capsules, and the third for selenium disulfide shampoo. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 41-587 for Vet-Kem T-113 (butonate liquid), NADA 94-777 for Zodiac 3 in 1 Worm Capsules (dichlorophene/toluene), and NADA 103-434 for Vet-Kem Selenium Disulfide Shampoo, all held by Zoecon Corp., 12200 Denton Dr., Dallas, TX 75234. The sponsor requested withdrawal of approval of the NADA's. This document removes 21 CFR 520.240 and amends 21 CFR 520.580(b)(1) and 524.2101(c) to reflect the withdrawal of approval of these NADA's.

List of Subjects in 21 CFR Parts 520 and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 524 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.240 [Removed]

2. Section 520.240 *Butonate liquid* is removed.

§ 520.580 [Amended]

3. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "011536,".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

4. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.2101 [Amended]

5. Section 524.2101 *Selenium disulfide suspension* is amended in paragraph (c) by removing "011536,".

Dated: July 26, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93-18278 Filed 7-30-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Parts 1200, 1204, and 1205

[NHTSA Docket No. 93-55, Notice 2]

RIN 2127-AD55

Uniform Procedures for State Highway Safety Programs

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule establishes a system of uniform procedures governing approval, implementation, and management of State highway safety programs. It implements the Department's rule concerning the administration of grants with State and local governments as it applies to highway safety programs, updates and codifies existing procedures, and deletes obsolete provisions.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Adele Derby, Associate Administrator for Regional Operations, 202-366-2121; John Donaldson, Office of the Chief Counsel, 202-366-1834. In FHWA, Mila Plosky, Office of Highway Safety, 202-366-6902; Wilbert Baccus, Office of the Chief Counsel, 202-366-0780.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1966, the Highway Safety Act of 1966 (the Act) (23 U.S.C. 401 *et seq.*) was enacted into law. Section 402 of the Act establishes a formula grant program to improve highway safety in the States. As a condition of the grant, the States must meet certain requirements. Section 402(a) of the Act requires each State to have a highway safety program approved by the Secretary of Transportation, which is designed to reduce traffic accidents and the deaths, injuries, and property damage resulting from those accidents. Section 402(b) of the Act sets forth the minimum requirements with which the State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration, through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year. The enforcement of these and other requirements is entrusted to the Secretary.

The Secretary's authority under section 402 of the Act has been delegated to the Administrators of the National Highway Traffic Safety Administration and the Federal Highway Administration ("the agencies") for highway safety programs within their respective jurisdictions. In carrying out their delegated duties, the agencies have, over time, issued regulations, orders, program manuals, and guidance memoranda implementing the requirements of section 402 and establishing procedures for the Administration of State highway safety programs. The issuance of guidance materials had continued as the concept of the State highway safety program has evolved, with the result that guidance or procedures governing the section 402 program appear in a variety of different documents, many of which are now obsolete. The continuing presence of potentially conflicting guidance has led to confusion among some States as to current procedures.

On March 11, 1988, Federal grant-making agencies issued a common rule requiring consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments. The Department of Transportation's codification of that rule, with specific exceptions applicable to its programs (49 CFR part 18, "the Common Rule"), became effective, in part on March 12, 1988, and in full on October 1, 1988. The Common Rule directed some fundamental changes in the administration of grants and cooperative agreements with State, local, and Indian tribal governments. Embodying the principle of Federalism, it provided that in the areas of financial management, equipment, procurement, and administration of subgrants, States would expend and account for grant funds in accordance with their own laws and procedures. On July 14, 1988, a Departmental Order (DOT Order 4600.9C) directed each of the modal administrations to implement the Common Rule, as it applies to agency grant programs.

The agencies appointed a task force to explore options for achieving greater regional uniformity in the procedural implementation of the program. The task force also considered the effects of the Common Rule on the agencies' then current program management procedures and determined that some changes in those procedures would be necessary. The task force recommended that uniform procedures for the approval, procedural implementation, and administration of the section 402 program, consistent with both section 402 of the Act and the provisions of the Common Rule, be codified in a rule and that inconsistent or obsolete materials be rescinded.

To implement the recommendations of the task force and the provisions of DOT Order 4600.9C, the agencies published a joint notice of proposed rulemaking (NPRM) (56 FR 29593) on June 28, 1991. The notice included procedures for the submission, content, and approval of the State highway safety plan (the HSP) (the document in which the State describes its proposed highway safety program and applies for Federal funds), and general requirements for implementation of the program. The notice also proposed to delete supplements A through I to 23 CFR 1204.4, which contain inconsistent and outdated information, intending that the applicable provisions of the proposed rule supersede these supplements. Finally, the notice proposed revisions to 23 CFR 1205 that would not affect existing procedures, but would permit reorganization of some of its provisions under appropriate sections of proposed part 1200.

A significant goal of the proposed rule was to achieve uniformity in the procedural implementation of the section 402 program. The agencies also hoped to clarify the application of certain sections of the Common Rule to the section 402 program's unique administrative requirements. However, no attempt was made to impose procedures which vary significantly from those that are currently being followed by the States and the agencies' field offices. With these guidelines in mind, the agencies solicited comments from interested parties on all aspects of the proposed rule. States were especially encouraged to submit comments on those portions that would implement the Federalism provisions of the Common Rule.

Discussion of Comments

The agencies received 16 responses to the NPRM—fourteen from states, through their cognizant highway safety offices, and two from safety organizations (Advocates for Highway and Auto Safety and the National Association of Governors' Highway Safety Representatives). In general, commenters expressed support for the effort to codify uniform procedures for administration of the section 402 program. Some commenters exhorted the agencies to continue the process by updating or rescinding inconsistent materials. The agencies have begun rescinding inconsistent or outdated agency orders, program manuals, and other materials. The process will be completed following publication of a final rule. The agencies will also review any guidance materials that should be updated rather than rescinded at that time.

The discussion of comments is organized under topic headings below. In the interest of brevity, State entities that submitted comments (e.g., the Governor's Office or Representative for Highway Safety, the State highway safety office) will be identified simply by the State name. The agencies appreciate the time taken by the commenters to share their thoughts and provide suggestions and recommendations.

Regional Uniformity (General)

South Carolina commented that the proposed procedures do not provide adequate guidance for program implementation. It argued that the original 18 Highway Safety Standards and NHTSA Order 462–13A provided some standard guidance as to what could be funded, without which the Regional Administrators would wield "complete approval authority," resulting in great disparity among regions with respect to funding decisions. Citing the Highway Safety Act's requirement for programs established in accordance with uniform standards expressed in terms of performance criteria, South Carolina asked whether the Highway Safety Standards would remain in effect if the proposal is approved as written. Kentucky voiced essentially identical concerns. Both States urged the establishment of standardized funding criteria applicable to all regions. Similarly, the National Association of Governors' Highway Safety Representatives (NAGHSR) urged that management guidance from old orders and manuals be updated and combined, along with the regulations concerning National Priority Program Areas, in this document for ease of reference.

Congress amended the Highway Safety Act in 1987 (Pub. L. 100–17, 101 Stat. 218), substituting the term "guidelines" for the term "standards." In so doing, Congress recognized the need for broader flexibility in program implementation to accommodate the varying needs of different States. The original 18 Highway Safety Standards now serve as guidelines that the States may draw upon in fashioning their highway safety programs (see 23 CFR part 1204). The Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) adds several new guidelines, and permits their designation by the Secretary of Transportation as priority programs. The 18 guidelines, and any others that may be established from time to time, are unaffected by this rule, and remain an integral part of the section 402 program.

Similarly, this rule does not purport to change the effect of NHTSA Order 462–13A, Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments. The NHTSA order implements OMB Circular A–87, which is cited by the Common Rule as the applicable guidance for determining allowable costs for State, local, and Indian tribal governments. Some portions of NHTSA Order 462–13A may be updated, as necessary, but it, too, remains fully applicable to the section 402 program.

It is worth reemphasizing what this rule seeks to achieve, as set forth in the preamble to the NPRM. It establishes uniform procedures governing approval, implementation, and management of State highway safety programs. As a predominantly procedural document, it generally does not specify what items or programs are to be approved, implemented, or managed, but merely designates how these actions are to be accomplished. Hence, the comments that standardized funding criteria and updated guidelines applicable to all regions (i.e., uniform criteria governing what can be funded) should be developed are beyond the scope of this rule. In any event, substantive or programmatic guidance for the section 402 program is to be found in other readily available materials, including adjacent parts of 23 CFR chapter II and OMB and agency directives. Upon publication in the Code of Federal Regulations, this rule will be located in close proximity to the provisions concerning National Priority Program Areas.

Even with existing substantive guidance, the agencies acknowledge that variations in approved programs or funding exist among regions. This is to be expected, as guidance providing that an item or program is fundable does not guarantee approval for the requester. The approving officials consider many extenuating factors, based on differing State or regional circumstances. In the context of the section 402 program, where approving officials strive to ensure the most efficient use of limited resources on a State-by-State basis, we do not view these variations as undesirable.

Nor do we believe that regional variations are symptomatic of an abuse of discretion by Regional Administrators, as is implied by South Carolina's comment that a program approved in one region and denied in another might be based "solely upon the Regional Administrator's personality or whims." The section 402 program has been characterized, in large measure, by a close and cooperative working relationship between dedicated Federal and State officials. Nevertheless, in the event that a State feels aggrieved by a Regional Administrator's decision, it may avail itself of the appeal rights provided in this rule.

Definitions (Section 1200.3)

Maryland requested that the term "funded in whole or in part from 402 funds" be inserted after the word "project" in the definition of "Highway Safety Plan or HSP" and in the definition of "Highway Safety Program." According to Maryland, adding this limitation would maintain consistency with prior NHTSA/FHWA directives and current practice. The existing broad language already reflects current practice, under which States are encouraged to consider the "big picture" and plan on the basis of comprehensive countermeasures, by including activities associated with the programs of sections 153, 403, 408, and 410 in the HSP. The proposed change would reduce the likelihood of such comprehensive planning. Consequently, the comment has not been adopted.

Three-year HSP (Section 1200.10(a))

There was general support for the provision allowing States to submit a three-year HSP in lieu of the traditional one-year HSP. Several commenters thought it would enhance the State's long range planning efforts. Others had more specific concerns or recommendations.

