proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW NM D Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″N., long. 103°19′20″W.)
Cannon ILS Localizer
(Lat. 34°22′25″N., long. 103°20′09″W.)
Cannon TACAN
(Lat. 34°22′51″N., long. 103°19′21″W.)

That airspace extending upward from the surface to and including 6,800 feet MSL within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course extending from the 4.6-mile radius to 5.1 miles northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW NM E2 Closvis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″N., long. 103°19′20″W.)
Cannon ILS Localizer
(Lat. 34°22′25″N., long. 103°20′09″W.)
Cannon TACAN
(Lat. 34°22′51″N., long. 103°19′21″W.)

That airspace extending upward from the surface within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course extending from the 4.6-mile radius to 5.1 miles northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on February 25, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–5392 Filed 3–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 447, 457, and 45 CFR Parts 92 and 95

[HCFA–2114–P]

RIN 0938–AI65

State Child Health; State Children's Health Insurance Program Allotments and Payments to States

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

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds available to individual States, Commonwealths and Territories for the new State Children's Health Insurance Program (CHIP) established under title XXI of the Social Security Act. This rule also proposes the allotment, payment, and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under the State Children's Health Insurance Program and related Medicaid program provisions.

Established by section 4901 of the Balanced Budget Act of 1997 (Pub. L. 105–33) and amended by technical amendments made by Pub. L. 105–100, the State Children's Health Insurance Program provides Federal matching funds to States to initiate and expand health insurance coverage to uninsured, low-income children. Aggregate Federal funding is limited to a fixed amount for each Federal fiscal year. This aggregate amount is divided into allotments for each State. State allotments are determined based on a statutory formula that divides the total available appropriation among all States with approved child health plans. Once determined, the amount of a State's allotment for a fiscal year is available for 3 years.

We are publishing this proposed rule in accordance with the provisions of sections 2104 and 2105 the Act that relate to allotments and payments to States under title XXI.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 3, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2114–P, PO Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC, or

Room C5–09–27, Central Building, 7500 Security Boulevard, Baltimore, Maryland.

If you wish to submit written comments on the information collection requirements contained in this proposed rule, you may submit written comments to the following:

Allison Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503; and

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN: Louis Blank, HCFA–2114–P.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2114–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box

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I. Background

Section 490l of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, as amended by Public Law 105–100, added Title XXI to the Social Security Act (the Act). Title XXI authorizes a new State Children's Health Insurance Program (CHIP) to assist State efforts to initiate and expand child health assistance to uninsured, low-income children. Child health assistance is provided primarily for obtaining health benefits coverage through (1) obtaining coverage that meets requirements specified in the law under section 2103 of the Act; or (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both.

Under title XXI, funds are appropriated to carry out this basic purpose. Section 2104(a) of the Act specifies appropriated amounts for each fiscal year to be used to provide allotments to each State. Section 2104 of the Act provided for the total amount of funds available nationally for each Federal fiscal year and sets forth a general methodology to calculate the State specific allotments.

Section 2105 of the Act requires the Secretary to make payments to each State with an approved State child health plan from its available allotment equal to a certain percentage (referred to as the enhanced Federal medical assistance percentage (EFMAP)) of the State expenditures under the plan. These expenditures are primarily for child health assistance for targeted low-income children that meet the health benefits coverage requirements in section 2103 of the Act. Section 2105 of the Act authorizes the Secretary to establish a process for making payments to States for State expenditures under their title XXI programs. Under this section, no more than 10 percent of a State's total expenditures may be used for the total costs of: other child health assistance for targeted low-income children; health services initiatives; outreach; and administrative costs.

This proposed rule will implement these title XXI State CHIP and related title XIX Medicaid program financial provisions, including the allotment process, the payment process, financial reporting requirements, and the grant award process.

II. Provisions of the Proposed Rule

A. Overview

Under our proposal, the new regulations for the Children's Health Insurance Program would be set forth in regulations at 42 CFR part 457 subchapter D. We note that some sections and subparts would be reserved for regulations currently under development related to other statutory requirements of the Children's Health Insurance Program. We intend to address these and other statutory requirements in subsequent **Federal Register** documents.

The overall existing regulations for the Medicaid program containing general financial and related provisions were used as a model for the Children's Health Insurance Program. In this regard, proposed regulations at §§ 457.200 through 457.238, subpart B, mirror existing Medicaid regulations related to program administration and conformed to the title XXI program. The most significant inclusion in these regulations would be our proposal to set forth proposed regulations at §§ 457.600 through 457.630, subpart F. This subpart would specify the methodologies and procedures to determine the Federal allotments, and the grant award process that will be used for payment to States.

The proposed organizational format for new part 457, subchapter D is as follows:

Subchapter D—Children's Health Insurance Programs (CHIPs)

Part 457—Allotments and Grants to States

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure To Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

Sec.

457.200 Program reviews.
457.202 Audits.
457.204 Withholding of payment for failure to comply with Federal requirements.
457.206 Administrative appeals under the State CHIP.
457.208 Judicial review.
457.210 Deferral of claims for FFP.
457.212 Disallowance of claims for FFP.
457.216 Treatment of uncashed or canceled (voided State CHIP checks).
457.218 Repayment of Federal funds by installments.
457.220 Public funds as the State share of financial participation.
457.222 FFP for equipment.
457.224 FFP: Conditions relating to cost sharing.
457.226 Fiscal policies and accountability.
457.228 Cost allocation.
457.230 FFP for State ADP expenditures.
457.232 Refunding of Federal share of CHIP overpayments to providers and referral of allegations of waste, fraud or abuse to the Office of Inspector General.
457.234 State plan requirements.
457.236 Audit of records.
457.238 Documentation of payment rates.

Subparts C through E—[Reserved]

Subpart F—Payment to States

457.600 Purpose and basis of this subpart.
457.602 Applicability.
457.606 Conditions for State allotments and Federal payments for a fiscal year.
457.608 Process and calculation of State allotments for a fiscal year.
457.610 Period of availability for State allotments for a fiscal year.
457.614 General payment process.
457.616 Application and tracking of payments against the fiscal year allotments.
457.618 Ten percent limit on certain Children's Health Insurance Program expenditures
457.622 Rate of FFP for State expenditures.
457.624 Limitations on certain payments for certain expenditures.
457.626 Prevention of duplicate payments.
457.628 Other applicable Federal regulations.
457.630 Grants procedures.

B. Program administration

Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

We would add new §§ 457.200 through 457.234 subpart B that would

specify the provisions necessary for program administration of the State CHIP plan.

1. Program Reviews (§ 457.200)

Section 457.200 would specify that HCFA reviews State and local administration of the State CHIP plan in order to determine whether the State is complying with the Federal requirements and provisions of its plan.

2. Audits (§ 457.202)

The Department's Office of Inspector General (OIG) periodically audits State operations. Section 457.202 would specify the purpose of these audits, OIG's audit reports, and action that a State agency may take on audit exceptions.

3. Withholding of Payment for Failure To Comply With Federal Requirements (§ 457.204)

Section 457.204 would specify the basis for withholding payment, noncompliance of a State plan and noncompliance practices.

4. Administrative Appeals Under the State CHIP (§ 457.206)

Section 457.206 would specify the three types of disputes that may be appealed under the State CHIP.

5. Judicial Review (§ 457.208)

A State dissatisfied with the Administrator's final determination approval of plan material or compliance with Federal requirements has a right to judicial review. In § 457.208, we would specify the procedure for judicial review.

6. Deferral of Claims for FFP (§ 457.210)

Section 457.210 would specify the requirements for deferral for payment of a claim or any portion of a claim for FFP. This section would also specify that the HCFA Regional Administrator must notify the State in writing of a deferral and the State's responsibility.

7. Disallowance of Claims for FFP (§ 457.212)

Section 457.212 would specify when the Regional Administrator or Administrator determines that a claim or portion of a claim is not allowable the State will be notified of the dissallowance and a right for reconsideration. This section would also specify the procedure for reviews of disallowances of FFP under CHIP, and implementation of reconsideration decisions.

8. Treatment of Uncashed or Canceled (voided) State CHIP Checks (§ 457.216)

Section 457.216 would specify the rule to ensure that States refund the amount of FFP related to checks not cashed after 180 days or canceled (voided) checks, issued by a State or a fiscal agent to CHIP payees under title XXI.

9. Repayment of Federal Funds (§ 457.218)

New § 457.218 would set forth the basic conditions when Federal payments have been made for claims that are later found to be unallowable. This section would specify the repayment schedule, quarterly repayment amounts, extended schedule and repayment process. It would also specify the process for offsetting of retroactive claims.

10. Public Funds as the State Share of Financial Participation (§ 457.220)

Section 457.220 would specify that public funds may be considered for the State's share in claiming FFP if they meet the conditions specified in this section of the regulations. These public funds may also be subject to the limitation on the use of donations and taxes that are set forth in Medicaid regulations, which we propose to incorporate for purposes of the CHIP in § 457.628 below. HCFA is considering whether there is a need to issue additional regulations for provider related-donations and health care related-taxes for CHIP.

