articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–213 that provides for combining approved decoquinate and bacitracin zinc Type A medicated articles to make Type C medicated feeds for broilers containing decoquinate 27.2 grams per ton (g/t) and bacitracin zinc 10 to 50 g/t. The Type C medicated feed is used as an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; and for increased rate of weight gain; and improved feed efficiency.

ANADA 200–213, filed by Alpharma Inc., is approved as a generic copy of Rhone Poulenc's NADA 45–348. The ANADA is approved as of September 19, 1997, and the regulations are amended in the table in 21 CFR 558.195(d) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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 part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.195 [Amended]

2. Section 558.195 *Decoquinate* is amended in the table in paragraph (d), in the entry for ''27.2 (0.003 pct)'', in the second column, in the entry for ''Bacitracin 10 to 50'', under the column ''Limitations'' by removing ''No. 000061'' and adding in its place ''Nos. 046573 and 011716''.

Dated: December 8, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33095 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 175

[DoD Instruction 4165.67]

RIN 0790–AF62

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

ACTION: Final rule.

SUMMARY: This rule establishes procedures for implementing section 2837 of the National Defense Authorization Act for FY96 concerning the Federal Agency leaseback of property transferred to Local Redevelopment Authorities (LRAs) at installations approved for closure or realignment, and informs communities affected by base closure of these procedures.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Atkin, Base Closure and Community Reinvestment Office, 400 Army-Navy Drive, Suite 200, Arlington, VA 22202, telephone (703) 604–2400.

SUPPLEMENTARY INFORMATION:

Regulatory History and Background Information

DoD published a proposed rule on February 21, 1997 (62 FR 7966) implementing section 2837 of the National Defense Authorization Act for FY96 (Pub. L. 104–106). Public comments were accepted until April 22, 1997. This final rule addresses the comments received on the proposed rule.

Discussion of Public Comments

During the public comment period, the Department received over 40 public comments from 14 sources, including numerous LRAs. The comments are summarized generically below. Changes that have been made to the rule in response to public comments are noted. The comments fall into eight broad categories including:

Federal Tenant Procurement Authority

Many comments requested that the rule revise the provisions regarding what services a Federal tenant may pay for and how the services can be obtained. Examples include: (1) The rule should authorize LRAs to charge Federal leaseback tenants a Common Area Maintenance Fee; (2) the rule should authorize Federal tenants to sole source for ''landlord'' services; and, (3) the rule should require Federal tenants to pay for services if the Agency paid for the services when it owned the property (note: this would only apply to existing Federal tenants rather than agencies relocating to the site).

Response: The Federal Government cannot pay for municipal services that are provided by a locality to its population using tax revenues. Doing so would, in effect, result in a taxing of the Federal Government. But, as evidenced by numerous Supreme Court Cases interpreting the Supremacy Clause of Article VI of the United States Constitution, States cannot tax the Federal Government. With respect to other services, Federal tenants can only pay for those services that are a requirement of the Federal Government. Paying a Common Area Maintenance Fee could result in the Federal tenant paying for services that are above and beyond what is needed to use the property being leased. For those services that are necessary, the leaseback authority does not remove the Federal Government's responsibility to abide by existing procurement laws. As a result, such services must be acquired using existing procurement laws and regulations. In some circumstances, a sole source contract may be allowable.

Leaseback Transfer Approval/Rejection Authority

Out of concern that prospective Federal tenants will reject an LRA's request for a leaseback transfer with virtually no justification, some comments requested that the rule establish criteria that would have to be

met for a Federal Agency to reject a leaseback in favor of property ownership. Other comments suggested that an arbitration or grievance process be established or that the General Services Administration (GSA) should be assigned the task of approving leaseback requests.

Response: The Federal Property and Administrative Services Act of 1949 gives Federal Departments and Agencies priority on the use of base closure and realignment property. This ''right of first refusal'' to obtain ownership of property is unchanged by the leaseback authority. As a result, DoD does not have the legal authority to require a Federal Department or Agency to give up the right of ownership in favor of a leasehold interest. However, if a leaseback is requested by an LRA, the Department urges Federal Agencies to give serious consideration to leasing the property from the LRA instead of pursuing ownership through a Federal-to-Federal transfer.