Texas and Virginia emphasized that the three-year HSP should be optional, not required. The agencies intend for the submission of a three-year HSP to be solely at the State's election. If the State does not choose to submit a three-year HSP, it must submit a one-year HSP. Because the existing language is clear on this point, no change has been made. However, we have added a parenthetical provision in paragraph (a)(2) encouraging the States to give at least ninety days' notice to the approving officials if they intend to submit a three-year HSP.

Oregon urged flexibility in the three-year HSP option to accommodate States needing a one-year or two-year HSP. As explained above, complete flexibility exists for a State to select between a one-year and a three-year HSP. The agencies have not adopted the suggestion that States be allowed to submit a two-year HSP. We believe that the option for either a one-year or three-year HSP strikes the proper balance between flexibility for the States and the need to maintain some standardization in the submission and review process.

Massachusetts was concerned that subgrantees operating under a three-year HSP would rely upon funds being committed for the full three-year time period, notwithstanding the annual Federal appropriation and obligation cycle. In its view, a reduction in the appropriation or change in the focus in any year would cause program changes to occur. The agencies appreciate the concern that program adjustments may be necessary in the face of changes in the yearly appropriation. This has been the case from the inception of the section 402 program, as Federal funds have never been available for commitment in advance of the year of authorization. An extra measure of effort by the States to educate subgrantees about the funding process should resolve any misplaced reliance by subgrantees. The agencies are available to assist in the education process, as needed.

Supporting Financial Documentation (Section 1200.10(b)(6))

An ambiguity in the NPRM left it unclear what information was required of a State on HS Form 217, the Highway Safety Program Cost Summary, if it elected to submit a three-year HSP. Because section 402 funds are made available by the Congress on a fiscal year basis, a year-by-year breakdown of proposed program expenditures is required. Language has been added to clarify that an HS Form 217 is required for each year of proposed program expenditures under a three-year HSP.

Project Length (Section 1200.10(c)(2))

Louisiana expressed support for the project length provision, stating that it would provide clear and concise direction and support to State program staff when negotiating a project.

Texas disagreed with the prohibition against federally funding a project for more than six years, and recommended allowing continuation subject to NHTSA approval. For many years, the NHTSA has operated under the policy that Federal participation in a project under the section 402 program generally should be limited to three years. After that time period, the State should accept full financial responsibility for the continuation of meritorious projects. However, the NHTSA recognizes that certain projects demonstrating long range potential might deserve approval for Federal funding beyond three years. To more fully accommodate this concern, we have deleted the absolute six-year limitation. Approval will continue to be required, on a yearly basis, for extending projects beyond three years, and we have retained the requirement for an increase in the cost contribution by the State in subsequent years. The NHTSA anticipates that approval for extending a project beyond six years will occur only on rare occasions.

Ohio commented that a three-year project period might terminate prior to meeting the initial training needs of communities across the State. The existing language provides that training projects supporting activities within an identified program area are not subject to the project length requirements. Consequently, such projects may continue to be funded for as long as a bona fide need can be shown to exist for the training under the program area.

Oregon was concerned that the project length and approval requirements might be misconstrued to apply to section 408 projects or other projects not under the section 402 program. It requested that projects not subject to these limitations be clearly identified. State highway safety offices are encouraged to engage in comprehensive planning, by outlining all of their highway safety objectives in the HSP, including those falling within the purview of section 408 and other sections. However, the project length requirements of this rule are not intended to apply outside of the section 402 program. The language has been changed to clarify this point.

Review and Approval (Section 1200.11); Appointment and Obligation (Section 1200.12)

In general, commenters were pleased to learn of the agencies' contract authority, which enables a continuation of HSP activities despite Congressional appropriation delays. Maryland, however, was concerned that language in the prescribed HSP approval letter subjects the authorization to incur costs to the availability of funds, which seems to negate the assurances of program continuity provided in the preamble to the NPRM. The HSP approval letter does not constitute the vehicle by which Federal funds are obligated, because the approval occurs prior to the fiscal year during which the funds become available. Rather, the HSP approval letter serves to inform the State that its proposed program (i.e., the activities for which it plans to spend Federal funds when they become available) has been approved. Such advance approval is necessary to ensure that the State is free to proceed with its highway safety program when Federal funds become available at the beginning of the new fiscal year. The Federal obligation is completed, as provided by § 1200.12(c), only when the NHTSA or the FHWA Administrator distributes the funds under § 1200.12 (a) or (b) against approved program amounts. The standardized statement that is to appear in all HSP approvals and conditional approvals (§ 1200.11(b)(4)) has been modified to clarify that both HSP approval and distribution of funds are necessary to effect the obligation.

In further clarification of § 1200.12, the language setting forth the requirement for submission of HS Form 217 as a precondition for reimbursement has been moved from paragraph (c) to a new paragraph (d), and amplified to correct ambiguities in the NPRM. (The requirement for submission of HS Form 62, the Federal Aid Agreement, has been removed, and HS Form 217, The Highway Safety Program Cost Summary, has been revised, as explained below.) New paragraph (d) makes it clear that reimbursement is contingent upon the submission of an updated HS Form 217, containing information based on the funds actually available and distributed. Previously, it was possible to interpret the requirement as being satisfied by the first submission of HS Form 217, which accompanies the HSP and contains only estimated figures. A cross-reference to this clarifying language has also been added to the standardized language which is to appear in all HSP approvals (§ 1200.11(b)(4)).

In order to better accommodate the expedited obligation process prescribed under this rule, the updated HS Form 217 is now required to be submitted within 30 days (instead of 60 days) after the start of the fiscal year or the date of the HSP approval letter, whichever is later. The agencies believe that the very small added burden, if any, associated with the 30-day time frame is more than compensated by the advantages it confers in program implementation. We note, also, that the net burden to the States is reduced by the deletion of the requirement for submission of HS Form 62, as discussed below. New paragraph (d) of § 1200.12 provides that the updated HS Form 217 may not reflect a change from the approved HSP (except that it may reflect decreases across program areas to accommodate funding limitations) without requiring approval by the approving officials. This clarification does not impose any new approval requirements beyond those intended in the NPRM.

Because the Federal obligation occurs when the funds are distributed for use under the approved HSP on October 1, HS Form 62 is no longer needed for the section 402 program. The written HSP approval required under § 1200.11(b), the distribution of Federal funds under § 1200.12, and the requirement that HS Form 217 be submitted by the State when it seeks HSP approval (§ 1200.10(b)(6)), after distribution of Federal funds (new § 1200.12(d), and to document or request approval for program changes (§ 1200.13(b) and (c)), accomplish all the purposes for which HS Form 62 was designed. Moreover, in light of the expedited obligation process prescribed under this rule, the continued use of the form can lead only to confusion. It implies, wrongly, that additional approval is required after the distribution of Federal section 402 funds to obligate the funds against approved program amounts. Consequently, the submission of HS Form 62 will no longer be required of the States in the implementation of the section 402 program. Its use in any other programs under title 23, United States Code, is also no longer required. The agencies have made minor changes to HS Form 217 (e.g., the addition of signature blocks and updated instructions) to accomodate this change in procedures. HS Form 217 has been further revised to delete the requirement for continuous tracking of carry-forward funds. (See discussion under the heading Disposition of Unexpended Balances.)

Changes (Section 1200.13)

This section elicited the greatest number of comments. Some commenters thought that the provisions were unclear, too restrictive, burdensome to State and Federal program officials, that they would lead to regional inconsistencies in interpretation, or that they interfered with the State's discretion to run its own program. Comments are discussed by paragraph.

Section 1200.13(a)(1)—(Prior Written Approval Required for Any Revision Resulting in the Need for Additional Federal Funding)

Maryland questioned the usefulness of this provision, unless additional section 402 funds could be made available to a State through the HSP change process. A State may, in fact, obtain additional section 402 funds through the HSP change process. For example, a State might initially receive only partial approval of its HSP and, hence, only a partial obligation of funds, because distributed funds constitute a Federal obligation only to the extent of approved program amounts. Or, Congress might make available special earmarked funds not initially available when the HSP was submitted and approved. In these and other cases, changes in the HSP would likely be required to place the funds under obligation. The provision codifies a similar requirement in the Common Rule, and seeks only to make clear that Federal approval is always required for the use of Federal funds not already under obligation. To further clarify this point, the language of paragraph (a)(1) has been changed to make reference to "obligated" funds.

Section 1200.13(a)(2)—(Prior Written Approval Required for Any Extension of the Period During Which Costs May Be Incurred)

Pennsylvania questioned whether this provision's reference to § 1200.31 (extension of the HSP) applied to projects as well as to the HSP, and disagreed with any interpretation that would require all active projects to be terminated and restarted due to the expiration of the HSP. A request for extension of the HSP necessarily is a request for extension of projects subsumed under the HSP. Specifically, the State is requesting approval to continue incurring costs for projects under the HSP. However, there is no requirement that the State must terminate and restart a grantee's project, from a State-level approval perspective. If an extension is obtained or the project's continuation is rolled into the following year's HSP, such action should be unnecessary. The termination of one year's HSP and the beginning of another year's HSP is an artifice imposed by the Common Rule for Federal accounting purposes, and need not affect the State's project approval process. This point is further discussed under the heading Extension of the HSP. No substantive change has been made to the paragraph, though an editorial change has been made to ensure parallelism with adjacent clauses.

Ohio thought the purpose of this provision was unclear. Recognizing that the typical HSP covers an annual period, it believed it to be understood that movement of activity from one grant year to another requires Federal approval, whereas movement within a single grant year does not. Ohio's comment is only partially correct. It is correct that movement of activity from one grant year to another requires prior approval under this rule. However, Ohio should note that movement within a single grant year may also require prior approval, as provided elsewhere in this section. The provision at issue merely cross-references § 1200.31, which requires prior approval for extensions of the HSP, and is included so that all changes are referenced conveniently under one section. To that end, a new paragraph (a)(3) has been inserted to cross-reference § 1200.10(c)(2), which requires prior approval for funding NHTSA projects beyond three years.

Section 1200.13(a)(3)—(Prior Written Approval Required for Contracting Out, Subgranting, or Otherwise Obtaining Third Party Services Central to the Purposes of the HSP)

Ohio, Texas, Pennsylvania, and Maryland objected to or requested clarification of the proposed provision, which they viewed as unnecessarily intrusive and burdensome. Ohio agreed, however, that any work authorized by State agreements must appear in the HSP prior to its performance. Maryland criticized the provision for apparently requiring specific additional approval prior to each subgrant being awarded. The provision has been deleted as unnecessary, because appropriate Federal oversight is afforded by the restrictions of § 1200.13(a)(5).

