowcasting considerations is not to make a virtue out of smallness. There must be some showing by a smaller claimant of the avidity of its viewers influencing the cable operator's decision to carry particular distant signals, so that the Tribunal may give credit toward its marketplace determination of the value of that type of programming. Several of the cable operator surveys and cable subscriber surveys proved to be so flawed as to give the Tribunal only the dimmest view of the effects of narrowcasting considerations. Following are our conclusions on the validity of each of the surveys.

The Nielsen Study. MPAA has considerably improved the Nielsen study over the years that it has presented it to the Tribunal. It now includes more broadcast stations than in the past, and for the first time, it includes noncommercial education stations. Its stability of results over the years, and even after proposed corrections by other claimants, tends to give the Tribunal confidence that its results are reliable. Our earlier criticism that MPAA may have been helped by only surveying the national "sweep" periods was addressed by MPAA in this proceeding. They surveyed two "partial sweep" periods, but due to criticism raised at hearing that the four-cycle data, the five-cycle data, and the six-cycle data were improperly combined, MPAA withdrew its reliance on the six-cycle data, and stated it was content to rely solely on the four-cycle data. NAB offered proposed corrections only to the four-cycle data. This leaves unanswered whether the two additional cycles would have altered the results. It appears that viewing data for Joint Sports is the most susceptible to seasonal changes. Aside from that, most other categories remain stable. The Tribunal is still uncertain that the four "sweep" periods are a projectable picture of viewing the year round, and would like more investigation into this area, but we are satisfied that MPAA's viewing figures are not as appreciably helped by surveying only the "sweep" periods as we had earlier suspected.

NAB offered specific criticisms that the viewing on the 117 broadcast stations could not be projected to the universe of viewing on all broadcast stations carried by cable systems in 1983 on a distant signal basis, and that MPAA miscategorized several programs. We agree with NAB's criticisms and have, for the purpose of our allocation decision, taken note of NAB's proposed corrections as they tend to provide more reliable Nielsen data results.

The Nielsen data results, therefore, which the Tribunal relied upon as one factor of the Tribunal's allocation decision, are as follows:

	Percent
Movies and Syndicated Series	76.35
Major Sports	10.01
Local	7.24
Educational	4.61
Devotional	0.65
Specialty Stations	0.52
Minor Sports	0.17

The Nielsen numbers, like all numbers in this proceeding, carry with them the psychological illusion of being hard and fast. They are not hard and fast for the following reasons: (1) They do not include the viewing figures for Canadian stations; (2) They do not include Music; (3) There is no breakdown for the program types on specialty stations, which contain religious programming, foreign language programming or automated programming; (4) NAB's first projection to the universe gave the local category 6.07%, but after adjusting for Mr. Cooper's one methodological criticism, it was reduced to 5.59%; (5) NAB's own witness John Abel conceded that another hypothesis of NAB's projection to the universe might be flawed; but, all in all, the Tribunal places higher weight on NAB's efforts at projection, than no projection at all; (6) The question of seasonal viewing patterns, shown most notably in the viewing figures for Joint Sports, affects the hardness of the results; (7) World Championship Wrestling was resolved to be four programs: two in the syndicated series category; two in the local category. (8) The question of diary-based data versus metered homes was raised by the Devotional Claimants. Although it might affect the results, it was not shown how the results were skewed in favor of or against any one program type.

With all these reservations in mind, the Tribunal still maintains that the Nielsen data are most useful, and help to develop the "zone of reasonableness" for the Tribunal's allocations.

We also favor Nielsen data over attitudinal surveys presented in this proceeding for several reasons. The Nielsen study was the only study conducted in 1983. All other surveys were conducted in late 1984 or 1985. We agree with the recall problem noted by the Program Suppliers. Although we appreciate the parties' difficulties in preparing for Tribunal proceedings, that difficulty does not cure the defect of the recall problem. More importantly, the Nielsen survey is the only survey to measure behavior. As Paul Virtz, a

surveyor testifying on behalf of the Devotional Claimants stated, it is recognized by surveyors that how people say they behave and how they do behave are quite different. This difference is exacerbated by the very nature of asking a subscriber or a cable employee over the phone to engage in a twenty minute exercise of allocating program preferences. The exercise is brief, takes into account no 'real world' factors such as supply, local franchising requirements, etc., and carries no consequences. We agree with Dr. Besen's criticism of attitudinal surveys that asking cable operators and/or subscribers to calculate programs does not take supply into account, so that all we are measuring is the benefit side of the equation, not marketplace value. We also agree with Dr. Besen's belief that the respondents were probably basing their responses on the total value of these programs to them, and not the marginal value of the programs to them on distant broadcast signals.

The PBS, Devotional Claimants and Canadian Claimants Surveys

We conclude that the surveys performed by PBS, the Devotional Claimants, and the Canadian Claimants are either so flawed, or so poorly designed, as to be of no value to the Tribunal in making its allocations.

The Canadian claimants did not offer their survey as an attitudinal survey. It was called a qualitative survey, because they specifically did not represent it to be a random sample survey projectable to the universe of cable carrying Canadian stations in 1983. The survey was only to those systems which carried Canadian signals. The cable operators were told by letter in advance that they would be surveys on Canadian programming. The interviewers for the Canadian Claimants asked questions only about Canadian programs and not about any other program types, and received almost uniformly encouraging replies from their respondents. It was not surprising that operators already carrying Canadian signals had good comments, but the survey did not aid the Tribunal in advancing toward a valuation of Canadian programming relative to other program types.

The PBS survey had many flaws. The interviewers knew the survey was for PBS. The respondent was told that the survey would be about PBS. Then the respondent was asked a number of aided questions about PBS we believe were phrased in a manner flattering to PBS. Only after many aided questions was the respondent asked to valuate PBS versus commercial television. PBS' own witness conceded such a sequence would raise PBS' rating.

The task the respondent was asked to perform was only a division between commercial and noncommercial television, when the Tribunal's task is to value all seven television program types. The resulting impact of a two-point scale, we believe, led to giving PBS a much higher value. More importantly, we have no way of translating such a result to a proper allocation, or even a plus or minus credit, to PBS.

Further, there was evident a great deal of confusion on the part of the respondent. 45% of them believed they carried a PBS distant signal, when, if the sample was reliably chosen, only 24% of them did. This was due, we believe, to a misleading definition of distant signals.

The respondent was not asked to relate his or her answer to the relevant question for the Tribunal—operator business decisions in 1983. Mr. Hoffman stated that his survey was designed for the operator's present state of mind, and was for measuring "worth," but not necessarily business decisions. Attempts to relate the questions back to 1983 were, in our opinion, ineffective, and, in any event, no attempt was made to relate back the particular questions which PBS wanted the Tribunal to consider most.

Both of the Devotional Claimants' surveys were too flawed to be accorded any weight. The cable operator survey had a very low response rate—26.8%. The interviewer knew the survey was being conducted for CBN. 65% of the operators surveys carried CBN Cable Network where the majority of Form 3 cable systems in 1983 did not carry CBN Cable Network. There was confusion on the part of the cable operator evident in incorrect identification of the distant signals carried by the operator's cable system.

The survey did not relate to 1983. The operator was asked about distant signals his or her system currently imported, but no attempt was made to have the operator recall the distant signal carriage for 1983. Nor was any attempt made to ascertain whether the operator was an employee of the system in 1983.

The operator was not explained the distinction between network programming and nonnetwork programming, and no definitions were given for the program categories.

The design of the survey does not aid the Tribunal. To ask an operator whether a program type is important or unimportant, and then to ask whether that is somewhat or very (un)important, is to ask the operator for an opinion so vague as to be almost meaningless. The results of the survey gave all program types high ratings, but we disagree that the relative strength exercise performed by Dr. Virts of those high ratings which resulted in a figure of 7% for the Devotional Claimants bears any relationship to the allocation task before the Tribunal.

The Devotional Claimants cable subscriber survey had many of the same flaws. The subscriber questionaire did not refer to 1983, nor was any attempt made to ascertain whether the respondent subscribed to cable in 1983. The program categories were not defined. The definition for distant signals was incorrect, and there was evident confusion on the part of the subscribers, because 65% of them mis-identified their distant signals.

In addition, Dr. Virts conceded that the sample was not projectable to the universe of cable subscribers. We also believe that there might be some bias in the sample, because all eight cable systems in the study carries CBN Satellite Network.

Most importantly, as in the cable operator survey, we do not see how we are aided by the use of the important-unimportant type of questioning.