Process For Securing Another Federal Tenant

The proposed rule specified that if the Federal Tenant no longer requires use of the property before the expiration of the lease term, the remainder of the term may be satisfied by the same or another Federal Agency for a similar use. The rule stated that GSA would assist in identifying interest in the property. Comments raised by the public requested that this process be clarified to include how GSA will screen for another user and how long GSA will have to secure another tenant.

Response: Section 175.7(k)(10(vi) has been amended to provide more guidance on how a replacement tenant would be identified by GSA. The rule also stipulates that GSA would have only 60 days in which to find a new tenant.

Valuation and Consideration

Numerous public comments addressed the issue of determining value for the leaseback property and setting the level of consideration. The comments included: (1) The value of leaseback property should be set at zero; (2) consideration for the leaseback property should not be due until after the Federal tenant vacates; (3) consideration for leaseback property should be set at zero; and, (4) the rule should define how value will be determined for a stand-alone leaseback.

Response: The leaseback authority requires the Department to determine the fair market value of the property before transfer. As a result, the value of the leaseback property cannot be preset through regulation. The rule does allow, however, for flexibility with respect to payment terms. Consideration can be in cash or in kind, and can be paid up front, over time, or when the Federal tenant vacates the property, as long as the amount of consideration (or formula for determining the amount of consideration) and the schedule for payment are agreed upon before the property is transferred. The value of leaseback property being transferred under an Economic Development Conveyance (EDC) will be determined in accordance with existing EDC valuation procedures. Property being conveyed as a stand-alone leaseback will be valued based on the proposed reuse.

Federal Tenant Improvements

Several LRAs expressed concern that the proposed rule allows a Federal tenant to repair, improve, and maintain the property at its expense without the approval of the LRA. The comments stated that without requiring a Federal tenant to consult with the LRA, alterations made to the property could be inconsistent with the community's plans for ultimate use of the property.

Response: The Department agrees with the comments that were submitted and has revised the rule to require Federal tenants to consult with the LRA before making repairs and improvements.

Insurance

A few comments requested that the rule require Federal tenants to obtain insurance for property leased back from an LRA in the same way that LRAs are required to have insurance for property leased from DoD.

Response: Requiring Federal tenants to obtain insurance is unnecessary because the Federal Government is self insured.

Leaseback Compatibility With Other Conveyance Regulations

Comments received from another Federal Agency raised concerns that a leaseback transfer may be incompatible with a public benefit transfer (PBT) when the leaseback property is located within the PBT property. For example, for leaseback property located within or adjacent to property being conveyed via a PBT, the public benefit grantee may not be the LRA—the recipient of the leaseback property. In addition, if leaseback property is located within or adjacent to PBT property, the Federal Agency's use of the property may be incompatible with the public benefit use (e.g. obstructing airspace near a public airport). The comment recommended that the rule require the Military Departments to consult with the Federal sponsoring Agency if the property to be transferred under the leaseback authority is within or adjacent to PBT property.

Response: Property needed by another Federal Department or Agency is either transferred using the Federal-to-Federal transfer process or it is transferred to an LRA and then leased back to the Federal entity under the leaseback authority. The use of the property is the same regardless of the transfer method. The Department does not consult with Federal sponsoring Agencies when using a Federal-to-Federal transfer, so the rule has not been changed to require consultation when using a leaseback. In some cases use of a leaseback transfer rather than a Federal-to-Federal transfer could actually be more beneficial if the property is located within or adjacent to PBT property because the leaseback rule allows the property to be transferred to another entity (e.g. an airport authority) and provides a guarantee on the future use of the property.

Legality of a Lease/Leaseback Arrangement

One comment stated that, contrary to the provisions of § 175.7(k)(7) of the proposed rule, it is legally impossible to have a leaseback without first deeding the property to the LRA. The letter stated that if a Federal Agency needs access to the property before a deed can be issued, the Military Department can allow the Agency access without first going through a leasback transaction. The letter also stated that non-DoD Federal agencies would refuse to enter into lease/leaseback arrangement.