Section 1200.13(a)(4)—(Prior Written Approval Required for Changes in Key Persons Specified in the HSP)

Ohio and Maryland questioned the need for this requirement, and Texas sought clarification. The agencies recognize that the requirement is confusing, because specific persons are not generally identified in the HSP. The requirement was intended to cover those rare occasions on which an activity might be approved precisely because of the participation of uniquely qualified named personnel. However, such cases may be accommodated under the conditional approval procedures of § 1200.11(b). Consequently, the provision has been deleted as superfluous.

Section 1200.13(a)(5)—(Prior Written Permission for any Change in the Scope or Objectives of a Project)

In the NPRM, the word "of" was inadvertently substituted for the word "or" in two places in the introductory paragraph. The provision should have read: "(5) Any change in the scope or objectives of a project. For the purposes of this paragraph, each of the following shall be considered a change in scope or objectives: * * *"

Pennsylvania thought the provision was ambiguous, due to the appearance of both the terms "project" and "program area," and asked whether the ten percent rule for changes applied at the project level or only at the program area level. The ten percent threshold is intended to apply at the program area level (i.e., the movement of funds between program areas requires prior approval when the ten percent threshold is exceeded for either the gaining or losing program area). The agencies agree with Pennsylvania that the choice of terminology does not make this result clear. Consequently, we have streamlined the provision concerning the ten percent threshold and it now appears as new paragraph (a)(4), without the introductory text concerning changes in scope or objectives of a project. This should greatly simplify the provision's application. We have also clarified that the threshold is based on the level of Federal funding, based on the amounts identified in the updated HS Form 217 required under new § 1200.12(d). The "scope or objectives" language, concerning approval of changes at the project level, appears in a subsequent paragraph, as discussed below.

Texas thought the ten percent threshold was more restrictive than required by law. In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 357), which directed the agencies to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing accidents, injuries, and fatalities. As a result of that rulemaking process, the so-called "national priority program areas" have been identified in part 1205 of this chapter. Congress contemplates that careful attention and oversight will be devoted to program areas. The agencies view cumulative changes affecting over ten percent of the funding of a program area as a sufficiently major change to the HSP to require prior Federal approval. We believe this requirement strikes the proper balance between State flexibility and adequate stewardship of Federal funds.

Maryland commented that the use of absolute rather than net values to determine the threshold for requiring approval of changes did not make sense. The use of absolute values was intended to trigger prior approval for changes on the basis of frequency of fund movements as well as absolute magnitude. The agencies reasoned that frequent small changes in a program area's funding (regardless of direction) could have as significant an impact as net changes in magnitude, and were therefore equally appropriate for Federal approval. However, in the interest of simplification and in order to afford the States wider latitude, we have removed the absolute value method of calculating changes. The amended language in new paragraph (a)(4) requires prior approval of changes which, when cumulated by simple addition, result in a net movement of funds (increase or decrease) exceeding ten percent of the approved Federal funding for the program area. Once the threshold is reached, all subsequent fund movements require prior approval (even if subsequent cumulation causes a dip below the threshold).

Ohio questioned the meaning of paragraphs (a)(5)(i) and (ii), in light of the existing requirement to document all obligations of funds to and/or movement of funds between program areas by submission of HS Forms 62 and 217. (As previously noted, there is no longer a requirement to submit HS Form 62 for the section 402 program.) The documentation, as distinguished from prior approval, of fund movements between program areas is an independent accounting requirement which applies whether or not the ten percent threshold has been reached. Paragraph (a)(5)(i) (now (a)(4)) would, in addition, require Federal approval before funds are moved when the ten percent threshold has been exceeded. As discussed below, paragraph (a)(5)(ii) has been deleted.

Maryland was unsure of the meaning of the term "training allowance" in paragraph (a)(5)(ii) and asked for clarification. The provision was intended to apply the ten percent threshold to changes in budgeted training funds supporting a program area. However, it has been deleted as superfluous, since such changes would be captured under the procedures of the ten percent threshold (new paragraph (a)(4)).

The NAGHSR thought that paragraph (a)(5)(iii), which concerns approval of project-level changes, was written far too broadly, and would create the potential for tremendous variation in program implementation by different Regional Administrators. NAGHSR strongly recommended that changes in project scope requiring prior approval be limited to those triggering the ten percent threshold. Pennsylvania, Maryland, and California urged that all Federal review be limited to the program area level, arguing that written approval at the project level would be unnecessarily burdensome and would curtail the State's flexibility. Maryland observed that projects often are refined at the time a project agreement is prepared, and sometimes scaled back if insufficient funds are available. Maryland also thought project level approval would deter adoption of multi-year HSPs, discourage specificity in the HSP, and encourage inconsistencies across regions.

As explained above, the ten percent threshold does not apply at the project level. However, the agencies believe that a redirection of the basic goals or effort underlying a Federally-funded project, irrespective of fund movements, is an important Federal concern, because it changes the assumptions upon which the grant agreement is based. The Federal Government must have the means to ensure that its funds are not being expended for purposes other than those under agreement. Consequently, the requirement for prior approval of project-level changes that alter the very nature of the project has been retained. However, we have restated it in terms of "scope or objectives," as it appears in the Common Rule and in the introductory text of paragraph (a)(5) in the NPRM. We have also included the parenthetical remark that appears in the Common Rule to clarify that the provision's application is independent of fund movement restrictions. The requirement appears as new paragraph (a)(5), and old paragraph (a)(5)(iii) has been deleted.

Maryland's specific concerns ignore the need for balance between the States' flexibility and the Federal Government's oversight. The fact that projects sometimes need refinement or must be scaled back by the State because of insufficient funds has no relevance to the determination of what level of prior approval is necessary for Federal oversight purposes. Moreover, we are not persuaded that the prior approval requirements would deter adoption of multi-year HSPs, because the choice of HSP document does not affect the level of review to which a highway safety program is subject. Similarly, we do not see how the level of review of changes would influence the level of specificity in the HSP. An HSP with insufficient specificity would normally trigger certain remedial requirements under the review and approval procedures of § 1200.11; it has little to do, in the first instance, with the "Changes" provisions.

In response to the NAGHSR's and Maryland's concerns about regional variations in program implementation, we reiterate that reasonable variations are to be expected and are desirable in light of differing State needs. We do not anticipate that the provision will be abused by regional officials, but remind NAGHSR that appeal rights are afforded elsewhere under this rule.

Changes (General)

South Carolina commented that the rule should authorize the Governor's Representative to make programmatic changes involving a subgrantee (presumably without prior Federal approval), provided there is no conflict with § 1200.13(a) or § 1200.31 and no change in the type of equipment needed. There is no need for such a provision in the rule. The Governor's Representative is free to make any programmatic changes in the State's highway safety program, provided they do not conflict with this rule or other applicable law.

Equipment (Section 1200.21)

South Carolina, Kentucky, and Oregon were concerned that there were no criteria governing what equipment is eligible for funding. As discussed under the heading Regional Uniformity, substantive funding criteria are beyond the scope of this rule. The equipment provisions speak only to title, use, management, and disposition. However, cost principles and other funding criteria appear in other documents, including Office of Management and Budget circulars and Federal regulations. These criteria apply according to the identity of the particular grantee, subgrantee, or contractor, and are referenced in the Common Rule at 49 CFR 18.22. Additional criteria are contained in applicable agency Orders. To clarify that these provisions remain fully applicable, a sentence has been added to § 1200.20.

Oregon sought clarification of "equipment inventory." Ohio viewed the equipment provisions as reasonable, but reserved the right to track the use of non-major equipment and to adopt the $5,000 threshold. In accordance with the provisions of this section, the $5,000 threshold as the distinction between major and non-major equipment. The rule does not impose any restriction on or otherwise interfere with State inventory procedures. To the contrary, it subjects the management and disposition of equipment (except Federally-owned equipment and equipment for which the Government has reserved the right to transfer title—see below) to State law. Consequently, a State is free to track equipment under its own procedures. Ohio does not need to elect to adopt the $5,000 threshold. In accordance with the provisions of this section, the $5,000 threshold is assumed unless a State elects to use a stricter threshold under applicable State laws.

To clarify that Federal procedures apply to the management and disposition of all Federally-owned equipment and to the disposition of all equipment for which the Government has reserved the right to transfer title, these provisions have been restated outside the paragraph concerning major equipment, where they appeared in the NPRM. As originally set forth, they conveyed, inaccurately, that Federal procedures applied in such cases only if the items constituted major equipment.

Virginia commented that allowing States to use their own thresholds to define equipment would result in a lack of uniformity in inventory procedures, and recommended a universal application of the $5,000 threshold. The agencies recognize that the use of varying State thresholds makes uniformity unattainable in this area. However, we are bound by the Federalism provisions of the Common Rule, which this rule implements. Under those principles, the Federal Government defers to State law concerning the management and disposition of equipment (except Federally-owned equipment and equipment for which the right to transfer title has been reserved), and allows a State the option to use its own definition of equipment, provided such definition would at least include all items falling within the Federal definition. Absent a written election to use the State definition, however, the $5,000 threshold would apply under the provisions of this section.

Vouchers and Project Agreements (Section 1200.22)

Texas requested clarification as to which project agreements would be required to accompany each voucher under § 1200.22. Maryland, Massachusetts, and Virginia believed that the requirement to submit project agreements was unnecessary and burdensome. Massachusetts noted that project agreements are available for review at the State highway safety office. To alleviate the potential for undue burden, the agencies have decided to delete the requirement that project agreements accompany each voucher. However, we have substituted new language requiring each State to make project agreements available for review upon request. Access to this information is needed to insure that Federal funds are being expended for approved purposes, and to track other restrictions, such as the project length limitation and the requirement for prior approval of changes in scope or objectives. In response to Texas' request for clarification, the term "project agreement" has been added to the definitions under § 1200.22.