11. FFP for Equipment (§ 457.222)

Section 457.222 would specify how claims for Federal financial participation in the cost of equipment under the State CHIP are determined, and the requirements concerning the management and how disposition of equipment under the State CHIP Program are prescribed.

12. FFP: Conditions Relating to Cost Sharing (§ 457.224)

New § 457.224 would specify the conditions for which no FFP in the State's expenditures for services is available or for which the amount of expenditures are reduced related to cost-sharing received by the State.

13. Fiscal Policies and Accountability (§ 457.226) and Cost Allocation (§ 457.228)

Section 457.226 would set forth fiscal policies and accountablity for a State that has a CHIP plan. Section 457.228 would require a State plan to provide that the single or appropriate State CHIP agency will have an approved cost allocation plan on file with the Department.

14. Federal Financial Participation for State ADP Expenditures (457.230)

Section 457.230 would specify that FFP is available for State ADP expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. This section would also specify where additional HHS regulations and HCFA procedures for implementing these regulations are specified.

15. Refunding of Federal Share of CHIP Overpayments to Providers and Referral of Allegations of Waste, Fraud or Abuse to the Office of Inspector General (§ 457.232)

Section 457.232 would specify how refunding of the Federal share of CHIP overpayments to providers will be handled. In addition, this section would specify that allegations or indications of waste, fraud and abuse with respect to the CHIP program must be referred to the Office of Inspector General.

16. State Plan Requirements (§ 457.234)

This section would specify that the State must provide that the requirements in this subpart are met.

17. Audits of Records (§ 457.236) and Documentation of Payment Rates (§ 457.238)

Sections 457.236 and 457.238 would specify that the CHIP agency must assure appropriate audit of records, and maintain documentation of payment rates and make it available to HHS.

C. Allotment Process

We would add new §§ 457.600 through 457.632, subpart F, that would implement the provisions of section 2104 of the Act, relating to the process for establishing the national total amounts available and the State specific allotments for a fiscal year, and section 2105 of the Act, relating to the process for making payments to States from their allotments. We would also add a new section on Medicaid presumptive eligibility at § 447.88 to subpart A, as discussed below.

1. Purpose, Basis and Applicability of This Part (§§ 457.600 and 457.602)

Section 457.600 specifies the purpose and basis of this new part.

Section 457.602 will specify that this subpart applies to the 50 States, the District of Columbia, and the Commonwealths and Territories.

2. Conditions for State Allotments for a Fiscal Year and Payments (§ 457.606)

In § 457.606, we specify the conditions necessary in order for a State to receive an allotment for a fiscal year and Federal payments for allowable State expenditures under its State child health plan. Specifically, a State will receive an allotment for a fiscal year only if HCFA has approved its State child health plan by the end of the fiscal year, and Federal payments are available only for the State's allowable expenditures under the approved State child health plan at an enhanced Federal medical assistance percentage. States could be at risk for expenditures made under a State child health plan that was submitted, but not yet approved.

Public Law 105–174, enacted on May 1, 1998, provides that if a State child health plan is approved by HCFA on or after October 1, 1998, and before October 1, 1999, the plan must be treated as having been approved for both FY 1998 and FY 1999. Thus, for example, if a State submits its initial child health plan during FY 1999 and the plan is approved in FY 1999, the State will receive a CHIP fiscal year allotment for both FY 1998 and FY 1999. However, a State's allotment for a fiscal year may only be used for CHIP and/or CHIP-related Medicaid expenditures that are allowable under the approved State child health plan or the Medicaid State plan. FFP would not be available for expenditures made in and claimed for periods prior to the effective date of the approved State child health plan or the Medicaid State plan. § 457.606 specifies the conditions contained in Public Law 105–174 relating to approval of State child health plans for FYs 1998 and 1999.

3. Process and Calculation of Allotments for a Fiscal Year (§ 457.608)

We specify in § 457.608 the provisions for determining the amounts of State allotments for a fiscal year. The total amount of the Federal funds available for the purpose of funding States' Title XXI programs is limited for each fiscal year nationally, and the statute provides a basis for determining State-specific allotments of this national total amount. There are two determinations involved in the overall allotment process. In the first determination, the total amounts available for allotment to the States, the District of Columbia, and the Commonwealths and Territories for a fiscal year are established. The second determination potentially involves three State specific allotment determinations by the Secretary for a fiscal year: the reserved allotment; the final allotment; and the redistribution of the amounts of unused fiscal year allotments from States that have not expended all of the amount of that fiscal year's allotment, to States that have fully expended the amount of their allotments for that fiscal year.

Section 457.608 specifies the methodology and formula for calculating the total amount available nationally for allotment to States and the District of Columbia for a fiscal year. Section 2104(a) of the Act specifies the total appropriated amount available nationally for allotment to each State and the District of Columbia with a State child health plan approved under this title based on the formula specified in section 2104(b)(1) of the Act. The total appropriations for each fiscal year, representing the total amounts available nationally for allotment to States are: $4.295 billion for FY 1998; $4.275 billion for fiscal years 1999 through 2001; $3.150 billion for fiscal years 2002 through 2004; $4.050 billion for fiscal years 2005 and 2006; and $5 billion for FY 2007. The total amount available nationally for allotment for each fiscal year is determined by subtracting certain amounts in a specified order, as specified in statute, from the total appropriation for all States for a given fiscal year. The example below illustrates the methodology used for calculating the total amount available nationally for allotment to States for FY 1998.

Total Allotment Available for FY 1998 for All States

Formula: $A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_{TA} = National total amount available for allotment to all States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year specified in section 2104(a) of the Act. Under section 2104(a)(1) of the Act for FY 1998, this is $4,295,000,000.

$T_{2104(c)}$ = Total allotment amount for a fiscal year available for allotment to the Commonwealths and Territories; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the fiscal year. For FY 1998, this is: $.0025 \times \$4,295,000,000 = \$10,737,500$

D_{4921} = Amount of total grant for children with Type I Diabetes under section 4921 of Pub. L. 105–33. This is $30,000,000 for each of fiscal years 1998 through 2002.

D_{4922} = Amount of total grant for diabetes programs for Indians under section 4922 of Pub. L. 105–33. This is $30,000,000 for each of fiscal years 1998 through 2002.

In accordance with the above formula, the total amount available for allotment to the 50 States and the District of Columbia for fiscal year 1998 is $4,224,262,500, determined as follows:

$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

$\$4,224,262,500 = \$4,295,000,000 - \$10,737,500 - \$30,000,000 - \$30,000,000$

4. Individual State Allotments to the 50 States and District of Columbia

Section 2104(b) of the Act provides for allotments from the total amount available nationally to the 50 States and the District of Columbia. For fiscal years 1998 through 2000, each State with an approved State child health plan will receive an allotment based on two factors for the fiscal year: the number of children and the State cost factor.

Section 2104(b)(2) of the Act specifies that the number of children used in determining a State's allotment for a fiscal year is a determination of the number of low-income children (and of low income children who have no health insurance coverage) for a State for a fiscal year made on the basis of the arithmetic average of the number of such children, as reported and defined in the 3 most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census before the beginning of the fiscal year.

For fiscal years 1998 through 2000 the number of children factor used in calculating a State's allotment for a fiscal year is based on each State's total number of low-income children with no health insurance coverage. For fiscal year 2001, the number of children factor is the sum of: (1) 75 percent of the number of low-income children with no health insurance coverage; and (2) 25 percent of the number of low-income children in the State. For each succeeding fiscal year after 2001, the number of children factor is the sum of: (1) 50 percent of the number of low-income children with no health insurance coverage; and (2) 50 percent of the number of low-income children in the State.

Section 2104(b)(1)(A)(ii) and (b)(3) of the Act specifies that the State cost factor used in determining a State's allotment refers to geographic variations in State health costs and is based on the average of the annual wages per employee for the State or the District of Columbia, or for all States and the District of Columbia, for employees in

the health services industry (although SIC Code 8000 is referenced in the statute, the Bureau of Labor and Statistics is using the more general SIC code 80) as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years before the beginning of the fiscal year involved.

As specified in the statute, the sources of the number of children and the annual average wages for employees in the health services industry are the Bureau of the Census and the Bureau of Labor Statistics, respectively. Both of the relevant sections of the Act refer to these data ''as reported and defined'' under the authorities of these Federal organizations for the 3 most recent years before the beginning of the fiscal year involved. In light of the clear language of the statute, in our calculations of the State allotments we will use the data regarding the number of children and the annual average wages as provided by the Bureau of the Census and the Bureau of Labor Statistics. That is, we will not make any adjustments or corrections to this data provided by the Bureau of the Census or the Bureau of Labor Statistics.

In order for HCFA to determine State CHIP allotments for a fiscal year within a reasonable time period at the beginning of the fiscal year, we intend to use the most recent official data that are available from the Bureau of the Census and Bureau of Labor Statistics, respectively, just prior to the beginning of the fiscal year on October 1. We will use this approach beginning with FY 2000, which begins on October 1, 1999.

