

materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 1996.

Peter Caulkins,  
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.434, the table in paragraph (a) is amended by adding alphabetically an entry for stonefruit group to read as follows:

**§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.**

*	*	*	*	*
(a) *	*	*	*	*
Commodity				Parts per million
*	*	*	*	*
Stonefruit group .....				1.0
*	*	*	*	*
*	*	*	*	*

[FR Doc. 96-17576 Filed 7-9-96; 8:45 am]  
BILLING CODE 6560-50-F

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR PART 73**

[MM Docket No. 95-42; FCC 96-274]

**Digital Data Transmission Within the Video Portion of TV Broadcast Station Transmissions**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Order amends the Commission's Rules to allow broadcast television licensees to use approved methods of ancillary data transmission without prior Commission authorization. The methods approved in this Report and Order are two "overscan" systems, as proposed by Yes! Entertainment Corporation and A.C. Nielsen Company, and two "sub-video" systems, as proposed by Digideck, Incorporated and WavePhore, Inc. The intended effect of this rule is to permit the transmission of data streams in the NTSC television signal for a variety of uses, such as software and business data downloading, activation of interactive toys, and program identifying and tracking.

**EFFECTIVE DATE:** July 10, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jim McNally, Gordon Godfrey, or Paul Gordon, Mass Media Bureau, Policy and Rules Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report

and Order, FCC 96-274, adopted June 21, 1996 and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

**Synopsis of Order**

1. This Report and Order amends the Commission's Rules to allow broadcast television licensees to use approved methods of ancillary data transmission without prior Commission authorization. Examination of this issue was raised in the *Notice of Proposed Rule Making* in this proceeding.<sup>1</sup> Two of the newly approved types of systems involve "overscan" methods, and the other two use a "sub-video" method. These methods, as well as a "signal substitution" method proposed by En Technology Corporation (En), will be further described below. We do not have a basis for imposing a government-imposed standard for digital data at this time.

*Background*

2. 47 CFR 73.646 allows the transmission, without prior Commission consent, of ancillary telecommunications services within the Vertical Blanking Interval (VBI) (Line 1 through Line 21) of television broadcast signals. The VBI precedes the active video portion of the standard NTSC television signal. In contrast, data transmission systems operating within the active video portion of the television picture have been authorized only on a case-by-case basis, in order to protect the public's ability to receive high-quality over-the-air video broadcast transmissions. Various parties have now asked the Commission to permit broadcasters to employ new data transmission systems utilizing the active video portion of the television picture.

3. *Overscan.* Ancillary data transmitting systems using the "overscan" method function by replacing the transmitted video signal with digitally encoded information in an area on the perimeter of the picture, not normally seen by viewers because it is masked off by the television cabinet. Line 22, the first line of active video, has traditionally been used for this purpose and Yes! proposes to use the extreme left edge of the picture

<sup>1</sup> 60 FR 24606, May 9, 1995.

similarly. Nielsen has been using line 22 since 1989, under temporary, conditional authority, to transmit the Nielsen Automated Measurement of Lineup (AMOL) system signal identification codes, and is seeking permanent authority for this use.

4. *Sub-video.* Sub-video systems distribute the ancillary signals throughout the visible picture. The amplitudes of these signals are kept sufficiently low (or are confined to such a limited part of the normally emitted video spectrum bandwidth) that they are supposed to be imperceptible to the viewer. WavePhore and Digideck have developed different sub-video systems. Both systems continue to be examined by the National Data Broadcasting Committee (the Committee), an entity formed in 1993 by the National Association of Broadcasters and the Consumer Electronics Group of the Electronic Industries Association.

#### *Authorizing Ancillary Services*

5. The Commission approves the use of the Yes!, Nielsen, Digideck and WavePhore signal transmission systems, as presented in this proceeding, by all television broadcast stations, including low power TV stations. It retains the authority to direct licensees to take corrective action should the ancillary transmissions unacceptably harm picture quality or cause interference to other stations. According to the Commission, this action is not inconsistent with others' ongoing efforts to develop a coherent national standard recommendation for certain data services.