Program Income (Section 1200.23)

Oregon requested clarification of program income, as it relates to subgrants awarded by the State highway safety office to State and local agencies. It believes that fiscal records for those subgrants should clearly show amount and source of program income and now it is expended. The agencies agree that States and their subgrantees must be accountable for program income. To that end, a requirement has been added to the Annual Evaluation Report, as discussed under that heading, for the State to identify any program income generated under a project and how such income was used.

Appeals (Section 1200.25)

Several commenters expressed support for the NHTSA appeals provision. Texas urged that similar provisions be added for the FHWA and for appeals needing joint resolution. The recommendation for an FHWA appeals provision has been adopted, and the section has been modified accordingly. The NHTSA appeals official has been changed from the Deputy Administrator to the Associate Administrator for Regional Operations. We do not adopt the recommendation for a joint appeals process, as the NHTSA and the FHWA bear independent responsibility for approving activities, depending on which agency's funds are involved.

Extension of the HSP (Section 1200.31)

Kentucky and South Carolina requested that a provision be included allowing the Governor's Representative to extend grants, provided extension do not exceed the Federal fiscal year or any extension granted by the approving authority. No such provision is needed, as the Governor's Representative is free to extend grants under an active HSP, provided the extension would not violate the NHTSA project length restrictions or any conditions imposed incident to the extension of an HSP.

Maryland stated that implementation of the HSP would be facilitated if project periods were allowed to correspond with the calendar year and closeout deadlines were revised accordingly. However, Maryland provided no explanation as to why it thought HSP implementation would be facilitated. The rule anticipates that projects will be closed out "fiscally" at the end of the grant period, unless an extension is granted. Work on a project may continue beyond one grant period under an extension or if the project is carried forward into the next grant period, but "fiscal" closeout must still take place to separate one grant period's activity from the next for Federal accounting purposes. Where projects are carried forward, States will need to obtain the concurrence of grantees to abide by the terms of the original grant in the new grant period. The procedure remains the same whether the grant period is the Federal fiscal year or any other accounting period. Consequently, we are aware of no facilitation that would occur from a change to calendar year accounting. We do not adopt the comment, as section 402 program funds are made available by Congress on a Federal fiscal year basis.

Final Voucher and Project Reports (Section 1200.32)

Maryland questioned the need for submission of individual project reports with the final voucher under § 1200.32. In order to streamline the closeout process and reduce the burden to the States, the agencies have decided to delete the requirement for the submission of project reports. Instead, the States will provide the relevant information in their Annual Evaluation Reports. The language of § 1200.32 has been changed to remove the project report requirement, and the language of § 1200.33 now includes certain additions to the Annual Evaluation Report, as discussed under that heading.

New Jersey argued that ninety days is insufficient time to process, audit, and compile final vouchers, due to limitations imposed by its own fiscal year, its accounting system, and its staff size. It cited examples of bills that, under State procedures, would not be received from its subgrantees in time to process for closeout. New Jersey also stated that the requirement that closeout of the prior year's HSP coincide with the start-up of the new fiscal year would be impossible to accomplish in an acceptable manner, because of staff limitations and the ninety-day time frame. The agencies do not believe that three months is an unreasonable amount of time to allow for closeout of a grant with a duration of only one year. Moreover, the workloads associated with the closeout of a prior year's HSP and the start-up of a new fiscal year do not, in fact, coincide. The HSP for the new fiscal year is required to be submitted by August 1 prior to the commencement of the fiscal year, whereas closeout activities for the prior fiscal year need not be completed until the following December 31, a span of five full months. The agencies recommend that New Jersey explore various options that would allow it to comply with these requirements. There are other States whose fiscal year differs from the Federal fiscal year, and we suggest that New Jersey consult with them.

Annual Evaluation Report (Section 1200.33)

Advocates for Highway and Auto Safety (Advocates) urged the agencies to retain the requirement for States to include statistical evidence of recent trends in fatal, injury, and property damage crashes in their Annual Evaluation Report. Advocates believes that imposing the requirement for its submission only in the subsequent HSP is not a sufficient substitute, because programs might be closed out and therefore escape statistical evaluation at that time, and because such evaluation would be less frequent in a three-year HSP. The proposed Annual Evaluation Report is an attempt to balance a legitimate Federal need for program information with the limited staff resources of the States. Other avenues exist for obtaining the statistical information. For example, the States must provide trend data in the HSP and cooperate with NHTSA in collecting data for the Fatal Accident Reporting System. The agencies believe this is sufficient. We do agree with Advocates that States submitting a three-year HSP should still be required to provide trend data on a yearly basis. Language has been added to §§ 1200.10(a)(2) and (b)(2) to clarify the requirement for submission of trend data in the HSP, or separately if the State has elected a three-year HSP cycle. We have also changed the language of paragraph (b) of this section to provide for the submission of project information in the Annual Evaluation Report, because of the deletion of the project report requirement. Finally, we have inserted a provision requiring the reporting of program income information, as previously discussed. These requirements fully meet the agencies' informational needs.

Maryland argued that the proposed submission date does not allow time for accident data analysis, which it collects on a calendar year basis. It recommended that the Annual Evaluation Report be submitted with the subsequent year HSP or by each August 1 for States submitting a three-year HSP. New Jersey commented that ninety days is insufficient time to accomplish both fiscal closeout and evaluation reporting. The Annual Evaluation Report is a measure of performance and, therefore, a significant part of the closeout process. For this reason, the agencies decline to move the deadline for its submission outside of the closeout process. Moreover, early submission of the report will assist the agencies in their reporting duties to the Congress. Much of what Maryland is seeking has been accommodated, since trend data need only be submitted with the subsequent year HSP. New Jersey is urged to explore all possible avenues for compliance.

Disposition of Unexpended Balances (Section 1200.34)

In the NPRM, the NHTSA proposed to relax the requirement that unexpended funds from previous years could only be carried forward into program areas that existed in the HSP from which the funds were reprogrammed. Ohio assumed the HS Form 217, the Highway Safety Program Cost Summary, would therefore no longer require a distinction to be maintained between current year and prior year funds. The requirement for States to continuously track prior year funds has been removed. However, all carry-forward funds must be identified by the program area from which they are removed on a one-time basis, as they are brought forward from the previous fiscal year. This is necessary for Federal accounting purposes. (Thereafter, the carry-forward funds need not continue to be so identified, unless they were specially earmarked by the Congress. HS Form 217 has been revised to delete the requirement for continuous tracking of carry-forward funds.) In the NPRM, this requirement was inadvertently included only in the preamble. It has been added to § 1200.34 to clarify that it is a necessary incident to the closeout process.

New Jersey requested a clear statement that any unexpended balances that are carried forward may be reprogrammed, at the discretion of the State, under program areas of a new HSP or the next year of a continuing three-year HSP. The comment has not been adopted. Reprogramming of unexpended balances is subject to the approval requirements of § 1200.11(b), as stated in the rule.

Miscellaneous

South Carolina commented that, because many States have delegated implementation of the section 402 program to lower levels of State government, "it is not the Governor's program and the Governor's Representative does not truly represent the Governor." The statute governing the section 402 program requires the Governor of the State to be responsible for administration of the program, and a certification to that effect is made by each State in the HSP. Delegation of the day-to-day responsibility for the program to a lower level does not affect the Governor's overall responsibility for the program, and the agencies will continue to look to the Governor as the individual with ultimate State authority.

In § 1200.3 of the NPRM, the term "carry-forward funds" was defined as "those funds which a State has obligated but not expended in the fiscal year in which they were apportioned, that are being reprogrammed to complete ongoing activities."

The agencies have deleted the phrase "to complete ongoing activities" from the definition, because carry-forward funds are not so limited.

Rulemaking Analyses and Notices

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. Highway safety is a national concern, and for this reason, Congress directed the Secretary of Transportation to ensure the implementation of effective State highway safety programs. In this rule, we increase the flexibility of the States by implementing the procedures of a Common Rule for the administration of grants to State and local governments which has as its basis the principles of Federalism. The latter rule recognizes that States possess unique constitutional authority, resources, and competence to administer national grant programs, and provides for the application of State laws and procedures to many aspects of grant administration.

Economic Impacts

The agencies have analyzed the effect of this action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rule will not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Regulatory Impact Analysis nor a full Regulatory Evaluation is required.

Impacts on Small Entities

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. States will be the recipients of any funds awarded under the regulation and, accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Environmental Impacts

The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

Paperwork Reduction Act

The requirement relating to this rule, that each State must submit a Highway Safety Plan and related materials to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Accordingly, this information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The requirement has been approved through July 31, 1995; OMB Control No. 2127–0003. The agencies are currently seeking approval for an amended information collection requirement, with a consolidated form that would be less burdensome.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Parts 1200, 1204, and 1205

Grant programs—transportation, Highway safety.

For the reasons set out in the preamble, title 23, chapter II of the Code of Federal Regulations is amended as set forth below.

1. Subchapter A, part 1200, is added to read as follows:

SUBCHAPTER A—PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

PART 1200—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

Subpart A—General

§ 1200.1 Purpose.

This part establishes the requirements governing submission and approval of State Highway Safety Plans and prescribes uniform procedures for the implementation and management of State highway safety programs.

§ 1200.2 Applicability.

The provisions of this part apply to States conducting highway safety programs in accordance with 23 U.S.C. 402, beginning with Highway Safety Plans for Fiscal Year 1994.

§ 1200.3 Definitions.

As used in this subchapter—

Annual evaluation report means the report submitted each year by each State which describes the accomplishments of its highway safety program for the preceding fiscal year.

Approving official means a Regional Administrator of the National Highway Traffic Safety Administration for issues concerning NHTSA funds or program areas and a Division Administrator of the Federal Highway Administration for issues concerning FHWA funds or program areas.

Carry-forward funds means those funds which a State has obligated but not expended in the fiscal year in which they were apportioned, that are being reprogrammed.

Contract authority means the statutory language which authorizes the agencies to enter into an obligation without the need for a prior appropriation or further action from Congress. When exercised, contract authority creates a binding obligation on the United States for which Congress must make subsequent appropriations in order to liquidate the obligations incurred pursuant to this authority.

Contractor means the recipient of a contract or subcontract under the HSP.

FHWA means the Federal Highway Administration.

Fiscal year means the Federal fiscal year, consisting of twelve months beginning each October 1 and ending the following September 30.