We used a different approach for FY 1998 and FY 1999. In calculating the FY 1998 reserved CHIP allotments, which were published in the **Federal Register** on September 12, 1997, we used the most recent official data that were available from the Bureau of the Census and Bureau of Labor Statistics, respectively, prior to the *September* 1 before the beginning of FY 1998 (that is, through *August 31,* 1997).

In particular, through August 31, 1997, the only official data available from the Bureau of the Census on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995. If we had waited for the official data available from the Bureau of the Census through September 30, 1997, we would have had to delay publication of the FY 1998 CHIP allotments until after the beginning of FY 1998. Since this was a new program, we believed that for the first year States needed to be able to plan in advance.

Section 457.608 specifies that in determining a fiscal year allotment, we will use the most recent official data that are available from the Bureau of the Census and the Bureau of Labor Statistics prior to the October 1 before the beginning of the fiscal year.

HCFA does not modify or adjust the Bureau of Census compilation of CPS data on the number of children. HCFA is, however, incorporating a correction made by the Bureau of Census to more accurately reflect underlying reported CPS data. The Bureau of Census recognized that the data collected and reported on the numbers of children in the March Supplements to the CPS were not accurately reflected in the compilation provided to HCFA for the September 12, 1997 calculation of the FY 1998 reserved allotments. In particular, children who had access to services through the Indian Health Services (IHS), but no other health insurance coverage, were identified in the compiled number of children as having health insurance coverage. The Bureau of Census has adjusted the compiled numbers of children to reflect the fact that the data shows that these children do not actually have health insurance coverage. In light of this adjustment to more accurately reflect reported CPS data, HCFA recalculated and republished the FY 1998 reserved allotments in the **Federal Register** on February 8, 1999 (64 FR 6102). This is consistent with the express incorporation of this Bureau of Census adjustment into the FY 1999 allotment calculation under Public Law 105–277.

In accordance with Pub. L. 105–277, the FY 1999 reserved allotments were based on the same data as the revised FY 1998 reserved allotments. These reserved allotments were also published in the **Federal Register** on February 8, 1999 (64 FR 6102).

Specifically, for FY 1999, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the 1994, 1995 and 1996 March supplements to the CPS, as adjusted in August 1998. The State Cost Factor was calculated based on the final State Cost Factor data for each of the most recent 3 years before the beginning of the fiscal year, through August 31, 1997 available from BLS. This is the same data that was used in the calculation of the FY 1998 allotments.

In accordance with section 2104(b)(4) of the Act, § 457.608(e) specifies that each State, (including the District of Columbia) with an approved State plan will receive a minimum allotment for a fiscal year of $2 million. This section also provides that in the event that a State's allotment as determined by the formula described above is below this $2 million minimum, it will be increased to $2 million; and the increase will be offset by a pro rata reduction in allotments to other States so that the total amount of allotments to all States in a fiscal year does not exceed the total amount available nationally for allotment to the States and the District of Columbia.

We specify in § 457.608(f) the formula for determining individual allotments for the 50 States and the District of Columbia. The formula for determining each State's allotment of the total available allotment is indicated in section 2104(b)(1) of the Act. The example below shows the methodology for determining each State allotment amount for FY 1998.

5. Formula for Calculating the State Allotment for a Fiscal Year (§ 457.608(d))

The methodology for determining the State allotment for a fiscal year is in accordance with the following formula:

$$SA_i = \frac{C_i \times SCF_i}{\sum (C_i \times SCF_i)} \times A_{TA}$$

SA_i = Allotment for a State for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(i)) for a fiscal year.

This number is based on the number of low-income children for a State for a fiscal year and the number of low-income children for a State for a fiscal year with no health insurance coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the 3 most recent March supplements to the Current Population Survey of the Bureau of the Census before the beginning of the fiscal year. (section 2104(b)(2)(B) of the Act). As discussed above, the number of children will be the most recent data officially available and reported ad defined by the Bureau of the Census prior to October 1 before the beginning of the fiscal year.

For each of the fiscal years 1998 through 2000, the number of children is equal to the number of low-income children in the State for the fiscal year with no health insurance coverage. For fiscal year 2001, the number of children is equal to the sum of 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 25 percent of

the number of low-income children in the State for the fiscal year. For fiscal years 2002 and thereafter, the number of children is equal to the sum of 50 percent of the number of children in the State for the fiscal year with no health insurance coverage and 50 percent of the number of low-income children in the State for the fiscal year (section 2104(b)(2)(B)).

SCF_i = *State cost factor* for a State (section 2104(b)(1)(A)(ii)).

For a fiscal year, this is equal to:

$.15 + .85 \times (W_i/W_N)$ (Section 2104(b)(3)(A)).

W_i = The annual average wages per employee for a State (section 2104(b)(3)(A)(ii)(I)).

W_N = The annual average wages per employee for the 50 States and the District of Columbia for such year (section 2104(b)(3)(A)(ii)(II)).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health industry (SIC code 80), as reported by the Bureau of Labor Statistics for the Department of Labor for each of the 3 years before the beginning of the fiscal year. Although section 2104(b)(3)(B) of the Act refers to the SIC code 8000, the Bureau of Labor Statistics reports the wages for employees in the health services industry using SIC code 80, which is more general. As discussed above, the health industry wages will be the most recent data available and reported and defined by the Bureau of Labor Statistics prior to October 1 before the beginning of the fiscal year. (section 2104(b)(3)(B)).

$\sum(C_i \times SCFi)$ = This is the sum of the products of $C_i \times SCF_i$ for each State (section 2104(b)(1)(B)).

A_{TA} = Total amount available for allotment to all States and the District of Columbia for the fiscal year. For FY 1998, this is $4,224,262,500.

6. Reserved Allotment for Each State (§ 457.608(g))

Although the statute provides that the Secretary shall make an allotment to a specific state if it has an approved State child health plan, we are proposing a process under which State CHIP allotments will be determined and ''reserved'' for each and every State for the fiscal year, regardless of whether the States have submitted and have an approved State child health plan. The amount of the ''reserved'' allotment for each State would be determined in accordance with the formula provided for in section 2104(b) of the Act.

In accordance with this approach, § 457.608 specifies that for each fiscal year, HCFA will develop the reserved allotments for the 50 States and the District of Columbia and the Commonwealths and Territories based on the principle that an allotment amount should be reserved and available for each State, regardless of whether the State has submitted a State child health plan or whether that plan is approved. This will provide States with the flexibility and time to develop their programs and submit their State child health plans. The reserved allotment does not represent an actual allotment for a State. The reserved allotment may be established as a State's actual allotment for a fiscal year only upon submission and approval of the States' child health assistance plan by the end of the fiscal year (or, in the case of fiscal year 1998, by the end of fiscal year 1999). Furthermore, as discussed below, the State's final allotment for the fiscal year may differ from the State's reserved allotment. Since the effective date for the States' CHIP plans could have been as early as October 1, 1997, we published the FY 1998 reserved allotments for the States, District of Columbia and Commonwealths and Territories, in a separate **Federal Register** notice (67 FR 48098) on September 12, 1997, as if they all had approved State child health plans. We believe it is important for States to be informed of a reserved allotment at the beginning of the fiscal year so that States have an opportunity to plan accordingly.

Reserved allotments are determined through the method described in section 4 in accordance with the formula provided for in section 2104(b) of the Act.

7. Final Allotment for Each State (§ 457.608(h))

The statute requires that final State allotments for each fiscal year be determined based only on the States that have approved State child health plans by the end of the fiscal year. This regulation proposes that the factors used in calculating each State's final allotments for a fiscal year, the number of children and the State cost factor, will be the same as the factors used in determining and publishing the reserved allotments. As discussed previously, in section 4 above, in general we propose to use the official data for these factors available from the Bureau of the Census and the BLS prior to October 1 before the beginning of the fiscal year. More recent data than that used in calculating the reserved allotments for a fiscal year will not be used in determining the final allotments for that fiscal year. This will establish a consistent basis for States in planning their State children's health insurance programs, and will mitigate the potentially significant fluctuations in allotments that could occur because of changes in these factors.

However, as discussed above in section 4, on reserved allotments, the Bureau of the Census has recently changed the way it reports children having access to IHS services. In order to reflect this Bureau of Census adjustment in the calculation of the final allotments for FY 1998, we propose to use the revised number of children factor reflected in the revised reserved FY 1998 allotments published in the **Federal Register** on February 8, 1999 (64 FR 6102). These numbers are slightly different from what was used when the reserved allotments were published in the **Federal Register** on September 12, 1997.

The Bureau of Census will continue to use this new reporting methodology of children with access to IHS services in the future, and therefore it will be reflected in the reserved state allotments and the final CHIP allotments.