The NAB Surveys

We conclude that the surveys conducted for NAB were adequate in design and methodology, and can be accorded some weight. However, they contain flaws which limit their use, and contain the conceptual drawbacks observed by the Program Suppliers witnesses.

NAB properly attempted to reach the appropriate respondent at the cable system, and terminated the interview if it could not. The questionnaire did relate back to 1983 and program definitions were given. All program types under consideration by the Tribunal were placed before the respondent.

We believe, however, that there probably existed confusion among the cable operators about the proper categorization of program types. In addition, we believe as we have stated in previous proceedings, that asking an operator to allocate $100 renders the task just an exercise and does not sufficiently focus the operator on the hard business decisions that he or she makes. We believe that NAB's practice to automatically accord PBS a zero valuation when the system did not, if fact, carry a PBS distant signal in 1983 was improper. We believe this mixes "attitude" with "behavior." Supposing a cable operator faces the reality of being able to import only 4 distant signals, if

his attitude were only on the measure of approximately 5% toward PBS, he or she would not carry a PBS signal. Therefore, we suspect that there are many operators who did not carry a distant PBS signal whose "attitudes" might be greater than zero but short of actual behavior, that were ignored in the survey to the detriment of PBS. The same is also true of NAB's treatment of the Canadian station category, except that, by law, cable operators below the 42nd parallel and more than 150 miles from the U.S./Canadian border cannot carry Canadian stations and could never convert their attitude into behavior. Therefore, the detriment to the Canadian Claimants is less.

Regarding the NAB subscriber survey, we have reservations about the response rate. We also believe that male-female ratio improper. We are most concerned about subscriber confusion. We believe that giving some definitions is better than nothing at all, but we believe that the particular set of definitions given by NAB led to a considerable amount of guessing by the respondent. We also find support in the subscriber study for our belief that results of surveys are not directly translatable to Tribunal action. Cable subscribers were willing to spend $4 a month to receive distant signals according to the NAB study—which would lead to a cable rate of 14 to 15 times what it is now.

The Joint Sports Claimants Survey. We conclude that the survey conducted for the Joint Sports Claimants was adequate in design and methodology and can be accorded some weight. However, like the NAB survey, the JSC survey contains flaws.

JSC properly contacted out the interviewing so that the interviewer and the interviewee were unaware for whom the survey was being conducted. The response rate was high. The survey was designed to ascertain the proper individual. The allocation task was to divide 100%, not $100. The cable operator was asked specifically about the value of the program in terms of subscriber attraction and retention. No confusion existed for the operator regarding which distant signals were being discussed, because the signals were identified. However, the questionnaire did not include devotional programming or Canadian programming. Further, no definitions were given for the program categories. In addition, as in the case with NAB's surveys, operators who did not carry PBS were accorded an automatic 0%, whereas operators who did carry PBS were not accorded any automatic percentages.

Conclusions—The Program Suppliers

In the 1978 proceeding, we recognized the harm incurred by program suppliers, "Evidence was offered to show the difficulties and risks to program production that were substantially increased by distant signal carriage, and which effectively undermine the value to a broadcast station of a syndicated program in an area receiving the same program by distant signal carriage." 45 FR 63037. But in the 1979 proceeding, the Tribunal could not proceed from that general proposition to a precise measurement of harm, and rejected the Nielsen data as that measurement, stating. "Even if viewership of distant signal programs is an appropriate measure of harm, it would be change in audience, not absolute audience levels, which would have to be considered." 47 FR 9892. Again, in this 1983 proceeding, we accept the testimony of Mr. Valenti, and have accorded the Program Suppliers a credit for harm, but have found nothing in the record to show any hard figures as to the degree of harm incurred.

Regarding benefit, the record is consistent that movie packages and to a lesser degree, syndicated series, are attractive to operators and subscribers and are a key reason for importing a distant signal. Cable operators testifying on behalf of every claimant group have granted movies and series a large place in their programming decisions. The Nielsen data gives the category 76.35%; the Sport survey gives the category 58.8%; the NBA operator survey gives the category 50.86%; and the NAB subscriber survey gives the category 43.2%.

The marketplace value of movies continues to remain high in 1983 because it is the attractiveness of the movie packages which provides the distant signals with the marginal value to the cable operator motivating the operator to import the signal. The marketplace value of some syndicated series, to the extent they are already available from local signals, is less than for movies. This is an observation we made in the 1979 proceeding and we find record evidence again in this proceeding supporting it. Time, a secondary factor, is relevant to the extent it shows the supply of programs and the willingness of a broadcaster to apportion his or her day with that type of programming. In time, the Program Suppliers were on distant signals 61%.

The Tribunal has determined that the above factors have established a zone of reasonableness for determining an award. The previous determination gave Program Suppliers 69.2982% of the fund. We are reducing that allocation to 67.1% of the fund, giving less credit than we have in the past to the marketplace value of syndicated series, and allocating that difference to other claimant groups who by improved evidence or changed circumstances have shown greater entitlement.

The Joint Sport Claimants

In the 1978 proceeding, the Tribunal noted "the ephemeral quality of sports telecasts" and the legislative history of the Copyright Act which mainfest a special concern by Congress for the harm which may be caused to professional sporting leagues by secondary transmissions. 45 FR 63038. In this proceeding, we accept the assertion of attractive sports games harms the sports league's equal interest in maintaining the value of the less attractive sports games—a copyright in which all teams share—but as in the case of the Program Suppliers, no quantification of this harm was offered.

The Tribunal has in each proceeding consistently agreed with Joint Sports that the Nielsen data underrates sports. Sharp differences appear when the Nielsen data and the attitudinal data are compared for sports: Nielsen—10.01%; JSC's survey—36.1%; NAB's operator survey—35.66%; NAB's subscriber survey—25.4%. Sharp differences also appear from the enthusiasm with which every cable operator who has appeared before the Tribunal has spoken about a "10%" Nielsen program category. If the arguments of the parties who are not in agreement with the mere following of the Nielsen numbers are true for any claimant group, it is sports.

In the 1978 proceeding, the Tribunal awarded the sports category, 12%. In the 1979 proceeding, that award was raised to 15%. However, in the 1980 proceeding, the Tribunal rejected any further upward adjustment for sports. The Tribunal at that time was weighing the change in circumstances between 1979 and 1980. We stated, "Joint Sports' claim for an increased royalty share relied heavily upon the increase and proliferation of satellite retransmitted distant signals between 1979 and 1980. The Tribunal concurs that such a change in circumstances did take place; the Tribunal also does not dispute that sports are highly popular on these signals, in particular WTBS, WGN, and WOR. The Tribunal, however, was unpersuaded that there was any causal link between sports programming and retransmitted signals. Sports testimony and exhibits were convincing as to the increase in satellite retransmission and

as to the popularity of sports, but not as to its linkage." 48 FR 9565.

In reviewing the evidence in this proceeding, we believe that the linkage has been established, and that the change in circumstances have been greater for the period 1980–1983 than for 1979–1980. The cable systems do advertise their carriage of the superstations to a large degree based on their sports programming; testimony from cable operators show a consistent desire for flagship stations. Still, it is not a one-to-one linkage. However, sports has shown improvement in all areas of measuring benefit and marketplace—in the surveys, in the Nielsen data—and continues to hold up well in expert testimony, sufficiently to the point where it has persuaded us that our reservations in the 1980 proceeding about the strength of their showing has been lessened.

We note, however, that Dr. Besen's view about the critical role supply plays in the marketplace equation probably affects sports more than most claimant groups. The attitudinal surveys do not ask operators or subscribers to take into account the limit on the supply of major league and college games, so that we believe the respondents, free from that consideration, express a desire for more sports programming than available. The Nielsen data, which is made up of the actual supply of sports programs, and the actual viewing behavior, continues to provide a ballast for what might be a higher consideration for sports. Therefore, we have concluded to raise the allocation for Sports from the previous 14.8496% to 16.35%.

PBS

PBS had testified in earlier proceedings that in certain western areas of the country, importation of a distant PBS signal precludes the development of a local PBS station. In this proceeding, PBS president Bruce Christensen attributed some harm to a misconception by some cable subscribers that their subscription to cable obviates the need to support PBS, but PBS, in its proposed findings, acknowledged that PBS strives for wide dissemination of its programs and did not urge any finding of specific harm to the copyright owners of their programs. We conclude that any harm to PBS is negligible. It is not a consideration in our allocation.

PBS was carried on 24% of all Form 3 cable systems. Their percentage of instances of carriage was approximately 7.6%, for Form 3 systems, and 7.3% for Form 2 systems. We have, for the first time, Nielsen viewing data, which projects approximately 4.6% viewing of PBS stations.