Governor means the Governor of any of the fifty States, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

Governor's Representative means the Governor's Representative for Highway Safety, the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), an official of the Bureau of Indian Affairs who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

Highway Safety Plan or *HSP* means the section 402 grant application document consisting of the plan submitted by a State describing the State's highway safety problems, identifying countermeasures, and detailing the projects the State plans to undertake which implement those countermeasures.

Highway safety program includes all of the projects planned or undertaken by a State or its subgrantees or contractors to address highway safety problems in the State.

Major equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit, or such other definition as a State may elect in accordance with the procedures in § 1200.21(c)(1) of this part.

National Priority Program Area means a program area identified in § 1205.3 of this chapter as eligible for Federal funding pursuant to 23 U.S.C. 402 because it encompasses a major highway safety problem which is of national concern and for which effective countermeasures have been identified.

NHTSA means the National Highway Traffic Safety Administration.

Non-major equipment means all tangible, personal property which does not meet the definition of major equipment, including supplies.

Program area means any area, including but not limited to a National Priority Program Area, which is eligible or approved for Federal funding pursuant to 23 U.S.C. 402.

Program income means gross income received by the State or any of its subgrantees or contractors which is directly or indirectly generated by a Federally-supported project during the project performance period.

Project means any of the activities proposed or implemented under an HSP to address discrete or localized highway safety problems falling within one or more program areas.

Project agreement means the written agreement between a State and a subgrantee or contractor under which the State agrees to provide section 402 funds in exchange for the subgrantee's or contractor's performance of one or more projects supporting the section 402 program.

Reprogramming means applying carry-forward funds to projects in a fiscal year subsequent to the one for which the funds were originally apportioned to the State.

Section 402 means section 402 of title 23 of the United States Code.

State means any of the fifty States of the United States, the District of

Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

Subgrantee means a recipient of an award of financial assistance by a State in the form of money, or equipment in lieu of money, under an HSP.

Subpart B—The Highway Safety Plan

§ 1200.10 Preparation and submission.

(a) *Time period covered by the HSP.* (1) Except as provided in paragraph (a)(2) of this section, a State shall submit an HSP for each fiscal year. The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be one fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part.

(2) A State may elect to submit an HSP once every three fiscal years, provided advance notice is given to the approving officials. (States are encouraged to provide notice of at least 90 days.) The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be three consecutive fiscal years, unless extended in accordance with the provisions of § 1200.31 of this part. Obligation of Federal funds and authority to incur costs, however, shall be based on each fiscal year. A State submitting a three-year HSP shall, nevertheless, submit the trend data required by paragraph (b)(2) of this section on August 1 of each year.

(b) *Content of the HSP.* Each State's HSP shall contain the following elements: (1) *Certifications and assurances.* A statement containing certifications and assurances shall be signed by the Governor's Representative and shall satisfy the requirements of 49 CFR part 18 and other applicable law. A sample statement, which may from time to time be amended to reflect changes in applicable law, shall be made available by each approving official.

(2) *Problem identification summary.* The problem identification summary will highlight highway safety problems throughout the State and briefly describe the countermeasures the State will employ to address these problems. It shall be supported by statistical evidence of recent trends in fatal, injury, and property damage crashes.

(3) *Description of and justification for program areas to be funded.* A State may identify and seek funding for projects, and related equipment purchases, within any National Priority Program Area or any other program area. National Priority Program Areas are identified in § 1205.3 of this chapter. Other program areas may, from time to time, be identified by statute, by rule, or by a State. For each program area for which Federal funding is sought, the following procedures shall apply:

(i) For National Priority Program Areas, the funding procedures at § 1205.4 of this chapter.

(ii) For program areas identified by statute, the funding procedures prescribed by the statute and implementing regulations or, in the absence of prescribed procedures, the funding procedures at § 1205.4 of this chapter.

(iii) For program areas identified by a State and not falling within paragraphs (b)(3)(i) or (b)(3)(ii) of this section, the funding procedures at § 1205.5 of this chapter.

(4) *Discussion of planning and administration needs.* Planning and administration needs shall be discussed in sufficient detail to justify proposed expenditures. Proposed and actual expenditures shall comply with the Federal contribution and State matching requirements of part 1252 of this chapter.

(5) *Description of training needs.* Training needed to support or further the objectives of the HSP should be described in adequate detail to justify proposed expenditures. Only training that supports or furthers the objectives of the HSP shall be eligible for funding.

(6) *Supporting financial documentation.* Financial documentation to be submitted with the HSP shall include the Highway Safety Program Cost Summary (HS Form 217) reflecting the State's proposed allocation of funds (including estimated carry-forward funds) among program areas and for planning and administration needs, completed in accordance with the form's written instructions, and such other financial documentation as may be required by law. A State electing to submit a three-year HSP shall include with the HSP, one completed HS Form 217 for each of the fiscal years covered by the three-year HSP.

(c) *Special funding conditions.* The planning and contents of an HSP shall reflect the following funding requirements:

(1) *Political subdivision participation.* Proposed expenditures under the HSP shall comply with the requirements for political subdivision participation contained in part 1250 of this chapter.

(2) *NHTSA project length.* NHTSA funding support under the section 402 program for a specific project under an HSP shall ordinarily not exceed three years. However, a funding extension beyond three years may be approved in writing by the NHTSA approving official on a year-by-year basis, provided the project has demonstrated great merit or the potential for significant long-range benefits and includes a cost assumption plan requiring, at a minimum, 35 percent non-Federal support for the fourth year and 50 percent non-Federal support for each year thereafter. A denial of a project funding extension shall be in writing by the NHTSA approving official and shall be subject to the appeal procedures of § 1200.25 of this part. The project length requirements are not applicable to planning and administration activities; program management (e.g., program area coordinators' or managers' oversight of the continuing development, implementation and evaluation of 402 or related State/locally supported activities); mandatory (earmarked) programs; training projects which support activities within an identified program area; or other activities which are required by Federal statute.

(d) *Due date.* The completed HSP must be received by the approving officials no later than August 1 preceding the fiscal year to which it applies or, in the case of a 3-year HSP, no later than August 1 preceding the first year to which it applies. For a State operating under a 3-year HSP, the trend data identified in § 1200.10(a)(2) and (b)(2) must be received by the approving officials on a yearly basis on August 1, and any other HSP updates for the second and third years which the State elects to submit must be received by the approving officials no later than August 1 preceding the fiscal year for which the updates apply. The State shall furnish three copies of its HSP (or trend data or HSP update, as appropriate) to each of its NHTSA and FHWA approving officials. Failure to meet these deadlines may result in delayed approvals.

(Approved by the Office of Management and Budget under Control Number 2127–0003)

§ 1200.11 Review and approval.

(a) *Review.* (1) Each approving official shall verify that each HSP complies with the basic requirements of § 1200.10 (b) and (c) of this part. Where an HSP is found not in compliance, the approving official will advise the State to take such action as is necessary to bring the HSP into compliance.

(2) An HSP determined to satisfy the basic requirements of § 1200.10 (b) and (c) of this part shall be further reviewed to ensure that the State has proposed a highway safety program which justifies the commitment of Federal funds. Each approving official shall have the

discretion to require further clarification or amendment of any portion of an HSP which does not adequately establish the existence of a bona fide highway safety problem, the selection of countermeasures and projects reasonably calculated to address the problem, and the efficient proposed use of Federal funds.

(3) Each approving official shall provide States with reasonable notice and opportunity to amend portions of HSPs which are found inadequate. Such notice and opportunity to amend shall facilitate the informal resolution of problems in the HSP, to the maximum extent practicable, before the time by which the approving official must render a written decision under paragraph (b)(2) of this section.

(b) *Approval/conditional approval/disapproval.* (1) If after reasonable notice and opportunity to amend pursuant to paragraph (a)(3) of this section, the approving official determines that a State has provided information in the HSP which is inadequate to justify a proposed use of Federal funds, or has failed to comply with other requirements of this part or applicable law, the approving official shall conditionally approve or disapprove the relevant portion(s) of the HSP, as appropriate. Otherwise, the approving official shall approve the HSP, except that in no case shall the approving official approve an HSP which is submitted without the statement required by § 1200.10(b)(1) of this part until receipt of such statement.

(2) Approval, conditional approval, or disapproval of the HSP, in whole or in part, shall be in writing, dated, and signed by the approving official(s), and shall be sent to the Governor, with a copy to the Governor's Representative, within 30 days after receipt of the HSP by the agency, unless extended by mutual agreement of the approving official(s) and the Governor's Representative.

(3) For any portion of the HSP which is conditionally approved or disapproved, a detailed explanation of conditions or reasons for disapproval shall be provided in writing by the approving official to the Governor's Representative. Conditional approval may include a requirement for project by project approval of federally funded activities.

(4) All approvals and conditional approvals sent to the Governor's Representative shall state the total Federal dollar amount of the program approved or conditionally approved and shall contain the following statement:

By this letter, (STATE)'s ____________ fiscal year 19____Highway Safety Plan, as submitted on (DATE) ____________, is hereby approved, subject to any conditions or limitations set forth below. This approval does not constitute an obligation of Federal funds for the fiscal year identified above or an authorization to incur costs against those funds. The obligation of section 402 program funds against the approved HSP will be effected in writing by the NHTSA/FHWA Administrator, as appropriate, at the commencement of the fiscal year identified above. However, Federal funds reprogrammed from a prior-year HSP will be available for immediate use by the State under the approved HSP on October 1. Reimbursement will be contingent upon the submission of an updated HS Form 217, consistent with the requirements of 23 CFR 1200.12(d), within 30 days after either the beginning of the fiscal year identified above or the date of this letter, whichever is later.

§ 1200.12 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute funds available for obligation under section 402 to the States and provide a statement of any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute a part of the funds authorized under section 402 contract authority to ensure program continuity and shall provide a statement of any conditions or limitations imposed by law on the use of the funds. Upon appropriation of section 402 funds, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, promptly adjust the apportionment, in accordance with law.

(c) The funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the states to satisfy the Federal share of expenses under an approved HSP, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document or in the written explanation of conditions required under § 1200.11(b)(3) of this part, and not exceeding the total dollar amount of the approved or conditionally approved program identified in § 1200.11(b)(4) of this part.

(d)(1) Notwithstanding the provisions of paragraph (c) of this section, reimbursement of State expenses shall be contingent upon the submission of an updated HS Form 217, within 30 days after either the beginning of the fiscal year or the date of the written approval required under § 1200.11(b) of this part, whichever is later. A State submitting a three-year HSP shall, nevertheless, submit the updated HS Form 217 on a yearly basis.