8. Allotments for the Commonwealths and Territories (§ 457.608(f))

New § 457.608(f) specifies the amount of the total allotment available for a fiscal year to the Commonwealths and the Territories and the amount of the specific allotment for each Commonwealth and Territory. Section 2104(c) of the Act provides for allotments to the Commonwealths and Territories of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. This section of the Act specifies that for a fiscal year, the Secretary shall allot 0.25 percent of the total amount appropriated for the fiscal year among each of the Commonwealths and Territories in accordance with the following percentages specified in section 2104(b)(2) of the Act:

Puerto Rico—91.6 percent
Guam—3.5percent
Virgin Islands—2.6 percent
American Samoa—1.2 percent
Northern Mariana Islands—1.1 percent

For fiscal year 1998 a total of $10,737,500 (.25 percent of $4,295,000,000) is available for allotment to the Commonwealths and Territories. For FY 1999 the Commonwealths and Territories will receive $10,687,500 (.25 percent of $4,275,000,000) under the formula described above. In addition, under Pub. L. 105–277, an additional $32 million

was appropriated for allotment only to the Commonwealths and Territories and only for FY 1999. This newly appropriated $32 million does not reduce the previous FY 1999 CHIP appropriation ($4.275 billion) and is in addition to the 0.25 percent of the amount discussed above ($10,687,500). Therefore, for FY 1999, a total of $42,687,500 will be available for allotment to the Commonwealths and Territories.

We will determine the reserved allotments for a fiscal year for the Commonwealths and Territories in accordance with the above methodology, as if every Commonwealth and Territory has an approved child health plan. If all the Commonwealths and Territories do not have an approved plan, the final allotments will be determined based only on those with approved child health plans and allotted in proportion to the above percentages.

9. Period of Availability of State Allotments for a Fiscal year (§ 457.610)

Section 457.610 specifies that a State's final allotment for a fiscal year as determined in accordance with the formula in § 457.608, remains available for the State, District of Columbia, and Commonwealth and Territory expenditures claimed in a 3-year period of availability beginning with the fiscal year, and ending at the end of the second fiscal year following the fiscal year. For example, for the FY 1998 final allotment, the period of availability is FY 1998 through FY 2000.

In addition, as discussed below, there may be a redistribution process to reallot unexpended amounts of States' allotments for a fiscal year. Section 457.610 specifies that the amounts of redistributed allotments for a fiscal year will be available through the end of the fiscal year immediately following the 3-year period of availability for a fiscal year. For example, for the redistribution of the unexpended amounts of the FY 1998 final allotments, the redistributed amounts would be available to States through the end of FY 2001.

10. Redistribution Process

We intend that at the end of the 3-year period of availability for a fiscal year allotment, HCFA will redistribute to States the unused amounts of allotments for that fiscal year. Section 2104(f) of the Act requires the Secretary to determine an appropriate procedure for redistribution of allotments from States that ''do not expend all of the amount of such allotments during the period in which such allotments are available'' under section 2104(e) of the Act, ''to States that have fully expended the amount of their allotments''. Under section 2104(e) of the Act, the period for which a particular fiscal year States' allotments are available is through the end of the second year following the fiscal year for which the allotment was established. That is, an allotment for a particular fiscal year is available to each State for up to a total of 3 years, the fiscal year and the 2 years following. For example, the FY 1998 allotments, would be available from the beginning of FY 1998 (October 1, 1997) through the end of FY 2000 (September 30, 2000). Any unused amounts of States' allotments for a fiscal year at the end of the 3-year period will be distributed to States that have fully spent their allotments. HCFA intends to apply the redistribution process as soon as possible after the end of the 3-year period, after determining the amount of the unused allotments and the States to which such amounts should be redistributed.

At this time HCFA is not addressing the redistribution process.

D. Payment to States

General Payment Process (§ 457.614)

New § 457.614 specifies that a State may make claim for payment for expenditures incurred during the period of availability related to that fiscal year. This section also specifies that in order to receive a claim for payment, a State must submit budget estimates of quarterly funding requirements for Medicaid and the Children's Health Insurance Programs, and submit an expenditure report. In turn, HCFA will issue an advance grant to a State as described in § 457.630; track and apply a State's reported expenditures against the State allotment; and track and apply relevant State expenditures for establishing and tracking the 10 percent limit.

As discussed previously, section 2105 requires the Secretary to make payments to each State with an approved State child health plan for child health assistance for targeted low-income children who meet the coverage requirements in section 2103, after reducing for expenditures for presumptive eligibility provided under section 1920A of the Act and Medicaid expansions for which the State receives a CHIP-related enhanced matching rate. Section 2105 also specifies that no more than 10 percent of a State's payment may be used for the total costs of: other child health assistance for targeted low-income children; health services initiatives; outreach; and administrative costs.

E. Application and Tracking of Payments Against the Fiscal Year Allotments (§ 457.616)

Section 457.616 of this regulation specifies the principles that will be used for tracking payments and States' title XIX and title XXI expenditures against the States' title XXI allotments.

Sections 2105(a) and 2104(d) of the Act require that title XXI fiscal year allotments be reduced by the following categories of expenditures:

(1) Payments made to a State under its title XIX Medicaid program with respect to section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child described in section 1905(u)(2) of the Act on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act.

(2) Payments made to a State under its title XIX Medicaid program with respect to section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are for attributable to the provision of medical assistance to a child described in section 1905(u)(3) of the Act on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act.

(3) Payments made to a State under section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1920A of the Act.

(4) Payments made to a State under its title XXI children's health insurance program with respect to section 2105(a) of the Act for expenditures claimed by the State during a fiscal year.

HCFA will use the following principles, referenced in § 457.616(c) of this regulation, to: Coordinate the application of the title XIX and title XXI expenditures against the title XXI fiscal year allotments; determine the order of these expenditures; and determine how expenditures apply against multiple fiscal year allotments.

- *Principle 1. Apply title XIX Medicaid payments before title XXI CHIP payments (section 2104(d)).* Federal payments for title XIX expenditures must be applied against the title XXI fiscal year allotments before payment for title XXI expenditures are applied. Specifically, u2 (the total computable expenditures claimed for the fiscal year under section 1905(u)(2) of the Act), u3 (the total computable expenditures claimed for the fiscal year under section 1905(u)(3) of the Act), and PE (presumptive

eligibility) payments under section 1920A of the Act in the Medicaid program are applied before any title XXI payments are applied.

• *Principle 2. Federal payments for expenditures must be applied against a fiscal year allotment based on the quarter in which they are claimed (section 2104(b), (d), and section 2105(a)).* Federal payment for title XIX and title XXI expenditures must be applied against a fiscal year allotment based on the quarter in which they are claimed. Thus, Principle 1 above applies only on the basis of the quarter the expenditures are claimed. For example, if title XXI expenditures were claimed in one quarter and title XIX expenditures were claimed in a second, subsequent quarter, the title XXI expenditures claimed in the first quarter would be applied against the fiscal year allotment before the title XIX expenditures claimed in the second quarter.

• *Principle 3. Expenditures should be applied consistently over the 3-year period of availability for fiscal year allotment (Section 2101(a), section 2104(e), and (f)).* Federal payment for expenditures should be applied consistently over the 3-year period of availability for fiscal year allotments. In order to treat States consistently in the redistribution process, as appropriate, HCFA will apply the same ordering of expenditures and allotments for all States.

• *Principle 4. Title XIX expenditures should be applied in the order which provides the most benefits for States.* Federal payment for title XIX expenditures should be applied in the order that maximizes Federal reimbursement for States. We believe the order that most benefits States is as follows: u2 expenditures first, then u3 expenditures, and lastly PE expenditures. This is because u2 and u3 expenditures are funded at the enhanced FMAP rate which drops to the regular FMAP rate when the allotment is exhausted. PE expenditures are always matched at the regular (lower) FMAP, and also continue to be matched after the allotment is exhausted.

• *Principle 5. Apply expenditures and allotments in the least administratively burdensome, most effective and efficient manner (section 2101(a).* To the greatest extent possible HCFA will use processes which are the least administratively burdensome, and the most effective and efficient. For example, we believe a ''first-in-first-out'' (FIFO) method should be applied both with respect to the application of claims for FFP for expenditures against the allotment and the availability of the fiscal year allotments. Thus, Federal payments for expenditures would be applied against a fiscal year allotment in the order they are claimed, and an earlier fiscal year allotment would be used before a subsequent fiscal year allotment. For example, in the case of a State for which FY 1988 allotment amounts are carried over to FY 1999, Federal payments for expenditures claimed in FY 1999 would first be applied against the FY 1998 carryover allotment amounts before being applied against subsequent fiscal year allotments (see Principle 7).

• *Principle 6. Application of claims for Federal payments in expenditures for 1 fiscal year against a subsequent fiscal year allotment (section 2104(e), (f)).* Federal payment for expenditures claimed in one fiscal year would be applied against a subsequent fiscal year's allotment, if the earlier fiscal year's allotment was exhausted. However, this could not be done until the subsequent year's allotment was actually available. For example, Federal payments for expenditures claimed in FY 1998 after the FY 1998 allotment was exhausted would be applied against the FY 1999 allotment, but only after FY 1999 had begun and the FY 1999 allotment had become available.