In the 1979 proceeding, the Tribunal noted that PBS was carried in about 10% of all instances of carriage, but discounted the award to PBS to 5.25% because of the limited weight the Tribunal gives to total number of program hours, and because of record evidence establishing substantial duplication of PBS programming on local stations. In the 1980 proceeding, the Tribunal rejected PBS' re-argument of the duplication issue and found that circumstances had not materially changed.

In this proceeding, some parties have argued that PBS' carriage has declined since 1979–1980 from approximately 9–10% to just under 8% and PBS' award should be similarly lowered. On the other hand, PBS has asked the Tribunal to reconsider the duplication issue.

Having taken another look at the issue, we have modified our views about duplication as it relates to PBS. The basic question of duplication goes to whether it is reasonable to assume that a cable operator is importing a distant signal because of the marginal value of a type of programming, when that same program is already available from local signals and/or non-broadcast programming services. Generally, lacking any other evidence, the Tribunal has discounted several claimant groups for duplication. However, in the case of PBS, the doubt is somewhat removed regarding the cable operator's attitude toward the marginal value of PBS because PBS occupies the entire broadcast signal. Each time a cable operator chooses to import a PBS signal, even if it is already carried locally, the operator has made his or her desire known. In 1983, approximately 50% of PBS' carriage occurred when the cable operator already had a local PBS signal. PBS' argument concerning the value of an additional PBS signal has been confirmed by statistics, and, by the personal testimony of cable operators and Mr. Christensen.

We therefore conclude that any diminution in the value of PBS signals evidenced by less carriage in 1983 is offset by our readjustment of the discount for duplication. We also consider the new evidence concerning PBS—the Nielsen data, and the attitudinal surveys—which must be adjusted upward for their methodological bias against PBS—center the zone of reasonableness for PBS around the same allocation that they were awarded in 1982. Consequently, we have allocated to PBS 5.20%.

NAB

In the 1978 proceeding, the Tribunal found that there was no evidence that local broadcasters are harmed by cable carriage in distant markets of locally produced programs. This was not relitigated, and this continues to be our finding.

Additionally, in the 1978 proceeding, the Tribunal found no evidence that cable systems benefitted from their carriage of locally produced news and public affairs programs, a substantial sub-group of the locally produced program category. In the 1979 proceeding, we modified our view to give consideration to the benefit to cable operators and subscriber interest in station news and public affairs programming from nearby stations or from more distant stations in the same region. In the 1980 proceeding, we reaffirmed our previous findings for NAB, and continued to hold that station programming is only of marginal benefit to cable operators.

In this proceeding, we note that after all efforts made by NAB at correction of the Nielsen data, the figure for local programming for 1983 is approximately the same as for the 1980 data which, as mentioned, we discounted for lack of harm, and slight benefit. NAB argues that the key element to their relitigation of the question of benefit are the attitudinal studies conducted by the Joint Sports Claimants and NAB, which give NAB 12.8% and 13.3% respectively. The NAB subscriber survey gives NAB 17.1%.

We have already set forth the many reasons why even the best of the attitudinal surveys can only be given partial credit—respondent confusion, the recall problem, the question whether a twenty-minute exercise can be related to actual behavior, methodological flaws. Therefore, it is not necessary to reiterate why the Tribunal does not make the forward leap to full embracement of the attitudinal survey numbers. We do note, though, that there is a qualitative difference in the way the results of the surveys affect our analysis of sports and in the way they affect our analysis of NAB. For sports, the Tribunal had independent evidence corroborating Sports' argument that the value of sports had not been given its fullest consideration, so that the high ratings of sports in the attitudinal surveys only confirmed our other impressions of the record evidence. For local television broadcasters, we have evidence contradicting the attitudinal survey results, obtained over many proceedings from many different sources

that local programming's value had been adequately assessed in the 4.5% range.

We have concluded that the improvement of the reliability of the Nielsen data, due to the efforts of both MPAA and NAB, and the reduced credit which we can give to the results of the attitudinal studies permits the Tribunal to raise our allocation to U.S. television stations to 5%.

NAB relitigated the question of compilation of the broadcast day, and the local broadcasters' share to an award for radio. In the 1978 proceeding, the Tribunal rejected NAB's claim to any value for the local broadcasters' compilation of the broadcast day. In the 1980 proceeding, we reached the same conclusion stating, "cable systems are interested in the programs on a distant signal which induce persons to subscribe, not in the scheduling and promotion." 48 FR 9566 (1983). In this proceeding, NAB's witness Protter gave the Tribunal no new insight to modify our previously held views. In fact, he stated that a broadcast designs his broadcast day for the local market and not for the distant market, and as a broadcaster, how his scheduling would appeal to others outside of his market was not his concern. We continue to hold to our view that NAB's compilation claim has no value.

In the 1978 proceeding, the Tribunal found the record inadequate as to the carriage of distant signal commercial radio and its value. In the 1979 proceeding, the Tribunal included in the value of its award to the Music Claimants, some compensation for the use of music on distant signal radio, but found no evidence of the marketplace value or the benefit to cable operators of the remainder of the copyrightable interests on radio, and thus made no award to NAB for commercial radio. In the 1979 remand on this issue, we stated, "In reaching such a conclusion, the Tribunal relied more than customarily upon time-based considerations. Normally, the Tribunal has refrained from looking to time-based considerations as a justification for our decisions because of their failure to differentiate between the conditions in local broadcast markets and distant cable markets; but in the case of commercial radio, no other useful measurement standard was provided. The degree to which the broadcaster's share may also be strictly local in interest further clouds the value that may be attributable to non-music copyrighted programming. In our findings, we wished to declare that for radio, music is the proper recipient for whatever de minimis unquantifiable award there may be . . . (A)lthough we judged that such an award was justified, we were unable to quantify it and found it incalculable and extremely small." In the 1980 proceeding, the Tribunal reaffirmed its findings of the previous proceeding.

In this proceeding, NAB concentrated entirely on presenting evidence relating to one station—WFMT–FM, Chicago, Illinois. It presented no evidence on the nationwide carriage of radio stations. The breakdown between music and non-music on WFMT is 80–20, and its value, as far as we have considered it, is as a unique classical music station. Again, we hold that the value of commercial radio is entirely assignable to the Music category, and that any value to the carriage of distant signal radio outside of music is de minimis.

The Music Claimants

Music's share of the cable royalty fund was established by the Tribunal in the earlier proceedings at 4.25%, including an amount for commercial radio. We have referred to Music as one of the seven program types to be measured by the Tribunal, but Music prefers to be considered a program element, because it runs through all of the program types on distant broadcast signals. As a program element, it admits of almost no possible precise formula to determine its marketplace value, and the evidence offered by all the other parties has been conspicuous by their absence of proposed measuring rods for music.

Music did not offer any new evaluative measures, only urging the Tribunal to assess a greater contribution by music to the other program types than we have before, and to consider the changed circumstances of the rise of music videos. We accept that a new concept in programming occurred in the period between 1980 and 1983 and that there was more use of music in general, and we have made a slight upward adjustment to Music to 4.5%.

Devotional Claimants

In the 1979 proceeding, we stated that, "We regard as a fundmental distinction, the practice of [the Devotional Claimants] to buy time on television stations to broadcast their programs, while other syndicated programs are purchased by the stations . . . (C)able carriage may well benefit these claimants because the expanded carriage provides greater exposure and the potential of increased contributions from viewers." 47 FR 9897. The Tribunal further found no marketplace value for the programs of these claimants, and rejected the use of time based formulas, because they ignored market considerations and produced a distorted value of programming. We gave no award to the Devotional Claimants.

The Court of Appeals remanded the zero award to the Devotional Claimants for further consideration. On remand, the Tribunal modified its views on the special factors of the Devotional claim—the purchase of broadcast time, and certain perceived benefits to the claimants from cable retransmissions, resolving to give them less weight. It was this modification that was the basis of an award of 0.35% to the Devotional Claimants. The Tribunal gave the caveat that it expected further development of these issues in future proceedings. In addition, the Tribunal continued to find only minimal benefit of this program type to cable operators, "We do not find in the record any basis for concluding that cable operators chose distant signals because of devotional programming, nor have we been persuaded, based on this record, that cable operators welcome the inclusion of devotional programs on distant signals to balance the carriage of secular programs." 49 FR 20049.

In the 1980 proceeding, on remand, the Tribunal found no basis to view the entitlement of the Devotional Claimants more favorably than for 1979. The Tribunal continued to find a "negligible" marketplace value.