(2) The updated HS Form 217 required under paragraph (d)(1) of this section shall reflect the State's allocation of section 402 funds made available for expenditure during the fiscal year, including known carry-forward funds, except that—

(i) The total of the Federal funds reflected on the form shall not exceed the total Federal dollar amount of the approved program identified in § 1200.11(b)(4) of this part; and

(ii) None of the federally funded amounts identified under any of the program areas on the form shall exceed the federally funded amounts identified under the same program areas on the HS Form 217 submitted under § 1200.10(b)(6) of this part.

(3) An updated HS Form 217 not meeting the requirements of paragraph (d)(2)(i) or (d)(2)(ii) of this section shall be accompanied by such information as is necessary to explain the deviation and shall require approval, in writing, by the approving officials.

§ 1200.13 Changes.

(a) *Changes requiring prior approval.* Each State shall obtain the written approval of the approving official prior to implementing or allowing subgrantees or contractors to implement any of the following changes:

(1) Any revision which would result in the need for additional Federal funding beyond that which is already obligated or approved for reprogramming under the current HSP;

(2) Any extension of the period during which costs may be incurred under an HSP, as provided in § 1200.31 of this part;

(3) Any extension of the length of a NHTSA project beyond three years, as provided in § 1200.10(c)(2) of this part;

(4) Any movement of funds into or out of a program area which, either singly or netted with all past movements of funds, exceeds ten percent of the Federal funding for the program area (e.g., 8% in+3% out+7% in=12% net fund movement), provided that—

(i) For the duration of the HSP, the ten percent threshold for each program area shall be based on the total federally funded program amounts identified on the updated HS Form 217 required under § 1200.12(d) of this part, without regard to amounts contained on any later submitted or approved HS Form 217; and

(ii) Once the ten percent threshold is exceeded with respect to a given program area, all fund movements made thereafter with respect to that program area require prior approval; or

(5) Any change in the scope or objectives of a project (regardless of whether there is an associated fund movement requiring prior approval).

(b) *Approval procedures.* (1) States shall request prior approval for changes by submitting a written request to the approving official, accompanied by HS Form 217 and such other information as is necessary to explain the proposed change.

(2) The approving official shall indicate approval in writing to the Governor's representative, normally within 10 working days after receipt of the request.

(3) Subject to the appeal provisions of § 1200.25 of this part, the approving official may disapprove a change in writing, with a brief explanation of the reasons therefor. Any such disapproval shall normally be made within 10 working days after receipt of the request.

(c) *Procedures for changes not requiring prior approval.* States shall provide documentary evidence of changes not requiring prior approval to the approving official by submitting an amended HS Form 217 and such other information as is necessary to explain the change.

Subpart C—Implementation and Management of the Highway Safety Program

§ 1200.20 General.

Except as otherwise provided in this subpart and subject to the provisions herein, the requirements of 49 CFR part 18 and applicable cost principles govern the implementation and management of State highway safety programs carried out under 23 U.S.C. 402. Cost principles include those referenced in 49 CFR 18.22 and those set forth in applicable Department of Transportation, NHTSA, or FHWA Orders.

§ 1200.21 Equipment.

(a) *All equipment.* (1) *Title.* Except as provided in paragraphs (a)(3) and (b)(1) of this section, title to equipment acquired under the HSP will vest upon acquisition in the State or its subgrantee, as appropriate.

(2) *Use.* All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, as determined by the approving officials, and neither the State nor any of its subgrantees or contractors shall encumber the title or interest while such need exists.

(3) *Right to transfer title.* The NHTSA or the FHWA may reserve the right to transfer title to equipment acquired under the HSP to the Federal Government or to a third party when such third party is otherwise eligible under existing statutes. Any such transfer shall be subject to the following requirements:

(i) The property shall be identified in the grant or otherwise made known to the State in writing;

(ii) The NHTSA or the FHWA, as applicable, shall issue disposition instructions within 120 calendar days after the end of the project for which the property was acquired, in the absence of which the State shall follow the applicable procedures in 49 CFR part 18.

(b) *Federally-owned equipment.* In the event a State or its subgrantee is provided federally-owned equipment:

(1) Title shall remain vested in the Federal Government;

(2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted;

(3) The State or its subgrantee shall request disposition instructions from NHTSA or FHWA, as appropriate, when the item is no longer needed in the program.

(c) *Major equipment.* (1) *Choice of definition.* A State may elect to use its own definition of major equipment, provided such definition would at least include all items captured by the definition appearing in § 1200.3 of this part. Such election shall be made in writing by the Governor's Representative to the approving official, in the absence of which the definition in § 1200.3 of this part shall apply.

(2) *Management and disposition.* Subject to the requirements of paragraphs (a)(2), (b)(2), and (b)(3) of this section, States and their subgrantees and contractors shall manage and dispose of major equipment acquired under the HSP in accordance with State laws and procedures.

(d) *Non-major equipment.* Subject to the requirements of paragraphs (a)(2), (b)(2), and (b)(3) of this section and except as otherwise provided in 49 CFR 18.33, States and their subgrantees and contractors shall manage and dispose of non-major equipment acquired under the HSP in accordance with State laws and procedures.

§ 1200.22 Vouchers and project agreements.

Each State shall submit to the approving official vouchers for total expenses incurred, regardless of whether the State receives advance payments or is reimbursed for expenditures under the HSP. Copies of the project agreement(s) and supporting documentation for the vouchers, and any amendments thereto, shall be made available for review by the approving official upon request.

(a) *Content of vouchers.* At a minimum, each voucher shall provide the following information for expenses claimed in each program area:

(1) Program Area/Project Number;

(2) Federal funds obligated;

(3) Amount of Federal funds allocated to local benefit (provided mid-year (by March 31) and with the final voucher);

(4) Cumulative Total Cost to Date;

(5) Cumulative Federal Funds Expended;

(6) Previous Amount Claimed;

(7) Amount Claimed this Period;

(8) Special matching rate (i.e., sliding scale rate) authorized under 23 U.S.C. 120(a), if used, determined in accordance with the applicable NHTSA Order.

(b) *Submission requirements.* At a minimum, vouchers shall be submitted to the approving official on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a state receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. Failure to meet these deadlines may result in delayed reimbursement.

§ 1200.23 Program income.

(a) *Inclusions.* Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under the grant agreement, and from payments of principal and interest on loans made with grant funds.

(b) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, refunds, taxes, special assessments, levies, fines, proceeds from the sale of real property or equipment, income from royalties and license fees for copyrighted material, patents, and inventions, or interest on any of these.

(c) *Use of program income.* (1) *Addition.* Program income shall ordinarily be added to the funds committed to the HSP. Such program income shall be used to further the objectives of the project under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only

upon written approval of the approving official. Such use shall not increase the commitment of Federal funds.

§ 1200.24 Compliance.

Where a State is found to be in noncompliance with the terms of the HSP or applicable law, the approving official may apply the special conditions for high-risk grantees or the enforcement procedures of 49 CFR part 18, as appropriate and in accordance with their terms.

§ 1200.25 Appeals.

Review of any written decision by an approving official under this part, including a denial of a funding extension under § 1200.10(c)(2) of this part, a disapproval or conditional approval of any part of an HSP under § 1200.11(b) of this part, a disapproval of a request for a change under § 1200.13(b)(3) of this part, and a decision to impose special conditions or restrictions or to seek remedies under § 1200.24 of this part, may be obtained by submitting a written appeal of such decision, signed by the Governor's Representative, to the approving official. Such appeal shall be forwarded promptly to the NHTSA Associate Administrator for Regional Operations or the FHWA Regional Administrator with jurisdiction over the specific division, as appropriate. The decision of the NHTSA Associate Administrator or the FHWA Regional Administrator shall be final and shall be transmitted to the Governor's Representative through the cognizant approving official.

Subpart D—Closeout

§ 1200.30 Expiration of the HSP.

Unless extended in accordance with the provisions of § 1200.31 of this part, a one-year HSP shall expire on the last day of the fiscal year to which it pertains and a three-year HSP shall expire on the last day of the third fiscal year to which it pertains. The State and its subgrantees and contractors may not incur costs past the expiration date.

§ 1200.31 Extension of the HSP.

Upon written request by the State, specifying the reasons therefor, the approving official may extend the expiration date for some portion of an HSP by a maximum of 90 days. The approval of any such request for extension shall be in writing, shall specify the new expiration date, and shall be signed by the approving official. If an extension is granted, the State and its subgrantees and contractors may continue to incur costs under the HSP until the new expiration date, and the due dates for other submissions covered by this subpart shall be based upon the new expiration date. However, in no case shall any extension be deemed to authorize the obligation of additional Federal funds beyond those already obligated to the State by the Federal Government, nor shall any extension be deemed to extend the due date for submission of the annual evaluation report. Only one extension shall be allowed for each HSP.

§ 1200.32 Final voucher.

Each State shall submit a final voucher which satisfies the requirements of § 1200.22(a) of this part within 90 days after the expiration of each fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part. The final voucher constitutes the final financial reconciliation for each one-year HSP or for each year of a three-year HSP.

§ 1200.33 Annual evaluation report.

Within 90 days after the expiration of the fiscal year, each State, whether operating under a one-year or a three-year HSP, shall submit to the approving official an annual evaluation report describing the accomplishments of the highway safety program under the HSP for that fiscal year. The report shall include the following information:

(a) *Statewide overview.* A three to five page overview of statewide accomplishments in highway safety, regardless of funding source;

(b) *Report by program area.* For each funded program area, a description of individual projects conducted thereunder, detailing costs and accomplishments (and status if a project has not been completed), identifying progress toward self-sustainment and contributions of independent groups, and including an accounting for any program income earned or used under the project;

(c) *Legislative and administrative accomplishments.* A discussion of significant legislative and administrative accomplishments which promoted the goals of highway safety; and

(d) *Status of remedial actions.* An evaluation of the progress the State is making in correcting deficiencies identified through program and financial management reviews conducted by the approving officials or by the State.

§ 1200.34 Disposition of unexpended balances.

Any funds which remain unexpended after reconciliation of the final voucher shall be carried forward, credited to the State's highway safety account for the new fiscal year, and made immediately available for reprogramming under a new HSP or under the next year of a continuing three-year HSP, subject to the approval requirements of § 1200.11(b) of this part. Carry-forward funds must be identified by the program area from which they are removed when they are reprogrammed from the previous fiscal year. Once so identified, such funds are available for use without regard to the program area from which they were carried forward, unless specially earmarked by the Congress.

§ 1200.35 Post-grant adjustments.

The closeout of an HSP does not affect the ability of NHTSA or FHWA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

§ 1200.36 Continuing requirements.

The following provisions shall have continuing applicability, notwithstanding the closeout of an HSP:

(a) The requirement to use all equipment for the originally authorized grant purposes for as long as needed for those purposes, as provided in § 1200.21(a)(2) of this part;

(b) The management and disposition requirements for equipment, as provided in § 1200.21 of this part;

(c) The audit requirements and records retention and access requirements of 49 CFR part 18.

PART 1204—UNIFORM GUIDELINES FOR STATE HIGHWAY SAFETY PROGRAMS

2. The authority citation for part 1204 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

§ 1204.4 [Amended]

3. In § 1204.4, supplements A through I, are removed.

PART 1205—HIGHWAY SAFETY PROGRAMS; DETERMINATIONS OF EFFECTIVENESS

4. The authority citation for part 1205 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

5. In § 1205.4, the introductory text and paragraph (a) are revised, paragraphs (c) and (e) are removed, and paragraph (d) is redesignated as paragraph (c) and revised to read as follows:

§ 1205.4 Funding procedures for National Priority Program Areas.

A State planning to use funds under 23 U.S.C. 402 to support a program that is within a National Highway Safety Priority Program Area shall be subject to the following procedures:

(a) The State shall describe each highway safety problem within such Priority Area and any countermeasure proposed to decrease or stabilize the problem, and provide recent statistical trend data concerning injury, fatal, and property damage crashes to support the problem and countermeasure identifications.

* * * * *

(c) The NHTSA and/or the FHWA, as applicable, shall review the information provided under paragraphs (a) and (b) of this section in accordance with the procedures of § 1200.11 of this chapter.

Issued on: July 27, 1993.

Jane F. Garvey,

Deputy Administrator, Federal Highway Administration.

Howard M. Smolkin,

Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 93-18302 Filed 7-30-93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 76-93]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a system of records from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4)(I); (e) (5) and (8); and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is the "National Drug Intelligence Center Data Base (JUSTICE/NDIC-001)." Information in this system relates to the mission of the National Drug Intelligence Center (NDIC), as set forth in section 9078 of Pub. L. 102-396, to coordinate and consolidate drug intelligence from all national security and law enforcement agencies and to produce information regarding the structure, membership, finances, communications, and activities of drug trafficking organizations and their memberships. The exemptions are necessary to avoid interference with the law enforcement-related functions of NDIC and of those agencies that provide information to, or receive information from, NDIC. Specifically, the exemptions are necessary to preserve the safety of law enforcement personnel and of confidential informants and other witnesses, to prevent disclosure of investigative techniques, to prevent persons suspected of illegal activities related to narcotics trafficking from frustrating law enforcement activities (for example, by flight or destruction of evidence), and to protect the privacy of third parties. The exemptions may also be necessary, in some cases, to safeguard information properly classified, pursuant to Executive Order, in the interest of national defense or foreign policy.

EFFECTIVE DATE: This rule is effective on August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 616-0178.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on April 26, 1993 (58 FR 21963). The public was given 30 days in which to comment. No comments were received.

This Order relates to individuals rather than small businesses. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the Order will not have "a significant impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative practices and procedure, Courts, Freedom of Information Act, Privacy Act and Government in the Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR part 16 is amended by adding a new section, § 16.82, as set forth below.

Dated: July 19, 1993.

Stephen R. Colgate,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR part 16 is amended by adding § 16.82 to read as follows:

§ 16.82 Exemption of the National Drug Intelligence Center Data Base—limited access.

(a) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4)(I); (e) (5) and (8); and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) and (e)(4)(I) of 5 U.S.C. 552a:

(1) National Drug Intelligence Center Data Base (JUSTICE/NDIC-001).

(b) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the National Drug Intelligence Center (NDIC). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the same reasons that the system is exempted from the provisions of subsection (d).

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j)(2) of the Privacy Act.

(3) From subsection (d) because disclosure to the subject could alert the subject of an investigation pertaining to narcotic trafficking or related activity of the fact and nature of the investigation, and/or of the investigative interest of NDIC and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life and safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Finally, access to records could result in the release of properly classified information that could compromise the national defense or foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(4) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information, NDIC will need to retain information not immediately shown to be relevant to counterdrug law enforcement to establish patterns of activity and to assist other agencies charged with the enforcement of laws and regulations regarding drug trafficking and charged with the acquisition of intelligence related to international aspects of drug trafficking. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement in that it would put the subject of an investigation, study or analysis on notice of the fact of such investigation, study, or analysis, thereby permitting the subject to engage in conduct intended to frustrate the activity; because, in some circumstances, the subject of an investigation may not be required to provide to investigators certain information; and because thorough analysis and investigation may require seeking information from a number of different sources.

(6) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation and reveal the identity of confidential informants and endanger their lives and safety.

(7) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than have been published in the **Federal Register.** Should the subsection be so interpreted, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and other law enforcement information and to protect the privacy and physical safety of witnesses and informants. Furthermore, greater specificity concerning the sources of properly classified records could compromise national defense or foreign policy.

(8) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes does not permit advance determination whether such information is accurate or relevant, nor can such information be limited to that which is complete or apparently timely. Information of this type often requires further analysis and investigation to develop into a comprehensive whole that which is otherwise incomplete or even fragmentary. Moreover, its accuracy is continually subject to analysis and review, and, upon careful examination, seemingly irrelevant or untimely information may acquire added significance as additional information brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in collating and analyzing information and would impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, or evidence.

(10) From subsection (g) to the extent that the system is exempt from subsection (d).

[FR Doc. 93-18317 Filed 7-30-93; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 93-1) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules under 310 IAC 12 concerning performance standards for restoring soil productivity for surface coal mining and reclamation operations under IC 13-4.1, Indiana's Surface Coal Mining and Reclamation Statute. The amendment is submitted in response to required program amendments codified at 30 CFR 914.16. The proposed changes are intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated May 22, 1991 (Administrative Record Number IN-D-0872), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment (#91-4) to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12-5. The amendment repealed 310 IAC 12-5-64 and added sections 310 IAC 12-5-64.1, 64.2, and 64.3. The added sections concern surface coal mining operations and establish standards for: Revegetation success for nonprime farmlands; revegetation sampling techniques for nonprime farmland; and statistical methodology to evaluate the success of revegetation. By letter dated May 23, 1991 (Administrative Record Number IND-0874), the IDNR submitted similar amendments (#91-6) to the Indiana rules which govern the surface impacts of underground coal mining operations. Specifically, Indiana repealed sections 310 IAC 12-5-65, 12-5-128 and 12-5-129, and added sections 310 IAC 12-5-128.1, 128.2 and 128.3. The program amendments submitted under amendments 91-4 and 91-6 were reviewed and approved, in part, by the Director on May 29, 1992 (57 FR 22653). In addition, in the same **Federal Register** notice, certain required program amendments were codified at 30 CFR 914.16(i), (j), and (k) which are intended to require Indiana to revise the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated May 23, 1991 (Administrative Record Number IND–0873), the IDNR submitted program amendment number 91–5 to the Indiana program. The amendment revised 310 IAC 12–5–145, 146, and 148, repealed 310 IAC 12–5–147, and added new 310 IAC 12–5–148.5. The amendments revised the performance standards for restoring soil productivity on prime farmland. The amendments were reviewed and approved, in part, by the Director on September 14, 1992 (57 FR 41869). In the same **Federal Register** notice, the Director codified required amendments at 30 CFR 914.16 (l) and (m) which are intended to require revision of the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated January 4, 1993 (Administrative Record Number IND–1193), Indiana submitted proposed amendments intended to address the required program amendments codified at 30 CFR 914.16(i), (j), (k), (l), and (m).

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16379), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on April 26, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indian program.

1. 310 IAC 12–5–64.1 and 12–5–128.1 Revegetation—Nonprime Farmland Standards for Success

a. In subsections 64.1/128.1(c)(3)(C) and 64.1/128.1(c)(6)(C), Indiana is deleting the words "alone or." In effect, deletion of the words "alone or" means that average county yields recognized by the U.S. Department of Agriculture (USDA) may not be used alone as a standard for revegetation success. The Federal regulations at 30 CFR 816/817.116(a)(2) provide that standards for revegetation success shall include criteria representative of unmined lands in the area being reclaimed. Indiana's average county yield data contain data of yields from previously mined lands. Therefore, the use of average county yield data alone as a revegetation success standard is less effective than the Federal regulations. By deleting the words "alone or," Indiana is eliminating the possibility that average county yields could be used as a sole success standard. Therefore, the Director finds that the deletion of the words "alone or" satisfies the required program amendment codified at 30 CFR 914.16(i) and that the provisions at 310 IAC 12–5–64.1/128.1(c)(3)(C) and 64.1/128.1(c)(6)(C) are no less effective than the Federal regulations at 30 CFR 816/817.116(a)(2).

b. In subsections 64.1/128.1(g), Indiana is deleting the sentence which reads "Small areas which are repaired under this section may be exempted from the success standards if the grading and vegetation blends with the contiguous area which meets the success standards." In effect, deletion of the sentence means that no areas may be exempted from the revegetation success standards and that "small areas" will be repaired in the same fashion as the rest of the permitted area. The Federal revegetation regulations at 30 CFR 816/817.116 do not authorize that areas of any size may be exempted from the revegetation success standards. Therefore, the Director finds that Indiana's deletion of the language quoted above satisfies the required program amendment codified at 30 CFR 914.16(j) and that the provisions at 310 IAC 12–5–64.1/128.1(g) are no less effective than the Federal regulations at 30 CFR 816/817.116(c)(2).