#### *Authorization of Specific Systems*

6. The problem-free operation of previous overscan systems verifies the inherently innocuous nature of their use and prompts the Commission to approve the use of the Yes! system and to grant permanent authority to Nielsen for its AMOL system to be used on line 22 on a non-exclusive basis. Further, the Commission does not set a technical standard or sharing criteria for Line 22 overscan systems, as had been requested by Airtrax in a related petition.

7. The Commission found that sub-video systems, apparently also can operate as proposed without causing material picture degradation or increasing the host station's potential for causing interference. Approval of the use of these systems is based on the favorable results of the National Data Broadcasting Committee's laboratory testing and on the Commission reliance that broadcasters will continue to exercise full technical control over their signals and will be responsible for

operating in a manner that does not increase their stations' potential for causing interference or degrade picture quality.

8. The Commission decided not to delay the deployment of these systems in order to set a mandatory standard or standards, given that they will be directed, at least initially, either to subscribers of a particular service or to viewers who have purchased special equipment to receive the signals. Should more general-consumer oriented services be developed in the future, it can reexamine the issue of standards in that context.

9. Data insertion systems must protect the integrity of closed captioning signals on line 21. Any data insertion must be accomplished in a manner that leaves the licensee with the capability to modify, reduce, or eliminate the data insertion if necessary to terminate any interference caused, or to restore the quality of a degraded picture.

#### *Licensees' Rights and Obligations*

10. Ancillary signals may be analog or digital, and they can be used to provide broadcast, point-to-point, or point-to-multipoint services. Services that are common carrier in nature are subject to common carrier regulation. Licensees that desire to operate in a common carrier mode must apply to the Commission for the appropriate authorization and comply with all policies and rules applicable to the particular service. Each licensee must retain ultimate control over the content of any inserted data and retain the ability to remove ancillary information from the signal when it deems necessary, unless the ancillary services are common carrier in nature.

11. Signals that are intended for an audience needing special equipment or who must subscribe to the service do not constitute "broadcasting." For example, the rule addressing the lowest unit charge for political candidates does not apply to these transmissions. At the same time, however, if significant public interest uses of this ancillary transmission technology suggest themselves, the Commission may consider means by which to advance or ensure such usage of the broadcast spectrum.

#### *Miscellaneous Issues*

12. Comsat expressed concern about sub-video data insertion causing problems where analog video is converted to digital video for program distribution, which may also be a concern for possible future consumer digital VCRs. Because industry participants have sufficient interest and

the greatest expertise to resolve these issues, the Commission does not see a specific role for it to play at this point.

13. A proposal by Radio Telecom and Technology, Inc. to include its "reverse VBI" technology in this proceeding is beyond the proper scope of this proceeding and is not included in the instant consideration.

14. One commenting party, En Technology, submitted information regarding its "Malachi" system. The Malachi system would typically replace many lines, or portions of lines, and thus be quite perceptible to the viewer. Such a system raises additional issues regarding spectrum allocation and use that have not been addressed in this proceeding, and it would appear to go beyond the scope of the operational flexibility proposed in the *NPRM*. Accordingly, the Commission does not authorize use of the En system in this *Report and Order*.

#### *Ordering Clause*

15. Therefore, *it is ordered that*, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 73 of the Commission' Rules and Regulations IS AMENDED as set forth below.

16. *It is further ordered that* the requests of A.C. Nielsen Company and Yes! Entertainment Corporation for the Commission to allow television broadcast licensees to use their respective overscan ancillary data transmission systems without prior Commission authorization ARE GRANTED to the extent indicated above, and in all other aspects ARE DENIED.

17. *It is further ordered that* the requests of WavePhore, Inc. and Digideck, Inc. for the Commission to allow television broadcast licensees to use their respective sub-video ancillary data transmission systems without prior Commission authorization ARE GRANTED to the extent indicated above, and in all other aspects ARE DENIED.

18. *It is further ordered that* the petition for Rule Making filed by Airtrax is dismissed.