In the 1982 proceeding, the Tribunal determined to give "no weight" to the special factors, and in deciding to make a larger award to the Devotional Claimants gave weight to an attitudinal suvey of cable managers toward programming, as evidence of benefit, and a cable subscriber survey tending to show that obtaining access to devotional programming is a factor in the determination of some people to subscribe to cable televison.

In this proceeding, we reaffirm the position to which our previous decisions have led—that the consideration of the Devotional Claimants no longer includes the "special factors," but neither have the Devotional Claimants shown any harm.

In determining benefit, we have given no weight to the testimony of the two cable operators, Mr. Munn and Mr. Bosiger. It was clear from their testimony that although they may value devotional programming, in general, they did not necessarily assign any marginal value to the importation of additional devotional programming on distant signal above and beyond those programs already available locally and on non-broadcast programming services. Mr. Munn recognized a great degree of duplication in his area, and that the

main reason for the distant signals he chose was to bring in those stations familiar to his vacationers. Mr. Bosiger admitted that his subscribership wanted the two superstation signals which show far less devotional programming than the third under consideration.

We again reject any time-based formula, for, as we have said, they only serve to distort any marketplace analysis. We gave no credit to the Devotional surveys, and the Joint Sports survey omitted any valuation of devotional programming.

In making our award to the Devotional Claimants, we have taken into consideration the Nielsen data, their presence on specialty stations, and the attitudinal surveys. For reasons already stated, we can give only partial credit to the NAB attitudional surveys, mainly, we suspect, for the reason stated by Dr. Besen, that respondents were most likely thinking in terms of total value, and not in terms of marginal value. We continue to find that devotional programming has only slight marketplace value, but with the improvement in the showing that devotional programming could diversify the cable operator's offering to his or her subscribership, we have made a slight upward adjustment in the award from 1982 to 1.1%.

The Canadian Claimants

In the 1980 proceeding, the Tribunal found that there was no harm due to the retransmission of Canadian programming in the United States. The Canadian Claimants offered in this proceeding evidence on the amount of programming in the United States which they syndicated in 1983, and argue that sales of programs to the U.S. would have been more but for the availability of their programs via cable retransmissions to 2 million subscribers. We conclude that this argument does not state harm incurred by the Canadian Claimants, but for Program Suppliers. Indeed, Glen-Warren and the CBS are represented by the Program Suppliers in Phase I and harm as a factor for them has already been considered. We continue to find no harm to the Canadian Claimants.

Regarding benefit and marketplace value, we note that carriage of Canadian broadcast signals accounted for 2.1% of the instances of carriage in 1983. Yet, Canadian signals are not entirely Canadian-content. Canadian signals are composed of a majority of Canadian-content programming, the rest being U.S. network and non-network syndicated programming, and baseball and hockey represented here by the Joint Sports Claimants. The proper assessment of the value of the Canadian claim is problematic. There are no Nielsen data for Canadian stations which would aid us in breaking down the relative appeal of U.S. programs, sports and Canadian programs on Canadian stations. We have the opinions of cable operators for the Program Suppliers, the Joint Sports Claimants, and the Devotional Claimants which we believe were creditable, that sports, most notably hockey, was the reason they imported Canadian stations. The attitudinal surveys yielded limited results. The Joint Sports survey did not include Canadian stations.

The NAB surveys rated Canadian signals very low—0.4% and 0.7%. We have noted a bias in them as in the case of PBS, but it is a slight bias due to the fact that Canadian signals cannot be imported south of 150 miles below the U.S./Canadian border and the 42nd parallel. As stated earlier, we gave no weight to the Canadian survey as a means toward translating opinion to a percentage allocation. We believe the survey was flawed because it led the respondents to give very favorable impressions, and it did not survey those who did not carry Canadian stations, or ask the respondents to compare program types on the Canadian signals.

In the past the Tribunal has credited the appeal of Canadian-content programming in English and that of French-language programming as 0.75% of the fund. We note and appreciate that Canadian programming is different and uniques from American programming, but a nexus to marketplace value is still needed that is greater than that already recognized and reflected in past awards. We conclude that the evidence presented did not improve the record and we award the Canadian claimants 0.75% for 1983.

Conclusions of Law—3.75% Fund

The Tribunal concludes that the factual and legal circumstances underlying the distant carriage of broadcast stations at the 3.75% rate are sufficiently different from the facts and law underlying the distant carriage of broadcast stations at the statutory rate to justify creating separate fund and making different allocations from those made for the basic fund.

We recognize that much of the testimony and evidence applied to both basic and 3.75% distant signal carriage, and therefore we have looked to our allocations in the basic fund as our starting off point, and have viewed the 3.75% fund from the prespective of how does it modify our view of the basic fund.

We conclude that noncommercial educational stations could be carried on an unlimited basis prior to FCC deregulation, and that no cable operator paid the 3.75% rate to carry any noncommercial stations. For this reason, we have concluded that PBS shall receive no allocation from the 3.75% fund.

Second, we conclude that specialty stations could also be carried on an unlimited basis prior to FCC deregulation, and so to the extent that specialty stations carry devotional programs, and French-language programs, the award to the Devotional Claimants and the Canadian Claimants should be diminished in the 3.75% fund.

Regarding the Devotional Claimants, we believe a further diminution is warranted for any credit given the Devotional Claimants in the basic fund for the benefit to cable operators in offering a diverse program package. We believe that when it comes to the importations of a 3.75% rate station, a cost substantially higher than the statutory rate stations, the primary considerations are movies, sports, and syndicated series. Therefore, in the 3.75% fund, we have chosen to hew much closer to the Nielsen data. Consequently, we have concluded that the Devotional Claimants shall receive an award of 0.75%.

Regarding the Canadian stations, the evidence shows that in the first accounting period of 1983, only 3 Canadian stations were identified by cable operators as the 3.75% station, and in the second accounting period of 1983, only 2 Canadian stations were so identified. We believe, however, that Joint Sports is correct when it asserts that some across-the-board allocation to other distant signals carried by the same operator at the statutory rate who has the option of free substitution should be made. However, we feel the Canadian Claimants went too far in claiming a share of the fund each time a system paid 3.75% and carried a Canadian signal, because many of those instances did not include the possibility of free substitution. Accordingly, we have given the Canadian Claimants a small credit for more distant signal carriage than the amount identified by cable operators and we award the Canadian Claimants 0.25%.

We conclude that the awards to Music and NAB should be the same as the awards made for the basic fund. We note first of all that Music has never presented any claim that their contribution to the works on the 3.75% stations were somehow different than on stations carried at the statutory rate, and can see no justification for treating them differently. We also note that for

NAB, the Nielsen data drops noticeably for stations carried at 3.75%, but without the proffered corrections to that data, we have not chosen to penalize them. We also observe no difference in their attitudinal data for 3.75% stations.

For the Program Suppliers and the Joint Sports Claimants, we find that the Nielsen data accords them 92.6% of the viewing share, and we have accorded greater weight to the element of harm in the 3.75% fund than in the basic fund based upon our findings in the 1982 cable copyright rate adjustment hearings that movies, syndicated series, and sports were primarily harmed by the further penetration of imported distant signals. Accordingly, we have raised the allocations for the Program Suppliers and Joint Sports to 72.0 and 17.5%, respectively.

Conclusions—The Syndex Fund

After the Supreme Court in *Fortnightly* found no copyright liability for cable retransmissions, the pressure for some form of copyright relief fell on Congress and the FCC. While the power to shape copyright law belonged solely to Congress, there were administrative actions which the FCC could take. The FCC chose to strike a balance between permitted signals and nonpermitted signals. The FCC imposed a limit on the number of distant signals that could be imported, and in the case of particular programs which harmed the program syndicators' marketing abilities, it gave to the broadcast station (and for pre-clearance, the program supplier) the power to prevent the performance of those works. However, the balance was not complete. It was still up to Congress to mandate copyright payments for the permitted signals. The 1976 Copyright Act did this. It required copyright payments for FCC-permitted performances and authorized infringement suits for performances of works which the FCC did not permit.

Within weeks of the passage of the Act, the FCC proposed a full review of the syndicated exclusivity rules. In 1979, the FCC found that there was little regulatory justification, apart from copyright considerations, for giving a broadcast station the power to prevent the performance of works on a cable system, and proposed to delete the rules. The deletion of the syndicated exclusivity rules meant that there would be more performances of works on cable systems. The Tribunal, accordingly, made an upward adjustment in the copyright rates.

In the first distribution proceeding, the Tribunal found that for permitted signals, the legislative history of the Act made it clear that compulsory license royalties should go to the creators of those works, not to the broadcast stations airing them except when the broadcast stations are themselves the creator of those works. Our determination was affirmed by the Court of Appeals.