Response: The Department's legal counsel indicates that a lease in furtherance of conveyance/leaseback transaction is allowable if a deed transfer cannot yet be accomplished. But, the Department acknowledges that in some circumstances other options may be available to provide a Federal Agency access to the property including the use of a permit.

Statement of Determination and Certifications

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this rule is not a significant regulatory action as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 95–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic

impact on a substantial number of small entities.

Public Law 104–13, ''Paperwork Reduction Act of 1995'' (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose any reporting or recordkeeping requirements.

List of Subjects in 32 CFR Part 175

Community development, Government employees, Military personnel, Surplus Government property.

Accordingly, 32 CFR part 175 is amended to read as follows:

PART 175—[AMENDED]

1. The authority citation for 32 CFR part 175 continues to read as follows:

Authority: 10 U.S.C. 2687 note.

2. Section 175.3 is amended by adding a new paragraph (l) to read as follows:

§ 175.3 Definitions.

* * * * *

(l) *Similar use.* A use that is comparable to or essentially the same as the use under the original lease.

3. Section 175.4, § 175.5, and § 175.6 are revised to read as follows:

§ 175.4 Policy.

It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases-more quickly, more efficiently, and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation. This regulation does not create any rights of remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Public Law 103–160, Public Law 103–421, or Title XXVII of Public Law 104–106.

§ 175.5 Responsibilities.

(a) The Deputy Under Secretary of Defense (Industrial Affairs and Installations), after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue guidance through the publication of a Manual or other such document necessary to implement laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security and the Deputy Under Secretary of Defense (Industrial Affairs and Installations) on revitalizing base closure communities.

§ 175.6 Delegations of authority.

(a) The authority provided by sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; September 13, 1991; and, September 1, 1995.[1] Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

(b) Authorities delegated to the Deputy Under Secretary of Defense (Industrial Affairs and Installations)[2] by § 174.5 of this chapter are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this part or other DoD Directive, Instruction, Manual, or Regulation. These authorities may be delegated further.

4. Section 175.7 is amended by revising paragraph (a)(13)(i) and paragraph (d)(3)(i), by reserving paragraph (j) and by adding paragraph (k) to read as follows:

§ 175.7 Procedures.

(a) * * *

(13) * * *

(i) In unusual circumstances, extensions beyond six months can be granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

* * * * *

(d) * * *

(3) * * *

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations)), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

* * * * *

(k) *Leaseback of real property at base closure and realignment sites.* (1) Section 2905(b)(4)(c) of Public Law 101–510, 10 U.S.C. 2687 note (BRAC 1990), as added by section 2837 of Public Law 104–106, gives the Secretary of Defense the authority to transfer real property that is still needed by a Federal Department or Agency to an LRA provided the LRA agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, hereinafter referred to as a ''leaseback,'' is to enable the LRA to obtain ownership of the property pursuant to the BRAC process while still ensuring that the Federal need for use of the property is accommodated.

(2) Subject to BRAC 1990 and this part, the decision whether to transfer property pursuant to a leaseback rests with the relevant military department. However, a military department may only transfer property via a leaseback if the Federal entity that needs the property agrees to the leaseback arrangement.

(3) If for any reason property cannot be transferred pursuant to a leaseback (e.g., the relevant Federal Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the military department determines that a leaseback would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations.

(4) If a building or structure is proposed for transfer under this authority, that which is leased back to the Federal Department or Agency may be all or a portion of that building or structure.

(5) The leaseback authority may be used at all installations approved for closure or realignment under BRAC 1990.

(6) Transfers under this authority must be to an LRA.

(7) Transfers under this authority may be by lease in furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response,

[1] Available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: ''base_reuse@acq.osd.mil''

[2] A Deputy Secretary of Defense memorandum of May 15, 1996, ''OUSD (Acquisition and Technology) Reorganization'' disestablished the office of the Assistant Secretary of Defense for Economic Security and established the office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies are available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: ''base_reuse@acq.osd.mil''

Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, *et seq.*) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.

(8) The leaseback authority can be used to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an LRA under this authority and lease it back unless:

(i) The Military Department is acting in an Executive Agent capacity on behalf of a Defense Agency that certifies that a leaseback is in the interest of that Defense Agency; or,

(ii) The Secretary of the Military Department certifies that a leaseback is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

(9) Property eligible for a leaseback is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include the proposed leaseback of property in its redevelopment plan, taking into account the planned Federal use of such property.

(10) The terms of the LRA's lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Acquisition Regulation (GSAR) (48 CFR Part 570) are not applicable to the lease, but provisions in the GSAR may be used to the extent they are consistent with this part. The terms of the lease are negotiable subject to the following:

(i) The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Department or Agency concerned. The lease term should be based on the needs of the Federal entity.

(ii) The lease, or any renewals or extensions thereof, shall not require rental payments.

(iii) The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.

(iv) The Federal Department or Agency concerned may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(v) The lease shall include a provision prohibiting the LRA from transferring fee title to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.

(vi) The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency that needs property for a similar use.

(A) Prior to exercising this option, the Federal tenant shall consult with the LRA concerned or other property owner if the property has been conveyed by the LRA to another entity in accordance with § 175.7(k)(10)(v) of this part.

(B) If the Federal tenant decides to exercise this option after consulting with the LRA or other property owner, it shall notify the appropriate General Services Administration regional office that the property is available for use by a Federal Department or Agency. The General Services Administration regional office shall have 60 days from the date of notification in which to identify a Federal Department or Agency to serve out the term of the lease and to notify the LRA or other property owner of the new tenant. If the regional office does not notify the LRA or other property owner of a new tenant within 60 days from the date of notification, the property is available for use by the LRA or other property owner.

(C) If the Federal tenant decides not to exercise this option after consulting with the LRA or other property owner, the property is available for use by the LRA or other property owner.

(vii) The terms of the lease shall provide that the Federal Department or Agency may repair and improve the property at its expense after consultation with the LRA.

(11) Conveyance to an LRA under this authority shall be in one of the following ways:

(i) Lease back property that will be conveyed under an Economic Development Conveyance (EDC) shall be conveyed as part of the EDC in accordance with the existing EDC procedures and § 175.7(k)(11)(ii)(B)(*4*). The LRA shall submit the following in addition to the application requirements outlined in § 175.7(e)(5):

(A) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(B) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(C) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(ii) Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:

(A) As soon as possible after the LRA's submission of its redevelopment plan to the DoD and HUD, the LRA shall submit a request for a leaseback to the Military department. The Military Department may impose additional requirements as necessary, but at a minimum, the request shall contain the following:

(*1*) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(*2*) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(*3*) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(B) The transfer may be for consideration at or below the estimated present fair market value. In those instances in which the property is conveyed for consideration below the estimated present fair market value, the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained.

(*1*) In a rural area, the transfer shall comply with § 175.7(f)(5).

(*2*) Payment may be in cash or in-kind.

(*3*) The Military Department shall determine the estimated present fair market value of the property before transfer under this authority.

(*4*) The exact amount of consideration, or the formula to be used

to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer under this authority.

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33109 Filed 12–18–97; 8:45 am]

BILLING CODE 5000–04–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–4, and 51–6

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee is changing five sections of its regulations to clarify them and improve the efficiency of operation of the Committee's Javits-Wagner-O'Day (JWOD) Program. The changes are necessary to clarify and expand earlier regulation changes and to eliminate unnecessary regulatory language.