#### *Final Regulatory Flexibility Act Analysis*

##### *I. Reason for Action*

In recent years, several new methods of embedding data within television video signals have been developed. These methods degrade television video by varying degrees, but only one of the methods is by design intended to be perceived by viewers. The Commission is acting to provide for such services

that do not significantly degrade the television picture because it believes its broadcast licensees have the qualifications and experience to determine which of the new systems are maximally compatible with their primary broadcast obligations and may yet be used to provide additional information services to segments of the public.

*II. Objectives*

The action taken herein provides an interim standard for the use of the above-described data transmission technologies and is intended to benefit broadcasters and the generally small entities which are believed to be the most likely providers of ancillary data services.

*III. Legal Basis*

The action taken is authorized by Sections 4 (i) and (j), 302, 303 and 403 of the Communications Act of 1934, as amended.

*IV. Description, Potential Impact and Number of Small Entities Affected*

Many broadcasters are considered to be small business entities. Thus, several thousand licensees of television broadcast facilities of all types (commercial and educational VHF and UHF stations, translators, boosters and Low Power TV stations) could benefit from the rule amendments herein adopted. Most providers of the data services envisioned herein are also expected to fall within the classification of a "small business entity," at least initially. Their number is unknown, but may amount to several hundred over the next few years.

*V. Recording, Record Keeping and Other Compliance Requirements*

No comments specifically addressed the Initial Regulatory Flexibility Analysis. No new record-keeping or compliance requirements are imposed by the new rules.

*VI. Federal Rules which Overlap, Duplicate or Conflict With this Rule*

None.

*VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With the Stated Objectives*

None.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

Rule Changes

Title 47 of the Code of Federal Regulations Part 73 is amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

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

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.621 is amended by revising paragraph (f) to read as follows:

**§ 73.621 Noncommercial educational TV stations.**

\* \* \* \* \*

(f) Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal. The provisions governing VBI and visual signal telecommunications service in § 73.646 are applicable to noncommercial educational TV stations.

\* \* \* \* \*

3. Section 73.646 is amended by revising the section heading and paragraphs (a), (b), (d), (e) and (f) to read as follows:

**§ 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.**

(a) Telecommunications services permitted on the vertical blanking interval (VBI) and in the visual signal include the transmission of data, processed information, or any other communication in either a digital or analog mode.

(b) Telecommunications service on the VBI and in the visual signal is of an ancillary nature and as such is an elective, subsidiary activity. No service guidelines, limitations, or performance standards are applied to it. The kinds of service that may be provided include, but are not limited to, teletext, paging, computer software and bulk data distribution, and aural messages. Such services may be provided on a broadcast, point-to-point, or point to multipoint basis.

\* \* \* \* \*

(d) Television licensees are authorized to lease their VBI and visual signal telecommunications facilities to outside parties. In all arrangements entered into with outside parties affecting telecommunications service operation, the licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems

inappropriate or undesirable. The licensee or permittee is also responsible for all aspects of technical operation involving such telecommunications services.

(e) The grant or renewal of a TV station license or permit will not be furthered or promoted by proposed or past VBI or visual signal telecommunications service operation; the licensee must establish that its broadcast operation serves the public interest wholly apart from such telecommunications service activities. (Violation of rules applicable to VBI and visual signal telecommunications services could, of course, reflect on a licensee's qualifications to hold its license or permit.)

(f) TV broadcast stations are authorized to transmit VBI and visual telecommunications service signals during any time period, including portions of the day when normal programming is not broadcast. Such transmissions must be in accordance with the technical provisions of § 73.682.

4. Section 73.682 is amended by adding paragraph (a)(24) to read as follows:

**§ 73.682 TV transmission standards.**

(a) \* \* \*

(24) Licensees and permittees of TV broadcast and low power TV stations may insert non-video data into the active video portion of their TV transmission, subject to certain conditions:

(i) The active video portion of the visual signal begins with line 22 and continues through the end of each field, except it does not include that portion of each line devoted to horizontal blanking. Figures 6 and 7 of § 73.699 identify the numbered line referred to in this paragraph;