• *Principle 7. Amounts of a State's fiscal year allotments for prior years that have not been expended and are ''carried over,'' are available for matching expenditures within the 3-year period of availability (section 2104(e), (f)).* Under the FIFO method (see Principle 5), unexpended amounts of an allotment for a fiscal year would be carried over for use in subsequent fiscal years and through the end of the 3-year period of availability. Furthermore, the carried over allotment would be used before the subsequent fiscal year allotment was used. For example, unspent amounts of the FY 1998 allotment may be carried over up through FY 2000. The carried over amounts of the FY 1998 allotment would be used before the allotments for FYs 1999 and 2000; that is, expenditures for FYs 1999 and 2000 would be applied against the FYs 1998 carryover amount before being applied against the FYs 1999 and 2000 allotments (Principle 5). Application of Principles 2, and 5 through 7 may mitigate the necessity of having to go through a redistribution process because earlier allotments would be exhausted by Federal payments for expenditures as they were claimed during the period of availability.

The following examples illustrate the above principles.

• *Example 1—Illustration of Principle 1.* The amount remaining of the fiscal year 1998 allotment is $5 million. Claims for payments for title XIX expenditures in a quarter are $4 million. Title XXI claims for payments for expenditures in the same quarter are $3 million. Under Principle 1, the $4 million in title XIX expenditures are applied against the remaining $5 million of the FY 1998 allotment first, leaving $1 million remaining of the fiscal year 1998 allotment. Therefore, FFP would be available for only $1 million of the $3 million in claims for title XXI expenditures; and at that point, the fiscal year 1998 allotment would be exhausted. The remaining $2 million in claims for title XXI expenditures would have to be funded by the State.

• *Example 2—Illustration of Principle 2.* The fiscal year 1998 allotment is $5 million. In quarter 1 of FY 1998, $3 million in title XXI expenditures are claimed. In quarter 2 of fiscal year 1998 there are $4 million in claims for title XIX expenditures. Since the $3 million in claims for title XXI expenditures are claimed (first) in quarter 1, under Principle 2, they would be applied first against the fiscal year 1998 allotment. This would leave $2 million remaining under the fiscal year 1998 allotment. In quarter 2 only $2 million in FFP would be available from the fiscal year 1998 allotment with respect to the $4 million title XIX claims for expenditures in that quarter. At that point, the fiscal year 1998 allotment would be exhausted, and FFP for the remaining $2 million in claims for title XIX expenditures would be available under Medicaid at the regular Medicaid FMAP.

• *Example 3—Illustration of Principle 4.* The fiscal year 1998 allotment is $5 million. There are the following claims for expenditures in Quarter 4 of fiscal year 1998: u2 $5 million, u3 $4 million, and PE $1 million. In accordance with Principle 4, in this case the $5 million in claims for u2 expenditures would be applied against the fiscal year 1998 allotment first. Since the amounts of the claims for u2 expenditures and the fiscal year 1998 allotment are the same, the entire amount of u2 expenditures would be reimbursed at the enhanced FMAP. Although the $5 million fiscal year 1998 allotment has been exhausted, the claims for u3 and PE expenditures would still be reimbursed under the Medicaid program at the regular FMAP rate. Again, this is because the regular Medicaid FMAP rate continues for these groups, even though the fiscal year 1998 allotment was exhausted.

• *Example 4—Illustration of Principle 6.* The fiscal year 1998 and 1999 allotments are $5 million for each fiscal year. The State claims $6 million for title XXI expenditures for fiscal year 1998, and $4 million for title XXI expenditures for fiscal year 1999. In this case, the $6 million in claims for fiscal year 1998 expenditures reduce the fiscal year 1998 allotment to $0 with $1 million of the fiscal year 1998 expenditures remaining unpaid. When the fiscal year 1999 allotment becomes available, the remaining $1 million in claims for fiscal year 1998 expenditures would be applied against the fiscal year 1999 allotment, leaving $4 million remaining of the fiscal year 1999 allotment. The $4 million

in claims for title XXI fiscal year 1999 expenditures claimed would then be paid from the fiscal year 1999 allotment, thereby exhausting the remaining fiscal year 1999 allotment.

• *Example 5—Illustration of Principles 5 and 7.* The fiscal year 1998 and fiscal year 1999 allotments are $5 million for each fiscal year. The State claims $4 million for title XXI expenditures for fiscal year 1998 and $6 million for title XXI expenditures for fiscal year 1999. Since the fiscal year 1998 was only reduced by the $4 million amount in claims for fiscal year 1998 title XXI expenditures, the $1 million remaining of the fiscal year 1998 allotment would be ''carried over'' to fiscal year 1999. In applying the claims for fiscal year 1999 expenditures, $1 million of the $6 million would first be applied against the carryover of the fiscal year 1998 allotment. The remaining $5 million for the fiscal year 1999 claims would be applied against the remaining $5 million allotment for fiscal year 1999, reducing the remaining fiscal year 1999 allotment to $0.

F. Ten Percent Limit on Certain Children's Health Insurance Program Expenditures (§ 457.618)

1. Limit on Four Categories of Expenditures (§ 457.618(a))

Sections 2105(a)(2) and 2105(c)(2) of the Act specifies that there are 4 categories of expenditures for which State claims for Federal funds at the enhanced FMAP are limited: administrative expenditures, outreach, health initiatives, and certain other child health assistance.

2. No Federal Payment for Expenditures in Excess of the Limit (§ 457.618(b))

Section 457.618(b) specifies that Federal payments for the categories of limited expenditures claimed by a State for a fiscal year will not be available to the extent the total of such expenditures exceeds the 10 percent limit calculation.

3. Ten Percent Limit (§ 457.618(c))

Under section 2105(c)(2)(A) of the Act, States may receive funds at the enhanced FMAP for administrative expenditures, outreach, health services initiatives, and certain other child health assistance, only up to a ''10 Percent Limit.'' The ''10 Percent Limit'' specifies that the ''total computable'' amount of these expenditures (the combined total State and Federal share of an expenditure) for which FFP may be claimed cannot exceed 10 percent of the sum of the total computable expenditures made under section 2105(a) of the Act and the total computable expenditures based on the enhanced match made under sections 1905(u)(2) and (u)(3) of the Act.

This 10 Percent Limit is applied on an annual fiscal year basis, and may be waived by the Secretary under section 2105(c)(2)(B) of the Act when coverage is provided through cost-effective community based health delivery systems. This proposed rule does not address the waiver process or standards.

Significant technical corrections were made to the 10 percent limit in Pub. L. 105–100. Prior to those amendments, the statute required calculation of the limit on a quarterly basis. This was changed to an annual basis. Furthermore, prior to the technical amendments, the limit was calculated on the basis of the Federal share of the expenditures while the expenditures applied against the limit were in total computable amounts. The technical amendments made both the calculation of the 10 percent limit and the expenditures applied against the 10 percent limit based on the total computable amounts of such expenditures.

These provisions along with the formula for calculating the 10 percent limit indicated below are specified in new § 457.618(c).

4. Formula for Calculating the 10-Percent Limit (§ 457.618(c)(3))

The following formula for the 10 Percent Limit (L10%) is in accordance with the referenced statutory provisions.

L10% = (a1 + u2 + u3)/9

a1 = Total computable expenditures claimed for the fiscal year under section 2105(a)(1) of the Act

u2 = Total computable expenditures claimed for the fiscal year under section 1905(u)(2) of the Act for which Federal payments under section 1903(a)(1) of the Act are based on the EFMAP

u3 = Total computable expenditures claimed for the fiscal year under section 1905(u)(3) of the Act for which Federal payments under section 1903(a)(1) of the Act are based on the EFMAP

Under this formula, the 10 percent limit is determined by dividing the State's CHIP program expenditures (meaning those expenditure that are *not* subject to the 10 percent limit) by 9. Calculating the 10 percent limit in this way ensures that the capped expenditures (meaning those expenditures that are applied against the 10 percent limit) are no more than 10 percent of the total expenditures including such capped expenditures. However, the amounts of the State's CHIP allotment(s) available in the fiscal year also provides the overall limit on the State's total CHIP expenditures in the fiscal year. In effect, the total of all the State's CHIP expenditures (that is, the program expenditures plus the expenditures capped by the 10 percent limit) cannot exceed the amounts of the State's CHIP allotment(s) available in the fiscal year. Therefore, we specify in § 457.618(c)(5) that a State's 10 percent limit for a fiscal year may be no greater than 10 percent of the total computable amounts of the State's allotment(s) available in the fiscal year, even if the application of the formula indicated above resulted in a larger amount. Thus, the 10 percent limit is the lower of: the amount determined under the formula indicated above; or 10 percent of the total computable amount of the CHIP allotment(s) available in that fiscal year.

The following example illustrates the calculation of the 10 Percent Limit based on a State's expenditures claimed for the fiscal year:

Example: The State's title XXI enhanced FMAP is 65 percent (that is, .65). The total computable expenditures claimed for the fiscal year under the section 2105(a)(1) category (a1) is $10 million; the Federal share claimed for those expenditures is $6.5 million (0.65 x $10 million). The total computable expenditure claimed for the fiscal year that are applicable against the 10 percent limit (for example, administrative expenditures) is $3 million. The total computable expenditures claimed for the fiscal year for the section 1905(u)(2) category (u2) is $3 million; the Federal share claimed for these expenditures is $1,95 million (.65 × $3 million). The total computable expenditures claimed for fiscal year for the section 1905(u)(3) category (u3) is $2 million; and the Federal share claimed for those expenditures is $1.3 million (.65 × $2 million).