2. 310 IAC 12–5–64.2(a) Revegetation—Sampling Techniques for Nonprime Farmland

Indiana is amending subsection 64.2(a) by adding the words "approved by the director" at the end of the main paragraph, and also by deleting subsections 64.2(a) (1) and (2). In effect, this amendment clarifies that the standards for determining success of revegetation must be approved by the director of the Indiana Department of Natural Resources (IDNR). Subsection 64.2(a) is being amended because the Indiana Natural Resources Commission (NRC) no longer approves the plan of reclamation since these responsibilities have been delegated to the director of IDNR. Subsection 64.2(a)(1), which is being deleted, provided that the NRC could approve the standards for success of revegetation. Therefore, the Director finds that the proposed amendment to 310 IAC 12–5–64.2(a) satisfies the required program amendment codified at 30 CFR 914.16(k), and that the provisions at 310 IAC 12–5–64.2(a) are no less effective than the Federal regulations at 30 CFR 816.116.

3. 310 IAC 12–5–64.3(c)(4) and 12–5–128.3(c)(4) Revegetation—Statistical Methodology

Indiana is amending these subsections by changing the formula for sample standard deviation to read: $s = \sqrt{M \div N}$. In this formula, s = the sample standard deviation; M = the mean deviation squared; and N = the number of observations. The standard deviation formula which is being amended currently reads: $s = \sqrt{M \div d}$, where d = degrees of freedom (N–1).

In response to a request by OSM, Indiana submitted a detailed explanation for the proposed change by letter dated May 6, 1993 (Administrative Record Number IND–1252). OSM reviewed the detailed explanation and supporting documentation submitted by Indiana and concurs with its technical adequacy.

The Director finds, therefore, the proposed change does not render the Indiana program less effective than the Federal regulations and is approved.

4. 310 IAC 12–5–145 Prime Farmland—Special Performance Standards

Indiana is amending this section by adding a new subsection 145(c). The new language in subsection 145(c) provides that soil reconstruction shall be carried out in accordance with the specifications of the Soil Conservation Service (SCS) of the U.S. Department of Agriculture establishing prime farmland soil reconstruction specifications for Indiana. The Federal regulations at 30 CFR 823.4(b) provide that the regulatory authority within each State shall use the soil-reconstruction specifications established by the SCS to carry out the State's responsibilities concerning prime farmland. Prior to this amendment, the Indiana program had no counterpart to the Federal regulations at 30 CFR 823.4(b). The Director finds that the proposed language is substantively identical to and no less effective than the Federal regulations at 30 CFR 823.4(b). The Director also finds that the proposed amendment satisfies the required program amendment codified at 30 CFR 914.16(l).

5. 310 IAC 12–5–148.5 Prime Farmland—Revegetation and Restoration of Soil Productivity

Indiana is amending this section by adding a new subsection 148.5(b)(11). The new language in this subsection provides that the selection of reference areas shall be guided by 310 IAC 12–5–64.1. Further, the selection of an approved reference area must be accomplished with concurrence by the SCS of the U.S. Department of Agriculture.

In the September 14, 1992, **Federal Register** notice which approved Indiana amendments concerning prime farmland, the Director noted that the Indiana rules at 310 IAC 12–5–148.5 do not require, by reference, the use of the Indiana rules at 310 IAC 12–5–64.1 (c)(3), (c)(6), and (d) which concern nonprime farmland (57 FR 41872). Without such a reference, the Indiana rules at 310 IAC 12–5–148.5 are less effective than the Federal regulations at 30 CFR 823.15(b)(7) which provide that reference crop yields must be representative of local farms in the surrounding areas. With the proposed language, the Indiana rules regarding prime farmland provide that the selection of reference areas will be guided by the rules at 310 IAC 12–5–64.1 (c)(3), (c)(6), and (d) and that the selection of a reference area will be accomplished with concurrence of the SCS. The Director finds that the proposed rule is substantively identical to the Federal requirements at 30 CFR 823.15(b)(7) and that the proposed language satisfies the required program amendment codified at 30 CFR 914.16(m).

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No comments were received concerning the proposed amendments to the Indiana program.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the March 26, 1993, **Federal Register** (58 FR 16379). The comment period closed on April 26, 1993. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The Indiana Coal Council (ICC) commented that 30 CFR 823.4(a) requires that "the U.S. Soil Conservation Service within each state shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction." ICC stated that the U.S. District Court for the District of Columbia has held that the SCS's specifications for prime farmland reconstruction would be considered "rules" under the Federal Administrative Procedure Act, 5 U.S.C. 551 *et seq.* and must be subject to public comment prior to becoming effective. *In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. October 1, 1984), slip op. pp. 23–24. ICC further stated that the SCS "specifications" must be adopted by SCS as rules.

In response, the Director concurs that the court has held that the SCS specifications for prime farmland must be subject to public review. Specifically, the court found that the specifications must be published in the **Federal Register** for comment by the public.

The existing SCS Indiana specifications for prime farmland soil reconstruction under SMCRA were subject to technical peer review when developed but not public review. The SCS is currently in the process of updating the prime farmland specifications and has scheduled a review for September 1993. SCS has stated that the new specifications will be subjected to public comment (Administrative Record Number IND–1262). Parties interested in reviewing and commenting on the prime farmland specifications should contact the SCS state soil scientist, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278; Phone (317) 290–3203 for further information.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment number 93–1 as submitted by Indiana on January 4, 1993. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the States to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, by letter dated February 8, 1993 (Administrative Record Number IND–1211), EPA concurred without comment.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 23, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

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

2. In § 914.15, paragraph (uu) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(uu) The following amendment (Program Amendment Number 93–1) to the Indiana program as submitted to OSM on January 4, 1993, is approved, effective on August 2, 1993: 310 IAC 12–5–64.1 and 310 IAC 12–5–128.1 concerning standards for revegetation success for nonprime farmland; 310 IAC 12–5–64.2 concerning sampling techniques for revegetation success for nonprime farmland; 310 IAC 12–5–64.3 and 310 IAC 12–5–128.3 concerning statistical methodology for revegetation success for nonprime farmland; 310 IAC 12–5–145 concerning special performance standards for prime farmland; and 310 IAC 12–5–148.5 concerning revegetation and restoration of soil productivity on prime farmland.

3. In § 914.16 paragraphs (i), (j), (k), (l), and (m) are removed and reserved to read as follows:

§ 914.16 Required program amendments.

* * * * *

(i) (removed and reserved)

(j) (removed and reserved)

(k) (removed and reserved)

(l) (removed and reserved)

(m) (removed and reserved)

* * * * *

[FR Doc. 93–18294 Filed 7–30–93; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 76

[MM Docket No. 92–266; FCC No. 93–372]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Moving forward effective date of final rules; preemption of state and local notice requirements; waiver of FCC notice requirements; temporary extension of response date to initial notices of regulation and to rate complaints.

SUMMARY: In accordance with the Conference Report approving the supplemental appropriation authorized by Congress, the Commission has adopted an order moving forward from October 1, 1993 to September 1, 1993 the effective date of cable service rate regulation. The order also (1) preempts until September 1, 1993, any state or local requirements that cable operators provide notice of rate changes intended to effectuate compliance with the Commission's rate regulations; (2) waives FCC requirements that cable operators provide notice of rate changes intended to effectuate compliance with the Commission's rate regulations; and (3) extends until November 15, 1993, the time period for cable operators to respond to an initial notice of regulation of the basic tier by local franchising authorities and to an initial complaint concerning a cable programming service tier filed at the Commission received during September 1, 1993 through October 15, 1993. This action will provide that regulations adopted pursuant to the Cable Act of 1992 on April 1, 1993, governing cable service rates, will become effective on September 1, 1993.

DATES: The effective date of the amendments to parts 76 and O, published at 58 FR 29737 (May 21, 1993), and extended to October 1, 1993, by an order, published at 58 FR 33560 (June 18, 1993), is moved to September 1, 1993.

The effective date of the preemption of state and local notice requirements is August 2, 1993. The termination date of the preemption of state and local notice requirements is September 1, 1993.

The effective date of the waiver of §§ 76.932, 76.964 and 76.309(c)(3)(i) is July 27, 1993. The termination date of the waiver of §§ 76.932, 76.964 and 76.309(c)(3)(i) is September 1, 1993.

The time period in §§ 76.930, 76.945(a), and 76.956(a) for cable operators to respond to an initial notice of regulation of the basic tier and an initial complaint concerning the cable programming service tier received during September 1, 1993 until October 15, 1993, is extended until November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Pat Donovan, (202) 632–1295; Jennifer A. Manner, (202) 653–5940.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in MM Docket No. 92–266, FCC No. 93–372, adopted July 27, 1993 and released July 27, 1993.

I. Introduction

1. In this Order, we move from October 1, 1993 to September 1, 1993 the effective date of cable service rate regulation.[1] To support the transition to this new effective date, we additionally: (1) Preempt state and local, and waive our own, notice requirements to permit cable operators to restructure rates and service offerings up until September 1, 1993 without prior notice to subscribers; (2) provide that cable operators unable to conform subscriber bills to reflect

[1] In this Order, we reconsider, on our own motion, certain decisions made in the Report and Order, the Preemption Order, and the Deferral Order issued in this docket. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92–266, Report and Order and Further Notice of Proposed Rulemaking, FCC 93–177 (released May 3, 1993) ("Report and Order"); Order, FCC 93–264, 8 FCC Rcd 3652 (1993) ("Preemption Order"); Order, FCC 93–304 (released June 15, 1993) 58 FR 33560 (June 18, 1993) ("Deferral Order"). In light of the pending petitions for reconsideration and clarification of the Report and Order, the Preemption Order, and the Deferral Order, the Commission retains jurisdiction to grant reconsideration on its own motion. See 47 U.S.C. 405; 47 CFR 1.108; *Central Florida Enterprises* v. *FCC*, 598 F.2d 37, 48, n. 51 (D.C. Cir. 1978), *cert. dismissed* 441 U.S. 957 (1979); Rebecca Radio of Marco, 5 FCC Rcd 2913, 2914, n. 8 (1990). In the alternative, we note that the matters addressed herein are inherently time-sensitive and the exigencies of the situation require them to be decided now in order to ensure a prompt and smooth transition to cable rate regulation. Accordingly, we find for good cause that further notice and comment on these matters would be impracticable, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(B).

For further background information on cable rate regulation, see also Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, sections 3, 9, 14, 106 Stat. 1460 (1992), amending sections 623, 612 and 622(c) of the Communications Act, *as codified at* 47 U.S.C. 543, 532 and 542(c) ("Cable Act of 1992").