(ii) Inserted non-video data may be used for the purpose of transmitting a telecommunications service in accordance with § 73.646. In addition to a telecommunications service, non-video data can be used to enhance the station's broadcast program service or for purposes related to station operations. Signals relating to the operation of TV stations include, but are not limited to program or source identification, relay of broadcast materials to other stations, remote cueing and order messages, and control and telemetry signals for the transmitting system; and

(iii) A station may only use systems for inserting non-video information that have been approved in advance by the Commission. The criteria for advance approval of systems are as follows:

(A) The use of such signals shall not result in significant degradation to any portion of the visual, aural, or program-related data (closed captioning) signals of the television broadcast station;

(B) No increase in width of the television broadcast channel (6 MHz) is permitted. Emissions outside the authorized television channel must not exceed the limitations given in § 73.687(e). Interference to reception of television service either of co-channel or adjacent channel stations must not increase over that resulting from the transmission of programming without inserted data; and

(C) Where required, system receiving or decoding devices must meet the TV interface device provisions of Part 15, Subpart H of this chapter.

(iv) No protection from interference of any kind will be afforded to reception of inserted non-video data.

(v) Upon request by an authorized representative of the Commission, the licensee of a TV station transmitting encoded programming must make available a receiving decoder to the Commission to carry out its regulatory responsibilities.

\* \* \* \* \*

5. Section 73.1207 is amended by revising paragraph (b)(2) to read as follows:

**§ 73.1207 Rebroadcasts.**

\* \* \* \* \*

(b) \* \* \*

(2) Permission must be obtained from the originating station to rebroadcast any subsidiary communications transmitted by means of a multiplex subcarrier or telecommunications service on the vertical blanking interval or in the visual signal of a television signal.

\* \* \* \* \*

6. Section 73.3613 is amended by revising paragraph (e) to read as follows:

**§ 73.3613 Filing of contracts.**

\* \* \* \* \*

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the sale of television broadcast time to "time brokers" for resale; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and

special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

[FR Doc. 96-17562 Filed 7-9-96; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**48 CFR Part 231**

[DFARS Case 96-D314]

**Defense Federal Acquisition Regulation Supplement; Individual Compensation**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8086 of Public Law 104-61 by placing a ceiling on allowable individual compensation under DoD contracts that are awarded after July 1, 1996, when payments are from funds appropriated in fiscal year 1996.

**DATES:** *Effective date:* July 10, 1996.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before September 9, 1996, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D314 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Haberlin, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 8086 of the National Defense Appropriations Act for Fiscal Year 1996 (Pub. L. 104-61) limits allowable costs for individual compensation to \$200,000 per year unless the Office of Federal Procurement Policy (OFPP) establishes in the Federal Acquisition Regulations guidance governing the allowability of individual compensation. On June 10, 1996, OFPP advised that it has determined that it will not alter the \$200,000 ceiling on allowable individual compensation costs contained in the Public Law. This

restriction applies to DoD contracts awarded after July 1, 1996, when payments are from funds appropriated in fiscal year 1996.

The interim DFARS rule amends DFARS Subpart 231.2, Contracts with Commercial Organizations; Subpart 231.3, Contracts with Educational Institutions; Subpart 231.6, Contracts with State, Local, and Federally Recognized Indian Tribal Governments; and Subpart 231.7, Contracts with Nonprofit Organizations, to implement the statutory ceiling on allowable individual compensation costs. In supplementing the cost principle at FAR 31.205-6, this DFARS rule relies upon the definition of compensation found in the FAR cost principle.

**B. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 8086 of the National Defense Appropriations Act for Fiscal Year 1996 (Pub. L. 104-61) and applies to all DoD contracts issued after July 1, 1996. An interim rule is necessary to ensure that DoD contracting activities become aware of the statutory ceiling on allowable individual compensation costs when forward pricing contracts which will be awarded after July 1, 1996, using fiscal year 1996 funds. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

**C. Regulatory Flexibility Act**

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and therefore the cost principles do not apply. In addition, this interim DFARS rule applies only to DoD contractors who incur individual compensation costs in excess of \$200,000 per year in performing new contracts awarded after July 1, 1996, using funds appropriated in fiscal year 1996. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted