PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

2. Section 4180.2(f) introductory text is revised to read as follows:

§ 4180.2 Standards and guidelines for grazing administration.

* * * * *

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section. However, the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February 12, 1997, fallback standards and guidelines implementation date, not to exceed the six-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long-term rangeland health and administrative efficiencies.

* * * * *

Dated: August 15, 1996.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–21994 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–157; FCC 96–316]

Cable Pricing Flexibility

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule,

SUMMARY: In this *Notice of Proposed Rulemaking* (''*NPRM*''), the Commission proposes to modify its current ratemaking rules in order to allow operators greater flexibility in pricing their regulated tiers of cable service while continuing to protect subscribers from unreasonable rates. Specifically, the Commission proposes to permit a cable operator that has established rates for its regulated service tiers to decrease the rate for its basic service tier (''BST''), and then take a corresponding increase in the rate for its cable programming services tiers (''CPSTs''), as long as the combined rate for the two tiers does not generate revenues for the operator that exceed what would otherwise be permitted under our rules. The Commission tentatively concludes that this proposal would remove an unnecessary restriction on an operator's pricing strategy, while maintaining effective constraints on the overall rates paid by subscribers, thus resulting in pricing which more nearly simulates that of a competitive market. The Commission seeks comment on this proposal which was adopted concurrently with a *Report and Order* requiring operators to use the same methodology when calculating rates for their BST and their CPST. That *Memorandum Opinion and Order* is summarized elsewhere in this issue of the Federal Register.

DATES: Comments are due on or before October 6, 1996, and reply comments are due on or before November 8, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* CS Docket No. 99–157 FCC 96–316 adopted July 25, 1996, and released August 15, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C., 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Notice of Proposed Rulemaking

1. An operator wishing to use the proposed pricing methodology first would establish rates for its regulated service tiers using the same methodology for both tiers. The resulting rate for the BST would be the cap for that tier. The operator then would determine the amount by which it was willing to decrease the BST rate and calculate the total revenue loss derived from the reduction. The operator would then divide this amount by the total number of CPST subscribers in order to calculate the rate increase for the CPST. The BST rate decrease would be reflected on the cable bill of every subscriber because subscription to the BST is required in order to have access to any other tier of service. Because subscription to CPSTs is optional, the pool of CPST subscribers is usually smaller than the BST subscriber pool. The total loss in BST revenue, therefore, when spread over the smaller CPST subscriber base, would generate a CPST rate increase that exceeded the amount of the BST rate decrease. As a result, BST–CPST subscribers (i.e., all CPST subscribers) would see a net increase in rates. This increase should be minimal if the operator has a high penetration rate on the CPST. Industry data available to us indicate that, for the most highly penetrated CPST on a system, the average penetration rate approaches or exceeds 90% and the median penetration rate exceeds 95%. The Commission seeks comment on these estimates and, more generally, on the likely impact on CPST rates if the proposal is implemented.

2. The Commission believes that individual consumers would be either substantially better off, or subject to only minor rate increases, were the Commission to adopt the proposal. BST-only subscribers would be better off because their rates would decrease with no diminution in service. Although CPST subscribers could experience a minor rate increase, all CPST subscribers are also BST subscribers for whom the increase in CPST rates would be substantially offset by the decrease in BST rates. However, because the Commission seeks to ensure that increases to CPST subscribers be minimized, the Commission seeks comment on whether to limit the amount of increase a CPST subscriber must pay or to otherwise limit the amount by which the BST and CPST rates may be adjusted. As noted, any increase to CPST subscribers would be minimal because of the high penetration rate of CPSTs.

3. In addition to lowering rates for current BST-only subscribers, this proposal should make the BST more affordable for some consumers who currently do not subscribe to cable at all. The Commission believes that its proposal presents other benefits as well. This proposal would provide cable operators with a rate structure flexibility enjoyed by providers of video services that are, or soon will be, attempting to compete with traditional cable operators in the video marketplace, including providers of direct broadcast satellite (''DBS'') service, multichannel multipoint distribution service, and

open video systems. These video competitors offer, or will offer, consumers an alternative to conventional cable service. Because these competitors are not subject to the type of rate regulation imposed upon cable operators by the Communications Act, they have greater flexibility to restructure their pricing as well as the services they offer consumers. The Commission tentatively concludes that the proposed rate adjustment mechanism may enhance a cable operator's ability to compete with these alternative providers. For example, while currently a cable operator can attempt to become more competitive by simply dropping the rate of its BST, this proposal gives the operator an additional incentive to do so in that BST revenues that otherwise would be lost due to the rate decrease can be recovered on the CPST, even though no subscriber would see a significant rate increase.

4. The Commission further concludes that a less expensive BST service might assist system operators in increasing customer access and penetration, in preparation for the developing marketplace in which access to nonvideo services, such as telephony or enhanced services, is becoming increasingly important.

5. To ensure that these goals can be accomplished while continuing to protect consumers, the Commission believes that the proposed mechanism must be subject to several conditions. As stated, an operator electing this approach first would set rates for its regulated tiers in accordance with our existing rules. After lowering its BST rate and increasing its CPST rate in the manner described, the operator would have a continuing obligation to keep track of what its maximum permitted rate would be for each tier had it not made the adjustment. An operator would continue to maintain records of these ''underlying rates'' so that an LFA, or the Commission, could verify that the operator had made the adjustment properly. In particular, the LFA must be able to ensure that the operator prices its BST rate at no more than what our rules otherwise permit. The Commission invites comment on this aspect of its proposal.

6. Further, the Commission proposes that systems offering more than one CPST would be able to allocate the amount deducted from the BST rate among the CPSTs in any manner, so long as the combined rate increases for the CPSTs is revenue neutral to the cable operator. As noted above, to ensure that any CPST rate increase is minimized, the Commission seeks comment on whether to limit the amount of such increase.

7. With respect to timing issues, the Commission believes that an operator should be permitted to use the proposed adjustment mechanism only when it has the opportunity to adjust rates under our existing rules. Thus, if an operator has chosen to adjust rates on annual basis, it would be able to implement the adjustment mechanism proposed herein only at the time of, and as part of, an annual rate adjustment. This restriction would ensure that our proposal does not increase the number of times subscribers experience rate adjustments. The Commission does not intend to require that the operator make a standard rate adjustment at the time it uses the proposed mechanism (unless it is otherwise required to do so), only that it have the choice to make such an adjustment

8. For LFAs, this proposal should generate no additional burdens. An LFA will engage in the same rate review process as before. The Commission seeks comment on how to simplify further the rate review process.

9. The proposal would add another step to the Commission's review of a CPST complaint. This is because an operator that elects the proposed option may have a CPST rate that exceeds what normally would be permitted by our rules. To determine whether the CPST rate is nonetheless reasonable, the Commission will have to consider not just the CPST rate, but also the combined BST–CPST rate. Our consideration of the combined BST–CPST rate under this proposal will be for the sole purpose of determining whether the CPST rate is reasonable. BST rate review will remain the province of LFAs. The Commission invites comment as to the interaction of this extra step in the Commission's review of CPST rates and the Commission's statutory mandate to ensure that CPST rates are not unreasonable.

10. The Commission also seeks comment regarding how this proposed adjustment should work in cases where the cable operator is subject only to CPST rate regulation, such as where the LFA has not exercised authority to regulate the BST. Upon submission of a complaint invoking its jurisdiction, the Commission is obligated to determine whether the new CPST rate is not unreasonable. One option in this circumstance would be to analyze the operator's rates as if its BST were regulated and to permit the operator to increase its CPST rate by the amount necessary to recover revenue lost due to a rate decrease on the unregulated BST. The Commission seeks comment on the extent of these circumstances and the merits of this suggestion, and invite commenters to recommend means by which a rate review should be conducted. In addition, the Commission solicits comment on an operator's ability to rescind a recently implemented rate adjustment, and whether this would cause subscriber confusion, particularly if reversing the adjustment reflects rates the operator intended to charge absent this alternative.

11. As indicated above, when the Commission initially proposed approaches to rate regulation under the 1992 Cable Act, it considered a pricing mechanism somewhat similar to that which the Commission proposes here, the object of which was to encourage or require a low-cost ''bare bones'' BST. In the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92–266, 58 FR 29736, (''*Rate Order*''), the Commission rejected this idea and adopted the ''tier neutrality'' requirement. The Commission determined that the public interest would best be served by basing rates for all rate-regulated channels of cable services on common principles, rather than forcing BST rates down through a rate-setting approach applicable only to that tier. The Commission was concerned that suppressing BST rates in this manner would result in operators simply moving channels off the BST to other tiers that would generate more revenues. The Commission concluded that it was preferable to adopt a framework that resulted in a slightly higher-cost BST that had more programming. In addition, the Commission determined that applying a single methodology to all regulated tiers reduced administrative burdens and confusion for operators, LFAs, and the Commission.

The current proposal differs from the proposal the Commission rejected in the *Rate Order* in two fundamental respects. First, the current proposal is not a forced reduction in the price of the BST. Rather, it simply permits operators to reduce the price of the BST as part of an overall marketing strategy. Second, it does not require any reduction in the number of channels on the BST. The current proposal preserves the benefits of the tier neutrality approach since the operator can make the adjustment proposed above only after establishing rates for its tiers in accordance with the tier neutrality principle. The current proposal also preserves the ability of the operator to move channels in order to accommodate market changes. The Commission believes this adjustment is

consistent with our approach to modify and improve the existing rules continually as the market changes and more information becomes available, while protecting consumers from more than a minimal rate increase.

Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking

13. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (''IRFA'') of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM* but they must be have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *NPRM* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

14. *Reason for Action and Objectives of the Proposed Rule.* The Commission has determined that our cable rules do not permit cable operators to lower rates for the BST and to then recover lost revenues on the CPST. The proposal contained in this *NPRM* will allow operators to offer a better price to BST subscribers while continuing to protect all subscribers from unreasonable rates. The proposal contained in this *NPRM*, if adopted, would be an optional step for a cable operator in ratemaking, offering rate regulated operators more flexibility in cable pricing. This proposal will provide a cable operator with the ability to price services in a manner which duplicates market driven rates while continuing to offer consumers protections in the absence of effective competition.

15. *Legal Basis.* The authority for the action as proposed for this rulemaking is contained in Section 623 of the Communications Act of 1934, as amended, 47 U.S.C. § 543, and Section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303.

Description and Number of Small Entities Affected

16. *Small Cable Entities:* The Communications Act contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' (47 U.S.C. § 543(m)(2)). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate (47 CFR § 76.1403(b)). Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. The Commission is likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area.

17. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide (47 CFR § 76.901(e)). Based on our most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this *NPRM*. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems. The Commission is unable to estimate the number of small cable systems nationwide, and the Commission seeks comment on the number of small cable systems.

18. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

19. *Municipalities:* The term ''small governmental jurisdiction'' is defined as ''governments of . . . districts, with a population of less than fifty thousand.''(5 U.S.C. § 601(5)). Based on most recent census data, there are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. The Commission notes that any official actions with respect to cable operators' BST will typically be undertaken by LFAs, which primarily consist of counties, cities and towns. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and States, which typically are not LFAs. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Rejected

20. *Small Cable Entities:* The Communications Act contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' (47 U.S.C. § 543(m)(2)). Under the Communications Act, at 47 U.S.C. 543(m) (1), a small cable operator is not subject to the rate regulation requirements of Sections 543 (a), (b) and (c) on CPSTs in any franchise area in which it serves 50,000 or fewer subscribers. The proposed rule adopted in this *NPRM* would give a rate regulated operator the option to lower rates on its BST and to raise rates on its CPST in order to recover lost revenues from the BST reduction. The CPST rate increase would be reviewed by the Commission. Because this proposed rule would not affect operators that are not rate regulated on CPSTs, there would be no impact on small cable operators that, according to the Communications Act, are not subject to rate regulation on CPSTs.

21. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide, and a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems (47 C.F.R. § 76.901(e)). SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually.

22. To the extent that any of these operators are rate regulated on CPSTs, the Commission emphasizes that the proposal would provide an optional rate adjustment methodology for rate regulated operators in order to provide for greater flexibility in cable pricing, and would not impose a mandatory requirement on cable operators. If the Commission did not modify its rules, a regulated cable operator would not be able to recover, on its CPST, lost revenues for rate decreases to the BST. The Commission believes that allowing for such an adjustment could give operators more flexibility to respond to competition in the marketplace.

23. *Municipalities:* The term ''small governmental jurisdiction'' is defined as ''governments of . . . districts, with a population of less than fifty thousand.'' (5 U.S.C. § 601(5)). The Commission does not believe that the proposal contained in this *NPRM* will have a significant economic impact on a substantial number of these small governmental jurisdictions. A small governmental jurisdiction that regulates the BST would continue its current practice of reviewing an operator's maximum permitted per channel rate on the BST. Any rate increase by an operator opting to use the proposal contained in this *NPRM* would occur on the CPST and would therefore be reviewed by the Commission.

24. *Reporting, Recordkeeping and other Compliance Requirements.* Our current methodology for calculating maximum permissible rates will need to be amended to account for the additional optional rate calculation step proposed in this *NPRM.* The proposed rule is optional, and would not be a requirement for any cable operator that does not want to utilize the proposed option. An operator wishing to use the proposed pricing methodology first would establish rates for its regulated service tiers using the same methodology for both tiers. The resulting rate for the BST would be the cap for that tier. The operator then would determine the amount by which it was willing to decrease the BST rate and calculate the total revenue loss derived from the reduction. The operator would then divide this amount by the total number of CPST subscribers in order to calculate the rate increase for the CPST. After lowering its BST rate and increasing its CPST rate in the manner described, the operator would have a continuing obligation to keep track of what its maximum permitted rate would be for each tier had it not made the adjustment. An operator would continue to maintain records of these ''underlying rates'' so that an LFA, or the Commission, could verify that the operator had made the adjustment properly. In the *NPRM,* the Commission seeks comment on the specific method of implementation of the proposal. The rule as proposed would not require any additional special skills beyond any which are already needed in the cable rate regulatory context.

25. *Significant Alternatives to Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.* In the *NPRM,* the Commission examines the current rule that prohibits a rate-regulated cable operator from justifying an increase in its CPST rate on the basis of a corresponding decrease in the BST rate. The Commission tentatively concludes that eliminating this aspect of our current rules would give cable operators greater pricing flexibility to respond to their growing competition while continuing to protect consumers. If, in the alternative, the Commission did not modify its rules, a regulated cable operator would not be able to recover, on its CPST, lost revenues for rate decreases to the BST. The Commission believes that allowing for such an adjustment could give operators more flexibility to respond to competition in the marketplace. This is consistent with the issues raised in the body of the *NPRM.* As explained above, the Commission does not believe the proposal creates any significant burden for small entities. The proposed rule change would be purely optional for cable operators, and local franchising authorities would not be subject to additional rate regulatory burdens as a result of adoption of the proposal.

Federal Rules which Overlap, Duplicate or Conflict with these Rules—None

26. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally,* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

27. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 6, 1996, and reply comments on or before November 8, 1996. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

Ordering Clauses

28. *It is ordered* that, pursuant to Sections 4(i), 4(j), 623(a), 623(b), and 623(c), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 543(a), 543(b), and 543(c), NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this *NPRM* of Proposed Rulemaking, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

29. *It is further ordered* that, the Secretary shall send a copy of this *NPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

Paperwork Reduction Act

This *NPRM* may contain either proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this *NPRM.* Comments should address: (a) whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–21581 Filed 8–28–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF ENERGY

48 CFR Parts 904, 909, 923, 926, 952 and 970

RIN 1991–AB31

Acquisition Regulation: Agency Proposal To Eliminate Non-Statutory Certification Requirements

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is publishing a Notice of Proposed Rulemaking to amend the Department of Energy Acquisition Regulation (DEAR) to eliminate all non-statutorily imposed contractor and offeror certification requirements.

DATES: Written comments on the proposed rulemaking must be received on or before October 28, 1996.

ADDRESSES: Comments (3 copies) should be addressed to John R. Bashista, Office of Policy (HR–51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: John R. Bashista (202) 586–8192 (telephone); (202) 586–0545 (facsimile); john.bashista@hq.doe.gov (electronic mail).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4301(b)(1)(B) of the Federal Acquisition Reform Act of 1996 (FARA), Pub. L. 104–106, requires agencies that have procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute to issue for public comment a proposal to amend their regulations to remove the certification requirements. Such certification requirements may be omitted from the agency proposal if (i) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (ii) the head of the executive agency approves in writing the retention of such certification requirement.

This proposed rule constitutes DOE's proposal for the elimination of all non-statutorily imposed contractor and offeror certification requirements from the DEAR pursuant to section 4301(b)(1)(B) of FARA. DOE has not identified any regulatory certification requirement contained in the DEAR which it has determined should be proposed for retention. Consequently, the Department is not pursuing approval from the Secretary of Energy to retain any certification requirement not specifically imposed by statute. The Department invites public comment on its proposal to eliminate all regulatory certification requirements from the DEAR and on its determination that there are no certification requirements which should be proposed for retention.

II. Agency Proposal To Eliminate Non-Statutory Certification Requirements

The following is the Department's proposal pertaining to each contractor and offeror certification requirement contained in the DEAR.

1. 952.204–2—Security Requirements

Section 952.204–2 will be amended to remove the non-statutory certification requirement pertaining to retention by a contractor of classified matter after contract completion or termination. A contractor seeking to retain classified material would still be required to identify such material, and the reasons for its retention, to the contracting officer.

2. 952.204–73—Foreign Ownership, Control, or Influence (FOCI) Over Contractor

Section 952.204–73 will be amended to remove the certification requirement for offerors to certify that FOCI data submitted to the Department is accurate, complete and current and that the disclosure is made in good faith; and to remove the requirement for offerors to certify that FOCI information previously submitted to DOE for a facility security clearance is accurate, complete and current. The disclosure requirement at DEAR 904.7003, however, will remain. In addition, technical and conforming amendments to the DEAR are proposed to 904.7003, 904.7005 and 904.7103. Prior to issuance of a final rule pertaining to the proposed amendment of subsection 952.204–73 herein, DOE will issue for public comment a separate proposed rule which will amend the policies currently set forth in the DEAR to be consistent with this rule. The separate rulemaking will implement the requirements of Executive Order 12829, ''National Industrial Security Program,'' and recent amendments to the Federal Acquisition Regulation (61 FR 31617) reflecting the Governmentwide applicability of the National Industrial Security Program Operating Manual.

3. 952.209–70—Organizational Conflicts of Interest—Disclosure or Representation

Section 4304 of FARA repealed section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789), and section 19 of the Federal Non-nuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918) which formed the basis for DOE's organizational conflicts of interest (OCI) policies and procedures set forth in Subpart 909.5 of the DEAR. With the repeal of the statutory basis for DOE's OCI program, the Department is now subject to the regulatory OCI program set forth in Subpart 9.5 of the Federal Acquisition Regulation (FAR). Based on an internal review comparing the current DOE program to the FAR program, the Department has determined that there are several important elements of the current DOE program which should be retained.

DOE published a separate proposed rule in the Federal Register on August 6, 1996 to codify and make mandatory DOE's new program in the DEAR. This separate rule will provide for the elimination of the certification currently contained in section 952.209–70.