EFFECTIVE DATE: January 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–0665. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is amending § 51–2.4 of its regulations to clarify further that its authorizing statute, the JWOD Act, 41 U.S.C. 46—48c, treats addition of commodities and services to the Procurement List and the establishment by the Committee of a fair market price as two separate functions and applies the requirement for notice and comment rulemaking only to the addition function. This area was first addressed in 1994 (59 FR 59338, Nov. 16, 1994) with the removal of fair market price from the list of suitability criteria for Procurement List additions, in accordance with a 1992 court decision, *McGregor Printing Corporation* v. *Kemp,* 802 F. Supp. 519, 527 (D.D.C), *rev'd on other grounds,* 20 F.3d 1188 (D.C. Cir. 1994). The amendment states that the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination. Accordingly, they will not be addressed when the Committee makes an addition decision. This amendment will not affect the ability of Government and other appropriate parties to comment on proposed fair market prices and price changes in connection with the Committee's fair market pricing process. The Committee is also removing paragraph 51–2.4(a)(4)(C) of its regulations to eliminate one of two essentially redundant statements in § 51–2.4 to the effect that the Committee considers pertinent comments when making its addition decisions.

The Committee also amended paragraphs (b)(6) and (c)(1) of § 51–4.3 of its regulations in 1994 (59 FR 59343) to allow the acceptance of State certifications of blindness or other severe disabilities as documentation of disability, in addition to reports by individual health professionals. Many of these certifications, however, are done by health professionals at local governmental bodies, such as public schools. The new amendment to this section will allow acceptance of these certifications.

Paragraph (c) of § 51–4.4 of the Committee's regulations permits nonprofit agencies participating in the JWOD Program to subcontract a portion of the process for providing a commodity on the Procurement List. The amendment will extend this permission to services on the Procurement List, and would specify how the Committee will oversee routine subcontracting of a part of the production process.

Paragraph (c) of § 51–6.12 of the Committee's regulations requires Government contracting activities to provide a 90-day notice when changing the scope of work of a service on the Procurement List. The amendment will make it clear that this notice requirement also applies to situations where the contracting activity converts a service to performance by Government personnel.

Prior to the 1991 revision of the Committee's regulations (56 FR 48974, Sept. 26, 1991), the matters contained in current parts 51–5 and 51–6 were in a single part 51–5, which had a disputes provision applicable to the entire part of the Committee's regulations. The amendment clarifies the disputes provision, § 51–6.14, to state its applicability to both parts 51–5 and 51–6.

Public Comments on the Proposed Rule

The Committee published the proposed rule in the **Federal Register** of September 26, 1997 (62 FR 50547). One comment was received, from counsel for a manufacturer which is objecting to a recently proposed addition to the Procurement List. The comment addressed only the proposed changes to 41 CFR 51–2.4, which contains the Committee's criteria for making additions to the Procurement List. No comments were received on the other proposed regulatory changes announced by the Committee at that time.

As noted above, the changes to 41 CFR 51–2.4 were intended to emphasize the Committee's conclusion that its authorizing statute treats the Committee's addition of commodities and services to the Procurement List and its establishment of fair market prices for these commodities and services as two separate Committee functions. The statutory requirement for notice and comment rulemaking, in the Committee's view, applies only to the first of these functions.

The commenter challenged the Committee's conclusion that the holding cited from the 1992 *McGregor* decision in support of the Committee's view was not reversed by the 1994 appeals court decision. While unable to point to specific language in the later decision reversing the lower court's holding, the commenter indicated that the holding was reversed ''by implication'' because the later decision discussed the Committee's shortcomings on its fair market price determination in the rulemaking at issue. If the appeals court did not intend to reverse the lower court's holding, the commenter argued, this discussion would be a mere waste of space in the appeals court's opinion.

The *McGregor* appellate decision set aside the Committee's rulemaking, and reversed the lower court, because the appellate court concluded that the Committee's rulemaking record did not support the Committee's conclusions and the Committee did not adequately explain the basis for its conclusions. The regulation stating the Committee's criteria for Procurement List additions which was in effect when the contested rulemaking took place included fair market price among the criteria. Accordingly, the discussion cited by the commenter from the appellate court opinion noted the shortcomings in the Committee's administrative record and **Federal Register** notice which pertained to the Committee's explanation of its rationale for deciding that the pricing criterion had been met, as a part of its longer discussion of the Committee's