From March 31, 1972 to June 25, 1981, the FCC made it possible for a broadcast station to obtain the right to prevent certain performances of a work. After January 1, 1978, the Act made the performances of nonpermitted works actionable for infringement, and gave to broadcast stations the right to sue for infringement for nonpermitted works if they had obtained the pertinent right from the copyright owner. It is reasonable to believe, therefore, that if, between January 1, 1978 and June 25, 1981, a cable operator did not honor a broadcast station's notice to refrain from retransmitting a certain work and aired a nonpermitted performance, a station might have been able to sue for infringement, although cases have not been reported to us on that point.

However, after June 25, 1981, the broadcast stations lost the right to prevent performances. The performances became permitted. The *Hubbard* case shows that regardless of the wording of the contract between the program supplier and the broadcast station, the defense of compulsory license is absolute. The broadcast station cannot become an exclusive licensee in its market against permitted signals, and cannot prevail in a suit for infringement. Section 501(b) only authorizes an owner of an exclusive right to sue for infringement to the extent of that particular right. There is no right that anyone can obtain against the occurrence of a permitted performance; any contract clause the station might have had became moot.

In summary, we conclude that: (1) Section 111 was intended to effect a payment by cable systems for signals which the FCC permitted to copyright owners; (2) broadcast stations can obtain exclusive rights against nonpermitted signals and may sue for infringement under Section 501; (3) but broadcast stations can not obtain exclusive rights against permitted signals, thus defeating their claim to be the relevant copyright owner for copyright royalty distribution purposes.

By this analysis, we believe it is unnecessary to inspect the contracts between supplier and station.[1] NAB made an assumption in its pleading that the syndicated exclusivity fund derives from the number of syndicated exclusivity contracts between program suppliers and stations in 1983, and that as these number of contracts decline and finally disappear in subsequent years due to the impossibility of contracting for exclusivity against permitted signals, the syndicated exclusivity surcharge should similarly decline and disappear. This is not true. The surcharge does not derive from the contracts; it derives from the greater number of performances of works. Not is it necessary to address Prof. Goldstein's reservations about geographic exclusivity being in many instances impossible to achieve because of incoming signals from beyond the local market. That would be an argument to be considered in an infringement suit.

NAB also argues that broadcast stations paid for exclusivity against cable retransmissions, that they incurred the harm, and that equitably, they should be made whole. We only note that the broadcast industry was on notice from 1976 that the syndicated exclusivity rules were subject to change. The stations were also on notice by the consistent representation of the industries in the legislative history and the rulings of the Tribunal that royalties for permitted performances would be awarded to the creators of the works. We can only assume that this awareness was reflected in contract negotiations and accommodations, to the extent necessary, were made accordingly.

We conclude, therefore, that there are only two claimant categories which have shown their entitlement in this record to the royalties derived from the syndicated exclusivity fund: the Program Suppliers and the Music Claimants. The Joint Sports Claimants are not entitled because sports programming was not a part of the syndicated exclusivity rules and are still covered by FCC regulation. PBS is not entitled because the syndicated exclusivity rules did not apply to noncommercial stations. The Devotional Claimants are not entitled because the record shows that as a practice, suppliers of devotional programming did not syndicate on an exclusive basis. The Canadian Claimants are not entitled because the syndicated exclusivity rules did not apply to foreign stations. In determining the proper allocation between the Program Suppliers and the Music Claimants, we have chosen to follow the percentage awarded to Music in the basic and 3.75% funds, the record being

[1] In any event, NAB did not place into the record any contracts.

devoid of any reasonable basis to make a distinction among the three funds regarding the contribution and value of music. Therefore, we shall allocate 95.5% of the syndex fund to the Program Suppliers and 4.5% to the Music Claimants.

PHASE II

Findings of Fact

On January 29, 1986, Multimedia filed a motion with the Tribunal to establish certain procedures and requirements for Phase II to assure that all works represented by Phase II parties were, in fact, copyrighted works and not in the public domain. While rejecting some parts of Multimedia's request as unduly burdensome and coming late in the proceeding, the Tribunal did agree with Multimedia's overall objective seeking to establish a way in which a good faith examination of and challenge to copyright ownership could be effected. The Tribunal ordered each Phase II party to list every title of every program underlying its Phase II claim. The Tribunal further ordered that if any party wished to challenge any of the titles, it should file such a challenge before the close of the direct case, supported by all relevant documentation. The Tribunal would then consider whether the presumption of ownership had been rebutted and whether to require more information from the other parties. The Tribunal also expressed an intention to review its procedures for further proceedings. *Order* dated February 12, 1986.

MPAA's Phase II claim. MPAA urged the Tribunal to make its Phase II allocations strictly according to the results of its Nielsen study. Cooper, MPAA Ph. II Direct, pp. 1–4. For Phase I, MPAA had commissioned a special Nielsen study with respect to the viewing of individual programs via distant signals in cable households. Based on Nielsen's six-cycle data, the total number of household viewing hours attributed to approximately 7,000 syndicated series, movies, and specials, was 2,351,899,372. *Id.* p. 2.

MPAA listed 6,008 titles as belonging to its claimant group. MPAA Ph. II Ex. 3. MPAA employed an internal verification procedure in which each of its member claimants provided MPAA a notarized certification attesting that the claimant was entitled to receive cable copyright royalties by virtue of being either the copyright owner or the authorized agent of the copyright owner for each claimed title. Cooper, MPAA Ph. II Direct, p. 3; MPAA Ph. II Ex. 4. Household viewing hours attributable to the 6,008 titles amounted to 2,217,169,720. Cooper, MPAA Ph. II Direct, p. 2.

Multimedia listed its shows as follows: *Donahue*, 260 hours of shows, consisting of 240 original programs and 20 repeats in 1983; *Young Peoples' Specials*, one-half hour children's features; Country Music Specials, two-hour, prime time programs; *The Bob Braun Show*, 260 hours of talk/variety programs; *Nashville On the Road/Music City U.S.A.*, 26 half-hour country music programs; *Pop! Goes the Country*, 26 half-hour country music programs; *Austin City Limits*, 26 half-hour country music shows; *Georgia Farm Monitor*, a weekly half-hour information program; four coaches programs and one sports special. Thrall, Multimedia Ph. II Direct, p. 4. MPAA performed an analysis of Multimedia's programs and found they accounted for 7,998,202 viewing hours in their Nielsen study. MPAA Ph. II Direct Ex. 5.

NAB listed 52 broadcast stations which produced and syndicated 120 programs, 58 of which were series, 62 of which were specials. NAB Ex. 11–2. MPAA performed a Nielsen study analysis of nine series and one movie (*INN Midday News and INN Evening News, Wall Street Journal Report, From the Editor's Desk, Agronsky & Company, Clue You In, Goodby to M*A*S*H, Unofficial Guide to the Superbowl, March of the Wooden Soldiers*, and *The Dance Show*). This yielded a total of 9,954,010 household viewing hours. Cooper, MPAA Ph. II Rebuttal, pp. 8–9.

The results, therefore, of MPAA's breakdown of the Nielsen data were:

	Viewing hours	Percent
MPAA	2,217,169,720	94.271
NAB	9,954,010	0.423
Multimedia	7,998,202	0.340
Unclaimed titles	116,777,440	4.965
Total	2,351,899,372	

If the unclaimed titles are eliminated from the analysis, the relative strength in the Nielsen study of the three Phase II parties, according to MPAA, would be as follows:

	Viewing hours	Percent
MPAA	2,217,169,720	99.197
NAB	9,954,010	0.445
Multimedia	7,998,202	0.358
Total	2,235,121,932	

Criticism of MPAA's methodology by Multimedia and NAB. Multimedia asserted that although the Nielsen study may provide a valid guide for overall viewership of syndicated programming versus sports, local, devotional programming, etc., it is suited to provide an accurate assessment of indivdiual program shares. Multimedia Proposed Findings, p. 19. Multimedia witness Richard Thrall observed that as the Nielsen study focus narrows, the effect of sampling error on the object of study (i.e., the individual program) is exacerbated. Ph. II Tr. 359–360. MPAA witness Allen Cooper conceded that the study's reliability varies from program to program. Ph. II Tr. 148.