In this example, the 10 Percent Limit is a total computable amount of $1,666,667, calculated as follows:

L10% = (a1 + u2 + u3)/9

a1 = Total computable expenditures for the fiscal year under section 2105(a)(1) of the Act.

u2 = Total computable expenditures for the fiscal year under section 1905(u)(2) of the Act.

u3 = Total computable expenditures for the fiscal year under section 1905(u)(3) of the Act.

L10% = (($10 million (a1) + $3 million (u2) + $2 million (u3))/)9 = $15 million/9 = $1,666,667.

In this example, FFP would not be available for that portion of the section 2105(a)(2) expenditures applicable against the 10 percent limit that are in excess of the 10 Percent Limit of $1,666,667, a total computable amount. Thus, although the State submitted $3 million in total computable amounts of section 2105(a)(2) expenditures, only $1,666,667 of the $3 million total computable amount would be allowable, and the remainder of the $1,333,333 total computable amount would be potentially disallowable.

Under this example, the allowable amount of Federal funds available under the 10 Percent Limit would be $1,083,334 (.65 ×0000666,667); and the unreimbursable amount of Federal funds in excess of the 10 Percent Limit would be $866,667 (.65 × $1,333,333).

The following example illustrates the ''limit on the 10 percent limit'' related to the available allotments in the fiscal year:

Example: The fiscal year is FY 1999. The State's carryover allotment from FY 1998 is $3 million and the FY 1999 allotment is $10 million. The enhanced EMAP for each of the FYs 1998 and 1999 is 65 percent. Therefore, the total computable amount of the total allotment available in FY 1999 is $20 million determined as:

($3 million (the FY 1998 carryover allotment) + $10 million (the FY 1999 allotment))/ .65 (the EFMAP) = $13 million/.65 = $20 million

Ten percent of $20 million is $2 million. Therefore, the 10 percent limit is limited to $ 2 million.

Under title XXI, FFP is available at the enhanced FMAP for a State's program and administrative expenditures (including related startup costs) during a period for which the State has an approved title XXI plan in effect. Initial State plans can be approved effective as early as October 1, 1997. As indicated above, such administrative expenditures (under section 2105(a)(2) of the Act) are subject to the 10 Percent Limit which is calculated on a fiscal year basis. Therefore, startup costs will be limited by the amount of sections 2105(a)(1), 1905(u)(2) and 1905(u)(3) expenditures claimed during the fiscal year in which the startup period occurs. The following example illustrates the availability of FFP for startup costs.

Example: The 10 Percent Limit formula is:

L10% = (a1 + u2 + u3)/9
a1 = § 2105(a)(1) expenditures
u2 = § 1905(u)(2) expenditures
u3 = § 1905(u)(3) expenditures

In the first two quarters of the fiscal year, the State's a1, u2, and u3 expenditures are $0 and the State's start up administration expenditures (a2 expenditures) are $2.0 million. In the third quarter of the fiscal year, the a1, u2, and u3 expenditures total $.5 million and the startup and other (a2) administrative expenditures are $1.5 million. In the fourth quarter of the fiscal year, the a1, u2, and u3 expenditures total $8.5 million and the startup and other (a2) administrative expenditures are $1.0 million. The totals for the fiscal year are: $9.0 million ($0 + $.5 million + $8.5 million) in a1, u2, and u3 expenditure, and $4.5 ($2.0 + $1.5 million + $1.0 million) in startup and other (a2) administrative expenditures. In this example, the 10 Percent Limit is $1.0 million, calculated as follows:

L10% = (a1 + u2 + u3)/9 = $9.0 million/9 = $1.0 million

In this example, FFP would be available at the enhanced FMAP for $1.0 million of the $4.5 million of administrative costs. Thus, the relatively lower benefit expenditures at the beginning of the fiscal year combined with the relatively higher benefits expenditures at the end of the fiscal year serve as the basis for calculating the final 10 Percent Limit, determined on a fiscal year basis.

It is important to note that if a State has no expenditures other than, for example, startup administrative expenditures under section 2105(a)(2)(D) of the Act during a fiscal year, no FFP under Title XXI will be available for such expenditures. This is because the 10 Percent Limit in this example would be $0, calculated as follows:

L10% = (a1 + u2 + u3)/9 = ($0 + $0 + $0)/ 9 = $0

States may mitigate the effect of little or no program expenditures on the calculation of the 10 percent limit in one fiscal year by delaying the claiming of administrative expenditures until a subsequent fiscal year. In that case, the delayed administrative expenditures could be applied against the subsequent year's 10 percent limit, which may be calculated using presumably higher program expenditures.

5. Administrative Expenditures

For purposes of payment under section 2105(a) of the Act, administrative costs are differentiated from the program costs referred to as ''child health assistance'' in section 2105(a)(1) of the Act (child health assistance is further defined in section 2110(a) of the Act). Child health assistance is generally referred to as ''payment for part or all of the cost of health benefits coverage for targeted low-income children.'' Payment for such program costs which are within the scope of the State's CHIP benefit package meeting the requirements of section 2103 of the Act are not considered to be payment for administrative costs, and are generally not subject to the 10 Percent Limit.

6. Waiver of 10 Percent-Limit

Under section 2105(c)(2)(B) of the Act, the Secretary may waive the 10 percent limit on the expenditures described in section 2105(a)(2) of the Act if 3 conditions are met: (1) Coverage provided to targeted low-income children through such expenditures meet the requirements of section 2103 of the Act, (2) the cost of such coverage is cost effective, and (3) such coverage is provided through the use of a community-based health delivery system such as through contacts with health centers receiving funds under section 330 of the Public Health Service Act or with hospitals such as those that receive disproportionate share payment adjustments under section 1886(d)(5)(F) or section 1923 of the Act. We are developing the requirements and conditions to implement the provision for waiver of the 10 percent limit. Therefore, this proposed rule does not address these issues. HCFA will address waiver procedures and standards at a later time.

7. FFP for State Expenditures (§ 457.622)

Under section 2105(a) of the Act, FFP in all allowable title XXI expenditures, and certain title XIX expenditures is available at the enhanced FMAP rate. As specified in § 457.622(b) and (c), a number of conditions apply with respect to the availability of FFP in States' expenditure claims at the enhanced FMAP.

Section 2105(b) of the statute defines the enhanced FMAP as the regular Medicaid FMAP for the State, increased by a number of percentage points equal to 30 percent of the number of percentage points by which that FMAP is less than 100 percent, but in no case more than 85 percent. This formula, mathematically, could be expressed as the lesser of 85 percent or FMAP + [0.3 × (100 percent—FMAP)]. In our proposed regulations, we simplify the statutory formula by multiplying the terms and arriving at a formula of the lesser of 85 percent or (0.7 × FMAP) + 30 percent. This formula is mathematically equal to the statutory formula.

The enhanced FMAP rate is available in a State's expenditures only if the State has an approved title XXI State child health plan.

The enhanced FMAP rate is available only if amounts of States' allotments for a fiscal year are available, that is, States' allotments have not been fully expended.

8. CHIP Related Title XIX Administrative Expenditures (§ 457.622(e))

As specified in § 457.622(e)(1), States have several options on how to claim FFP for CHIP related title XIX administrative expenditures. These administrative activities refer to the costs of State activities in support of certain Medicaid State plan options; specifically, the following provisions: coverage of children under section

1905(u)(2) and (3); and coverage of presumptive eligibility under section 1920A of the Act.

There are a number of factors a State must consider in deciding which option to choose for claiming FFP for CHIP-related Medicaid administrative costs:

- *The FFP rate for the administrative costs in the Medicaid and the CHIP programs.* For example, if the Medicaid administrative FFP rate is 50 percent for a certain administrative activity and the CHIP enhanced FMAP rate was 65 percent, a State might decide on the basis of this factor to claim the expenditure under the CHIP program.
- *The CHIP fiscal year 10 percent limit.* Any administrative costs claimed under the CHIP program are subject to the 10 percent limit. However, claiming CHIP related Medicaid administrative costs under the 10 percent limit could affect the availability of FFP for other CHIP-only administrative costs, if the 10 percent limit was an issue. Note, if the 10 percent limit was reached, a State could still claim CHIP related Medicaid administrative costs that were over the 10 percent limit under the Medicaid program.
- *The availability of the CHIP fiscal year allotment.* Any administrative costs claimed under the CHIP program are also subject to the State fiscal year allotment. Thus, whether any allotment amounts were available and how much they would be affected would be an issue. Note, that if the allotment was exhausted, a State could still claim CHIP related Medicaid administrative costs that were over the limit under the Medicaid program.