Multimedia questioned the selection of sample stations regarding its most important Phase II program, *Donahue*. *Donahue* was carried on 173 stations in November, 1983, of which only 21 (or 12 percent) were included in MPAA's Nielsen sample. In the January partial sweep, only six stations (or 3 percent) carrying *Donahue* were included. Multimedia Ex. 19. Multimedia found, on the other hand, that 10 of 39 stations (25 percent) carrying *The Merv Show* were included in the MPAA sample. *Id.* Multimedia disagrees that the Nielsen result giving *The Mery Show* more cable viewership than *Donahue* is accurate. Ph. II Tr. 519. In response, MPAA accounted for any disparate treatment of *Donahue* and *The Merv Show* as resulting from *Donahue* being carried 90% by network affiliates which are carried less by cable systems, and *The Merv Show* being carried more on independent stations. Ph. II Tr. 420.

NAB criticized MPAA's decision to study only 9 series and one movie in NAB's claim. MPAA did not report the viewing of *Elvira*, believing it was not properly within NAB's claim, when in actuality NAB has an interest in the "wrap around" portions of the series. Cooper, MPAA Ph. II Rebuttal, p. 6; Affidavit of Walter Baker. MPAA made an assumption that parades and telethons and programs of that nature were not to be included as syndicated series in their study, so therefore Nielsen never made a study of the viewing of *The Kentucky Derby Parade*. Ph. II Tr. 603. MPAA made similar assumptions regarding political programs, and syndicated minor sports programs. MPAA also attempted no measurement of programs on specialty stations. Ph. II Tr. 609, 612, 621. Therefore, MPAA did not include as syndicated series in their Nielsen study such programs as *Barry Goldwater I and II, Tribuna Publica*, high school sports and coaches shows, among others. Cooper, MPAA Ph. II Rebuttal, p. 6.

MPAA also did not report the viewing for NAB-represented programs broadcast on commonly-owned stations, believing that they should not qualify as syndicated series, since there was no

exchange of money between stations, and believing that they are primarily a device by licensees to divide costs of production. Ph. II Tr. 583–4. On cross-examination, Cooper conceded that MPAA did count the viewing for some MPAA-represented programs involving syndication on commonly-owned stations. Ph. II Tr. 585, 648.

Multimedia's Phase II claim. Multimedia witness Richard Thrall testified that Multimedia's claimed programs have significant marketplace value. Thrall, Multimedia Direct, pp. 4–9. Thrall noted that *Donahue* consisted in 1983 of 240 (out of 260) original productions, rather than repeats or reruns. *Id.*, p. 5. *Donahue* is a widely carried, popular and informative news/interview programs. Ph. II Tr. 346, 397. Multimedia's *Young People's Specials* is educational and continued to have substantial syndicated activity in 1983. Thrall, Multimedia Direct, p. 7. Multimedia continued in 1983 to be a significant syndicator of country music series and specials. *Id.*, p. 8.

Multimedia did not argue, however, that circumstances had significantly changed with respect to their claims for 1983 as compared with 1982. Certain additions and deletions of some country music series in Multimedia's claim were essentially a "wash." Ph. II Tr. 174–175; Multimedia Proposed Findings, p. 10.

Multimedia argued that MPAA's share of Phase II should be reduced because of the purported effect of direct compensation to program suppliers by WTBS. *Id.*, p. 28. Approximately 25 percent of the viewing hours for programs claimed by MPAA are attributable to programs broadcast by WTBS. Ph. II Tr. 160–161. Multimedia introduced an affidavit of Paul D. Beckham, Vice President and Controller of Turner Broadcasting Systems, filed in *Hubbard, supra*, which stated that license fees paid by WTBS for its programming had increased from $3,231,728 in 1979 to $13,569,777 in 1983. Multimedia Ex. 15. Another affidavit introduced in *Hubbard* signed by Charles Shultz, Vice President of Business Affairs for WTBS, listed increases in license fees for 22 series and 9 movie packages over the previous ten years and for years beyond 1983. Multimedia Ex. 18. However, on questioning from the Tribunal about prices in general for syndicated programs in the period 1974 and 1981, Thrall conceded that there were big increases for all stations during those years. Ph. II Tr. 473. Thrall did not have any comparable figures for other broadcast markets, or for other superstations. Ph. II Tr. 476. Thrall could not establish how much of the increases paid by WTBS were the result of higher program costs in the television market, and how much, if any, related to WTBS' greater carriage by cable systems. Ph. II Tr. 476–77.

Multimedia also argues that, in any event MPAA's award should be limited to the 94.27% Nielsen share it had established, and that anything above it would constitute a windfall to MPAA. Multimedia Proposed Findings, p. 35.

Challenge to copyright status of MPAA's works. Multimedia introduced certain certificates from the Copyright Office to raise a challenge to the copyright status of some works represented in MPAA's claim. Multimedia Exs. 2X–7X. Exhibit 2X was a Copyright Office certification that the copyright registration of five episodes of *Popeye* owned by Paramount Pictures Corp. could not be found, and that 17 episodes owned by Paramount Pictures Corp. were registered, but that no renewal registration could be found. Multimedia Ex. 2X. In response, however, MPAA witness Cooper stated that the episodes of *Popeye* in MPAA's Phase II claim were those episodes owned either by King Features or MGM–UA, not Paramount. Ph. II Tr. 215.

In Exhibit 3X, the Copyright Office certified that for 14 episodes of the *Lone Ranger*, no renewal registration could be found. Multimedia Ex. 3X. Cooper did not offer any explanation. However, he noted that there were 182 half-hour *Lone Ranger* episodes in the MPAA claim, and he did not know whether the 14 episodes in question were included in them. Ph. II Tr. 223.

Exhibit 4X purported to show 45 titles of *The L'il Rascals* which were registered during the early 1920's, but not renewed, and two in which no registration was found. Multimedia Ex. 4X. Cooper responded that MPAA only represented *Our Gang Comedy*, and that they were movies made after sound had been introduced. Tr. Ph. II Tr. 229.

In Exhibit 5X, the Copyright Office certified no copyright registration for the movie *Cast a Dark Shadow* (1955). In Exhibit 6X, the Copyright Office certified that *The Strange Love of Martha Ivers* (1946) was not registered, and that no renewal registration could be found for *My Dear Secretary* (1948), *Nicholas Nickleby* (1947), *The Perils of Pauline* (1947), *Rudyard Kipling's Jungle Book* (1942), *Tarzan's Revenge* (1938), and *The Thirty Nine Steps* (1935). In Exhibit 7X, the Copyright Office certified that no renewal registration could be found for *The Snows of Kilimanjaro* (1952). Multimedia Exs. 5X, 6X, 7X.

Cooper responded that *Nicholas Nickleby* had been culled from the list of 7,000 Phase I titles and did not appear on the list of 6,008 titles constituting MPAA's Phase II claim. Ph. II Tr. 234–237. Cooper also responded that *The Thirty Nine Steps* was properly represented by Janus Films, Inc. based upon a license from the copyright owner of the underlying work. Ph. II Tr. 238–240. The Tribunal subsequently agreed with MPAA's position on *The Thirty Nine Steps. Order*, dated April 4, 1986.

Cooper did not respond regarding the other titles. Ph. II Tr. 231–241. The Neilsen viewing data for those titles were as follows:

	Viewing hours
My Dear Secretary	343,948
The Perils of Pauline	265,008
Cast a Dark Shadow	264,618
Rudyard Kipling's Jungle Book	254,538
The Snows of Kilimanjaro	131,501
Tarzan's Revenge	130,494
The Strange Love of Martha Ivers	8,382
Total	1,398,489

MPAA Ph. II Direct Ex. 3.

If those seven movie titles were deleted from MPAA's claim, the relative strength in the Nielsen data would be:

	Viewing hours	Percent
MPAA	2,215,771,231	99.196
NAB	9,954,010	0.446
Multimedia	7,998,202	0.358
Total	2,233,723,443	

NAB's Phase II claim. NAB incorporated into the record of this proceeding testimony regarding the marketplace value and benefit of station-produced syndicated programs from the 1979 and 1981 Phase II proceedings, but offered no new evidence on these points. NAB Phase II Statement. NAB argued that it had strengthened its claim in terms of total number of works it represents. In 1981, it represented 44 broadcast stations, 85 syndicated programs of which 19 were syndicated series. In this proceeding, it represented 52 stations, syndicating 120 programs of which 58 were series. 1981 NAB Ex. CT/81–F; NAB Ex. II–2. However, NAB offered no evidence regarding the marketplace value of these additional works.

3.75% Fund and Syndex Fund

Multimedia listed the works it represents on those stations which were carried at a 3.75% rate by at least one cable system. Multimedia Ex. 17. No

other evidence was submitted on 3.75% carriage.