A State has a choice of two options on how it may claim the CHIP-related Medicaid administrative costs. These are administrative costs related to the provision of medical assistance for expenditures described under sections 1905(u)(2) and (3), and section 1920A of the Act when a State's Medicaid expansion is also referenced in an approved State child health plan. The option a State chooses determines how the State will report the estimated and actual expenditures related to these administrative costs.

Under the first option, States may choose to claim CHIP related title XIX Medicaid administrative expenditures under the title XXI CHIP, at the enhanced FMAP rate. States choosing this option must continue to claim these expenditures as administrative expenditures in a fiscal year until the 10 percent limit and/or the State allotment for the fiscal year is reached, at which point the State could claim these administrative expenditures under the Medicaid program.

Under the second option, States may choose to claim CHIP related title XIX Medicaid administrative expenditures under the title XIX Medicaid program.

States may select and apply each option with respect to any or all of the categories of FFP for administrative expenditures available in the title XIX Medicaid program, and specified in § 433.15 of this part. There are potentially 4 FFP rates for the different categories of administrative expenditures indicated in that section: 50, 75, 90, and 100 percent.

The regulation further specifies that once a State has chosen to claim CHIP related title XIX administrative expenditures under one of the options for one or more of the FFP claiming categories for administrative expenditures listed in title XIX, it must continue to claim these administrative expenditures consistently on a fiscal year basis.

As specified in § 457.622(e)(2), allowable title XXI administrative expenditures support the operation of the State child health plan. Therefore, FFP for administration under title XXI is not available for costs of activities related to other programs. For example, FFP would not be available for generalized activities related to health education or social services.

Section 457.622(e)(3) specifies that FFP for allowable title XXI administrative expenditures is not available in payments for expenditures that are paid for as part of another payment. That is, the effective and efficient operation of the State plan should include reasonable costs which do not duplicate payments that are already included and paid as part of another payment mechanism, for example:

- Rates for outpatient clinic services;
- Case management services;
- Part of capitation rate;
- Other provider rate; and
- Other program payments (including Federal, State, or local governmental programs.

Section 457.622(e)(4) specifies that FFP is available for administrative expenditures for activities defined in sections 2102(c)(1) and 2105(a)(2)(C) of the Act as outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in, such a program. Section 457.622(e)(2) provides that States have the option to choose how to claim FFP for expenditures for title XIX Medicaid administrative activities, including outreach, related to the title XXI CHIP. If claimed under title XXI, FFP for outreach expenditures is available at the enhanced FMAP rate and subject to the 10 Percent Limit (unless subject to a waiver of such limit under section 2105(c)(2)(B) of the Act); if claimed under title XIX, FFP for such expenditures would be available at the regular Medicaid FFP rate for administration.

Section 457.622(e)(5) specifies that FFP is available for administrative expenditures for activities specified in sections 2102(c)(2) of the Act as coordination of the administration of the State children's health insurance program with other public and private health insurance programs. Furthermore, § 457.622(e)(2) specifies that States may choose how to claim FFP for expenditures for title XIX Medicaid coordination administrative activities related to the title XXI CHIP. If claimed under title XXI, FFP for such expenditures is available at the enhanced FMAP rate and subject to the 10 Percent Limit; if claimed under title XIX, FFP for such expenditures would be available at the regular Medicaid FFP rate for administration.

Therefore, FFP at the enhanced FMAP rate is available under title XXI specifically for coordination activities related to the administration of title XXI with other public and private health insurance programs. Section 457.622(e)(3) specifies that FFP would not be available for the costs of administering the other public and private health insurance programs. Coordination activities must be distinguished from other administrative activities common among different programs.

9. Limitations on Certain Payments for Certain Expenditures (§ 457.624)

Section 457.624 implements provisions of sections 2105(c) of the Act, which limit the availability of FFP for certain coverage.

Under section 2105(c)(1) and (7), payment for health insurance coverage under a State's child health insurance program may only be made to States for coverage of abortions that are necessary to save the life of the mother, or if the pregnancy is the result of rape or incest. Otherwise, payment may not be used to pay for abortions or assist in the purchase, whole or in part, of health benefit coverage that includes coverage of abortion.

Section 2105(c)(3) of the Act provides for waiver for purchase of family coverage. Payment may be made to a State with an approved State child health plan for the purchase of family

coverage under a group plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of HCFA that—

(1) Purchase of this coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved; and

(2) This coverage shall not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

10. Prevention of Duplicate Payments (§ 457.626)

This section implements section 2105(c)(6) of the Act, which limits payments for child health assistance when such payments would duplicate certain other health insurance coverage.

Section 2105(c)(6) of the Act specifies that no payment will be made to a State for expenditures for child health assistance provided for a targeted low-income child under its State child health plan to the extent that a private insurer defined by the Secretary by regulation and including a group health plan (as defined in section 607(l) of the Employee Retirement Income Security Act of 1974, a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided child health assistance under the State child health plan.

As specified under section 2105(c)(6)(B) of the Act, except as otherwise provided by statute, no payment will be made to a State under its State child health plan for child health assistance provided for a targeted low-income child under its plan to the extent that payment has been made or can reasonably be expected to be made promptly as defined in accordance with regulations under any other Federally operated or financed health care insurance program, other than an insurance program operated or financed health care insurance program, other than an insurance program operated or financed by the Indian Health Service, as identified by the Secretary.

11. Other Applicable Federal Regulations (§ 457.628)

Section 2107(e) provides that certain provisions of the Act outside of title XXI shall apply to title XXI ''in the same manner as they apply to a State under title XIX.'' HCFA continues to study how to best apply these provisions to title XXI ''in the same manner.'' As an interim measure, in § 457.628, we propose to make certain Medicaid regulations directly applicable to title XXI.

Section 457.628 specifies other regulations that are applicable to State CHIP programs. These are existing Medicaid and other Departmental programs and include, for example, the Medicaid regulations at 42 CFR subpart B, § 433.50 related to the donations and taxes provisions issue. Under section 2107(e)(1)(C) of the Act, the limitations on provider taxes and donations (as referred to in section 1903(w) of the Act) must apply in States' CHIPs in the same manner as they do in the Medicaid program. Other Medicaid provisions, that are also applicable in States' CHIPs, include deferral and disallowance procedures (§§ 457.210 and 457.212), appeals procedures, record keeping.

G. Grants

Grant Procedures (§ 457.630)

Section 457.630 specifies the grant procedures that HCFA will use to issue grants awards to States with approved title XXI State plans.

In general, based on the title XXI appropriation language the entire title XXI appropriation amount for each fiscal year referred to in section 2104(a) of the Act must be ''obligated'' by the Federal government by the end of such fiscal year. Any funds not obligated by the Federal government by the end of the fiscal year (that is, prior to the close of the related Federal government's accounting system for that fiscal year) will no longer be available to any State.

However, as indicated in section C. 2. above, Pub. L. 105–174, enacted on May 1, 1998, provides that if a State child health plan is approved by HCFA on or after October 1, 1998, and before October 1, 1999, the plan must be treated as having been approved for both FY 1998 and FY 1999. Pub. L. 105–174 affects the general grant award process discussed above for FYs 1998 and 1999. Under the provisions of Pub. L. 105–174, the FY 1998 allotments may not be finalized until the end of FY 1999, because States have until then to have their child health plans approved. Therefore, the Federal government must obligate the FY 1998 CHIP allotments by issuing grant awards (for purposes of meeting the ''obligation'' requirements) equal to the total of the allotments for FY 1998, by the end of FY 1999. The Federal government must also obligate the FY 1999 allotments by the end of FY 1999 by issuing grant awards for FY 1999 equal to the total of the fiscal year allotments for each State by the end of FY 1999. Section 457.630 will reflect these requirements for issuance of the grant awards in order to obligate the allotment funds for each fiscal year.

The funds are obligated by issuing title XXI grant awards. To ensure that all of the appropriated funds are available to States, HCFA will issue grant awards to all States with title XXI State plans approved by the end of the fiscal year (or by the end of fiscal year 1999, for fiscal year 1998) which equal, in total, the national amount available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for that fiscal year (on September 30). Such grant awards must be issued by the time the HCFA/HHS accounting system closes with respect to that fiscal year. The total of the grant awards for the fiscal year will equal the States'', Commonwealths'', and Territories' final allotments, described earlier. Therefore, in order for HCFA to act to approve each States' State child health plan by September 30 of a fiscal year, it is important for States to submit such plans as soon as possible and no later than July 1 of that fiscal year.

H. FFP for Expenditures Provided During Presumptive Eligibility (PE) Period

Section 4912 of the BBA amended the Medicaid statute to add a new section 1920A of the Act, which authorizes States to make medical assistance available in their Medicaid programs to low-income children on a cursory assessment of family income by a qualified entity, during a presumptive eligibility period pending submission and processing of a complete Medicaid application. Although the CHIP statute, title XXI of the Act, does not contain an explicit section similarly authorizing presumptive eligibility in States' CHIPs, we believe that States could implement a similar policy under title XXI as a health services initiative under section 2105(a)(2)(B) of the Act.