In 1978, when *Donahue* was carried live on WGN, station WOTV, Grand Rapids, Michigan had requested General Electric Cablevision Corporation and Muskegon Cable TV to black out their showing of *Donahue* on WGN in the Grand Rapids market pursuant to the then-existing syndicated exclusivity rules. The cable systems refused because WGN's *Donahue* was a live presentation, and Section 76.5(p) of the FCC's rules excluded live presentations from the definition of syndicated programs. The FCC ageed with the cable systems' position and would not grant WOTV any special relief. *Manhattan Cable Television, Inc.*, 79 F.C.C. 2d 24 (1979).

In 1983, *Donahue* was broadcast live on WBBM, Chicago, Illinois, and tapes were distributed to about 172 stations on a five week "bicycle." Thrall, Multimedia Direct, p. 5; Multimedia Ex. 19. WBBM is a network-affiliated station. It was carried by 13 cable systems on a distant signal basis in the second half of 1983. DC Ex. 7B. In 4 instances, it was paid for by the cable systems at the 3.75% rate. DC Ex. 11B. Payment of the 3.75% rate and the syndicated exclusivity surcharge are mutually exclusive. The surcharge is paid by cable systems in the top 100 markets for the stations which they carried after March 31, 1972 and before June 24, 1981. The 3.75% rate is paid for signals carried after June 24, 1981. 37 CFR 308.2 (c) and (d). No evidence was introduced whether the other nine cable systems were in the top 100 television markets or carried WBBM after March 31, 1972 and before June 24, 1981.

Conclusions of Law—Phase II

The Tribunal concludes that no change in the Phase II awards from the 1982 proceeding has been justified by the presentations of either MPAA, Multimedia or NAB.

MPAA relitigated the Tribunal's previously stated position—that while the Nielsen viewing data are reliable and can be accorded substantial weight, the Tribunal does not rely on the data as the sole means of making its royalty distribution. MPAA argued that its ability to continue to achieve a high degree of settlements within its group could be weakened if the Tribunal's award to non-settling claimants deviated significantly from the shares they would receive as MPAA-represented claimants. We repeat what we said in the 1979 proceeding, "The Tribunal welcomes voluntary agreements, however, when a Phase II case is presented, the Tribunal has the task of deciding the issues on the basis of the evidence before us, and the private agreement reached by parties in voluntary settlements cannot substitute for the Tribunal's judgment." 47 FR 9895.

Further we agree with some of the criticisms of the Nielsen methodology. Its overall reliability may be somewhat less when the focus in on individual programs. We are also not in accord with MPAA's definition of what is a syndicated program. We find MPAA's decision not to measure syndicated parades, political programs, minor sports programs, and specialty station programs arbitrary. Definitional problems, to the extent they exist, should be referred to the Tribunal, as was the case with wrestling programs. We would also have liked to look at the data regarding syndication on commonly-owned stations. To the degree that MPAA believes either that program distributed among commonly-owned stations are not really syndicated programs or that the weight they should be given by the Tribunal should be less than for other programs, these are matters to be argued before the Tribunal and not simply to be pre-determined by MPAA. For all these reasons, we believe that MPAA's Nielsen data somewhat underrated Multimedia and NAB's claims.

We also believe that the Nielsen data does not include all the criteria upon which the Tribunal bases its judgment. We have given credit in the past to the appeal of Multimedia's programs, the avidity of their viewership, and that their programs' value are enhanced by the substantial number of first-run productions as against repeats or reruns. We have also given credit to NAB's programs for their regional appeal.

Multimedia and NAB argued for increased awards, but their showings were lacking. Multimedia acknowledged there were no changed circumstances with regard to its claim since 1982, and it could not show any marketplace value for its works above and beyond the credit already reflected in its previous 1% award. NAB's sole argument for changed circumstances was a list of more works than it listed the last time it was a Phase II litigant, 1981. However, it made a minimal effort to establish the marketplace value for these programs.

Multimedia made three efforts to improve its relative position vis-a-vis MPAA. It argued that WTBS has already paid program suppliers on the basis of its being a superstation and therefore, any distribution from the Tribunal would be a form of double compensation. Its efforts at this argument fell short. Multimedia could only establish that WTBS' license fees have risen considerably. It could not make the necessary nexus that these increases were due to WTBS' special position in the cable distant signal market. Far more of a showing would be necessary to develop Multimedia's argument.

Multimedia's argument that MPAA had shown at most an entitlement to 94.27% of the Phase II fund, because it had only shown a 94.27% Nielsen share, is not correct. In Phase II, the Tribunal only attempts to appraise the relative worth of the works represented by the claimants before it. In making such an assessment, we eliminated from consideration the Nielsen data for unclaimed works, and arrived at a new "starting off point" (MPAA—99.177%, NAB—0.445%, Multimedia—0.358%). We then made our comparative analysis based on the entire record, as we have done in every distribution proceeding. *See*, 47 FR 9879.

Multimedia also argued that some of MPAA's claim consisted of works in the public domain. We agree with MPAA's explanations regarding Multimedia's challenges to *Popeye, The L'il Rascals/ Our Gang Comedy, Nicholas Nickleby*, and *The Thirty Nine Steps*. Since MPAA offered no explanation of 14 episodes of *The Lone Ranger* and seven movie titles, the Tribunal, under the procedures established in our *Order* dated February 12, 1986, could have determined that the presumption of ownership had been successfully rebutted and could have required more information from MPAA. However, the Tribunal performed an analysis assuming, for the sake of the analysis only, that those works were in the public domain. MPAA's Nielsen share would only have been reduced from 99.197% to 99.196%, and Multimedia's Nielsen share would have stayed at 0.358%. Clearly, those works to which Multimedia has raised a challenge constitute a negligibie portion of MPAA's claim, and even by their elimination, the parties' relative position would not have changed. Therefore, the Tribunal chose not to require more information from MPAA. Neither were we persuaded that Multimedia's challenges represented the "tip of the iceberg." Many of the challenges were answered by reasonable explanations by MPAA. The possibility that there exists a sizable number of public domain works in MPAA's claim that would have been revealed but for the limitations of Multimedia's resources simply does not appear plausible to us.

Finally, the Tribunal considered whether there existed sufficient record evidence to make separate allocations in Phase II for the basic fund, the 3.75%

fund, and the syndex fund. We believe that the record developed in this proceeding does not justify making separate allocations. We found no evidence to determine whether the relative carriage of MPAA's, Multimedia's and NAB's works were different on stations paid for at the 3.75% rate than on stations paid for at the statutory rates. The Tribunal would like to see a more developed record in subsequent proceedings, including the relative worth of regionally syndicated programs versus nationally syndicated programs. As for syndex, we recognize that live presentations were not afforded syndicated exclusivity protection by the FCC, so that these live presentations might not properly share in the syndex royalties. However, *Donahue* is presented live on its flagship station only, and on tape on the rest of the 172 stations. Record evidence could not establish that any of the 13 cable systems paid a surcharge to carry WBBM in 1983. Four systems did not pay a surcharge, since they paid to carry WBBM at the 3.75% rate, and payment of the 3.75% rate and the syndicated exclusivity surcharge is mutually exclusive. We conclude that live presentations of *Donahue* in 1983 as a factor in our allocation in Phase II is de minimis. Accordingly, the Tribunal will make one allocation in Phase II. MPAA will be allocated 98.2%, Multimedia, 1%, and NAB 0.8%.

Allocations

After subtracting the stipulated award to National Public Radio of $144,497.85, the Tribunal has adopted the following allocation to categories of claimants in Phase I of the 1983 cable copyright royalty fees available for distribution:

Category	Basic pct.	3.75 pct.	Syndex pct.
Program suppliers	67.10	72.00	95.50
Joint sports	16.35	17.50	0
Public broadcasting service	5.20	0	0
Commercial television	5.00	5.00	0
Music	4.50	4.50	4.50
Devotional claimants	1.10	0.75	0
Canadian claimants	0.75	0.25	0
Commercial radio	0	0	0

The allocation adopted by the Tribunal under Phase II for the individual claimants is as follows:

Program suppliers:	*Percent*
Motion Picture Association of America, Inc.	98.2
Multimedia Entertainment, Inc.	1.0
National Association of Broadcasters	0.8

Dated: April 10, 1986.

Edward W. Ray,

Chairman.

[FR Doc. 86-8368 Filed 4-14-86; 8:45 am]

BILLING CODE 1410-01-M

Reader Aids

Federal Register

Vol. 51, No. 72

Tuesday, April 15, 1986

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

11007-11284.....1
11285-11418.....2
11419-11538.....3
11539-11702.....4
11703-11894.....7
11895-12116.....8
12117-12302.....9
12303-12496.....10
12497-12594.....11
12595-12678.....14
12679-12818.....15

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....11928, 12332

3 CFR

Proclamations:
4707 (Superseded in part by Proc. 5452).....11539
4768 (Superseded in part by Proc. 5452).....11539
5365 (Superseded in part by Proc. 5452).....11539
(Superseded in part by Proc. 5453).....11545
5452.....11539
5453.....11545
5454.....12119
5455.....12303
5456.....12305
5457.....12679
5458.....12681

Administrative Orders:
Presidential Determinations:
No. 86-8 of March 25, 1986.....12117

5 CFR
Ch. XIV.....12595
530.....11007
536.....12683
950.....11668

Proposed Rules:
530.....11043

7 CFR
247.....11008
272.....11009, 12307
273.....11009, 12307
278.....12497
371.....11703
400.....11704, 12307
418.....11285
436.....11285
444.....11286
445.....11291
449.....11895
713.....11419
770.....11419
795.....11419
796.....11419
907.....11419
908.....11419
916.....11900
917.....11900
925.....12498
944.....12498
1006.....11551
1094.....11552
1106.....11297
1230.....11553
1260.....11557
1421.....11419
1425.....11419
1427.....11419
1430.....11526
1902.....12307
1924.....12307
1930.....12307
1944.....11298, 12307
1951.....11562
1965.....11562

Proposed Rules:
1.....11930
27.....12624
28.....12624
51.....12522
52.....11043, 11744
61.....12624
226.....12711
271.....12268
272.....12268
273.....12268
274.....12268
275.....12268
276.....12268
652.....11053
729.....11274
907.....11931
908.....11931
982.....11932
999.....11932
1032.....11452
1040.....11053
1094.....11452
1106.....11453
1240.....11313
1493.....11744

8 CFR
223.....12595
223a.....12595

9 CFR
51.....11299
75.....12596
91.....12121
94.....11902

Proposed Rules:
93.....11316
381.....12161

10 CFR
110.....12598

Proposed Rules:
Ch. I.....12162
2.....12629
50.....12502
904.....12333

12 CFR
201.....11903
226.....11422
564.....12122

Proposed Rules:
620.....11745

13 CFR
121.....11705

14 CFR
39.....11300, 11301, 11704-11714, 12123, 12506, 12507, 12509, 12511, 12684, 12690
71.....11426, 11564, 11715, 11886, 12512, 12693
73.....12512
95.....12694
97.....11564, 12513

Proposed Rules:
Ch. I 12163
21 11933
23 11933
39 ..... 11321, 11322, 11748–11750
71 ..... 11454, 11455, 11585, 11752, 12524
91 11942

15 CFR
806 11012

Proposed Rules:
917 12525

16 CFR
13 11904

Proposed Rules:
13 12629

17 CFR
32 12698
33 11905
239 11907
240 ..... 11907, 12124
249 11907
259 11907
269 11907
274 11907

Proposed Rules:
30 12104

18 CFR
2 ..... 11566, 11716
3 12137
157 ..... 11566–11569, 11716
284 ..... 11566–11569, 11716
389 11716

19 CFR
18 11012
24 11012
101 11013
112 11012
113 11012
141 11012
144 11012
146 11012
178 11012
191 11012

Proposed Rules:
101 12339
175 12712

20 CFR
404 ..... 11717, 11910, 12600
416 ..... 11717, 12600

Proposed Rules:
655 11942

21 CFR
5 ..... 11427, 11429
73 ..... 11430, 11432, 11435, 12607
74 11014
82 11014
145 11433
160 11434
173 11719
178 12607
193 11437
430 11571
436 11571
441 11571
510 11437–11439
520 11439
522 11437
529 ..... 11438, 11440
555 11441
558 ..... 11014, 11438, 11439, 12137
561 12138
720 11441
882 12100

Proposed Rules:
74 11054
150 11054
163 ..... 12631, 12632
172 ..... 12163, 12632
175 ..... 12163, 12632
176 ..... 12163, 12632
177 ..... 12163, 12632
179 ..... 12163, 12632
181 ..... 12163, 12632
501 11456
812 ..... 11266, 12713
868 11516

22 CFR
501 11014
503 11014
504 11016
505 11016
506 11014
511 11014
516 11014
525 11014

23 CFR
140 11576
1325 11445

Proposed Rules:
645 11055

24 CFR
115 11577
200 11198
215 11198
235 11198
236 11198
247 11198
511 12700
812 11198
880 11198
881 11198
882 11198
883 11198
884 11198
885 12308
886 11198
912 11198

26 CFR
1 ..... 11016, 11302
35a 11447
48 12515
602 ..... 11016, 12515

Proposed Rules:
1 ..... 11323, 11324, 11753, 12022, 12340–12341
3 12022
5f 12022
6a 12022
25 12022
31 12341
514 12022

27 CFR
9 11912

Proposed Rules:
4 11944
5 12342
9 11753

28 CFR
2 11017

29 CFR
4 12264
5 12264
1602 11017
2201 11578
2610 12488
2616 ..... 12489, 12491, 12701
2617 ..... 12489, 12491, 12701
2619 12701
2623 ..... 12489, 12491, 12701

Proposed Rules:
1910 12526
1926 11945

30 CFR
870 11720
917 ..... 11579, 12138
935 12141

Proposed Rules:
Ch. II 12163
7 11586
250 11324
904 12713
918 11586
935 ..... 11055, 11588, 11589
944 12166

31 CFR
Proposed Rules:
51 11056

32 CFR
291a 12312
552 11722
701 11018
706 ..... 11303–11305, 12142–12144, 12515, 12516
834 12313

33 CFR
3 11914
66 11447
110 ..... 11726, 12313, 12314
117 12318–14320
146 11580
162 12314
165 ..... 11019, 11448, 11727
175 11580
181 11580

Proposed Rule:
100 11590
117 12342
166 11755

34 CFR
682 12764

Proposed Rules:
692 12480

38 CFR
18 12702
18a 12702
18b 12702
21 12321

39 CFR
Proposed Rule:
10 12343
111 11324

40 CFR
51 11414
52 ..... 11019, 11305, 12321–12323, 12517
60 ..... 11021, 11727, 12144, 12324
61 ..... 11021, 12144
131 11580
141 11396
142 11396
143 11396
166 11306
180 ..... 11306–11308, 11448, 12145, 12146
261 12148
799 11728

Proposed Rules:
50 11058
52 11756
180 12168
440 12344
721 11591
763 11947
766 12344
799 ..... 11756, 12344

41 CFR
50–201 12264
101–20 11022
101–38 11684
101–39 11022

42 CFR
57 ..... 11029, 12608
400 11581
405 ..... 11142, 11582
435 12325

Proposed Rules:
405 12714

43 CFR
2200 12609

Proposed Rules:
4 12168
431 12678

44 CFR
64 ..... 12152, 12612
65 ..... 12153, 12154
67 12155
302 12518

Proposed Rules:
61 12348
67 12175

45 CFR
Proposed Rules:
1178 11597

46 CFR
Proposed Rules:
381 12176
383 12176

47 CFR
0 ..... 12157, 12614
1 ..... 12157, 12614
2 12614
15 12614
18 12614
43 12157
65 11033
67 ..... 11035, 12702
68 12614
73 ..... 11037–11040, 11583, 11914–11917, 12159, 12160, 12614, 12616, 12703

Proposed Rules:
64 11948
69 11328
73 ..... 11058, 11072, 11598–11600, 11950–11956, 12176–12179, 12722
76 11073
90 11075
97 11759

48 CFR
1 12296
8 12292
22 12292
31 12296
52 12292
53 12292
242 12330
513 12704
553 12704
706 11449
716 11449
725 11449
752 ..... 11449, 12706

Proposed Rules:
31 12676
203 11760
209 11602
252 ..... 11602, 11760
904 11457
952 11457
970 ..... 11457, 11701
1401 11075
1405 11075
1406 11075
1408 11075
1414 11075
1415 11075
1419 11075
1420 11075
1428 11075
1437 11075
1452 11075
1453 11075

49 CFR
1 ..... 12617, 12618

301 12619
388 12619
389 12619
390 12619
391 12619
394 12619
395 12619
501 12706
541 11919
565 11309
571 ..... 11309, 11310
1023 12710

Proposed Rules:

172 12529
173 12529
571 11957
1042 12530
1312 11536

50 CFR

228 11737
619 11921
642 ..... 11041, 11310
650 ..... 11041, 11927
655 ..... 11451, 11742
663 12622
671 11041

Proposed Rules:

17 ..... 11761, 11874, 11880, 12180, 12184, 12444–12460
23 ..... 11328, 12350
611 12632
630 12632
683 12531

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List April 14, 1986.