We believe it would be useful to discuss some payment implications of different administrative approaches to claiming presumptive eligibility expenditures. Federal payments for presumptive eligibility expenditures for children who are not later determined to be Medicaid or CHIP eligible fall under the definition of title XXI health services initiatives, and therefore, are subject to the State's CHIP 10 percent limit (discussed in section II. F. 7. of this preamble and in § 457.622) as well as the State's CHIP allotment. Because of this, States will need to carefully consider how they claim Federal payments for presumptive eligibility

expenditures, both in Medicaid and CHIP. We believe that States have a number of options in characterizing their presumptive expenditures that may increase available Federal funding for their programs, with respect to both the CHIP and Medicaid programs. For example:

1. *Presumptive Eligibility (PE) Under Title XIX*—Section 1920A of the Act permits States to provide medical assistance under their title XIX Medicaid programs for up to two months to children during a PE period. Expenditures classified as Medicaid PE expenditures under section 1920A of the Act may only be claimed as medical assistance and matched at the regular FMAP under section 1905(b) of the Act; that is, the enhanced FMAP is not available for Medicaid PE expenditures. Furthermore, if the State has an approved title XXI child health plan, such payments for PE expenditures under section 1920A of the Act must be tracked and applied against the title XXI allotment.

There are a number of options available to States for classifying and reporting medical assistance expenditures provided to children during the section 1920A PE period. In particular, the actual eligibility category in which PE children are ultimately placed through the regular eligibility determination may also determine the treatment of States' expenditures for these children. The options a State chooses with respect to reporting expenditures during the PE period and the ultimate category of eligibility (or ineligibility) will determine how the payments for expenditures provided during the PE period can be treated for purposes of application against the title XXI allotment and the FMAP rate (regular or enhanced) that is available for the expenditures.

The following options are available to a State for classifying and reporting expenditures as PE expenditures in its Medicaid program when the State has an approved title XXI Child Health Plan and an associated fiscal year State allotment; these provisions will be set forth in new § 447.88:

(a) *Identify and Claim PE Expenditures on Ongoing Basis—No Subsequent Adjustments.*—A State can identify and claim FFP for all PE medical assistance expenditures on an ongoing basis. That is, under this option the State would claim FFP for PE expenditures as they are incurred and billed by providers, and would not make any further subsequent adjustments when the actual eligibility determination is made. Under this option, the amounts of the Federal payments for the PE expenditures would be applied against the States's CHIP allotments and would be claimed at the regular title XIX FMAP. This approach may be the easiest for States to administer, since no further adjustment or tracking of the payments would be necessary.

(b) *Delay Reporting PE-Related Expenditures Until After Actual Eligibility Determination.*—Under this option a State would delay reporting of PE-related medical assistance expenditures until after the actual determination of eligibility. Under this option, a State would classify the expenditures as follows, in accordance with the actual eligibility determination, and would not claim for such expenditures until after the actual eligibility determination was made:

- Expenditures for children determined to be in a regular Medicaid eligibility category (for example, the Temporary Assistance for Needy Families (TANF) program related eligibility under section 1931 of the Act) and not within a CHIP-related Medicaid expansion. These expenditures would be reported by the States as Medicaid title XIX expenditures under the Medicaid Budget and Expenditure System (MBES) and would be claimed and funded under the regular Medicaid eligibility category at the regular Medicaid FMAP. The associated Federal payments for expenditures in this category would not be applied against the CHIP allotment as a PE expenditure.
- Expenditures for children determined to be eligible in CHIP-related Medicaid expansions for children described in sections 1905(u)(2) and/or (u)(3) of the Act in States with an approved title XXI child health plan. These expenditures would be reported as Medicaid title XIX expenditures under the MBES, and claimed, and funded under the Medicaid program at the enhanced FMAP, not the regular FMAP associated with PE expenditures. The associated Federal payments for these expenditures would be treated as expenditures under section 1905(u)(2) or (3) of the Act, not as PE expenditures, and applied against the States' CHIP allotments.
- Expenditures for children determined to be eligible under a State's approved title XXI State child health plan. These expenditures would be reported as CHIP title XXI expenditures under the CBES, and claimed, and funded under the CHIP at the enhanced FMAP. The associated Federal payments for these expenditures would be applied against the States' CHIP allotments as payments for CHIP expenditures would be, not as payments for Medicaid PE expenditures.
- Expenditures for children ultimately determined not to be eligible for either the Medicaid or CHIP programs. These expenditures would be reported as Medicaid title XIX PE expenditures under the MBES, and claimed and funded at the regular Medicaid FMAP as PE expenditures. If the State has a title XXI allotment, the associated Federal payments would be applied against the CHIP allotment. Payments for these expenditures are treated and reported as PE expenditures.

(c) *Identify and Claim PE on Ongoing Basis—Adjust After Actual Eligibility Determination.*—Similar to the process under subsection (a) above, on an ongoing basis States can identify and claim FFP for all section 1920A PE expenditures, as such expenditures are billed to and paid by the State. Under this option, after the actual eligibility determination is made, adjustments to the previous claims would be made to reflect the actual eligibility category determination. The PE expenditures would be reported on an ongoing basis as PE expenditures under title XIX, the payments for such expenditures would be applied against the CHIP allotments, and claimed at the regular title XIX FMAP rate. After the actual eligibility determination, the State would make an adjustment to the previously reported expenditures as in section II. H. 1.(b) above.

2. *Presumptive Eligibility (PE) Under Title XXI*—A State may make PE expenditures under its State title XXI CHIP as an expenditure described in section 2105(a)(2)(B) of the Act, which permits health services initiatives. These expenditures would be reported as CHIP title XXI expenditures. As described in the previous sections on the 10 percent limit, CHIP PE expenditures provided as a health services initiative are subject to the 10 percent limit and are counted against the State's title XXI allotment. The State has several options for claiming such expenditures which could mitigate the effect of such expenditures on the 10 percent limit and the CHIP allotment. The following options are available to a State for classifying and reporting expenditures as PE expenditures in its CHIP, and are similar to those discussed above with respect to the title XIX Medicaid PE program.

In summary, States may:

- Identify and claim CHIP PE health services initiative expenditures on an ongoing basis—no subsequent adjustments.
- Delay reporting CHIP PE health services initiative expenditures until

after actual eligibility determination (and claim under final eligibility category).

- Identify and claim PE on an ongoing basis—adjust after actual eligibility determination to reflect final eligibility status.

I. Other Regulations Similar to the Medicaid Program

Certain existing general Departmental regulations in part 45 of the Code of Federal Regulations (CFR) subparts 92 and 95 were conformed to the title XXI program. We revised the sections in these subparts.

J. Relationship of the CHIP, the CHIP Fiscal Year Allotments, and the Limit on FFP for the Commonwealths and Territories Under Section 1108 of the Act

1. Commonwealth/Territory Limit Under Section 1108 of the Act

Sections 1108(f) and (g) of the Act specifies limits on the amounts of FFP available to the Commonwealths and Territories for expenditures under the Medicaid program. However, under the CHIP legislation, the limits on FFP for the Commonwealths and Territories under section 1108 of the Act do not apply with respect to FFP for expenditures that are attributable to the provision of Medical assistance to a child for which payment is made under section 1903(a)(1) of the Act on the basis of an enhanced FMAP under section 1905(b) of the Act (which in turn refers to the Federal matching rate specified at section 2105(b) of the Act). That is, if the Federal payments for expenditures are made at the enhanced FMAP referenced at section 2105(b) of the Act, such payments would not apply to the Commonwealth/Territory limit under section 1108 of the Act. However, these payments would apply against the CHIP allotments established for the Commonwealths or Territories. However, if the Federal payments are for expenditures for which payment is not at the enhanced FMAP, such payments would be applicable against the Commonwealth and Territory limit under section 1108 of the Act. This issue is discussed in sections below.

2. Family Planning

As indicated in previous sections, in general under the Medicaid program the Federal matching for States' family planning provided to CHIP related Medicaid expansion groups is not at the enhanced FMAP, but rather is at the regular Medicaid FMAP rates associated with such expenditures: 90 percent. Since the family planning FMAP rate is not at the enhanced FMAP referenced in section 2105(b) of the Act, in the States the Federal payments for such expenditures would not be applicable to the States' CHIP allotments. In general, this is also true for the Commonwealths and Territories. However, as indicated in section II. J. 1. above, if the Federal payments are not at the enhanced FMAP, but are at the ''regular'' Medicaid FMAP rate associated with the services (in the case of family planning, 90 percent), the Federal payments would be applied against the Commonwealth/Territory limit under section 1108 of the Act.

Because of the potential effect that FFP claims for family planning may have on the Commonwealth and Territory limit on Federal payments under section 1108 of the Act, we believe the Commonwealths and Territories have two options for claiming for such expenditures. Under the first option, the Commonwealths/Territories could claim FFP for family planning at the ''regular'' Medicaid FMAP rates associated with such expenditures (90 percent). Under this option, the Federal payments would not apply against the Commonwealth/Territory CHIP allotment, but would apply against the Commonwealth/Territory limit established under section 1108 of the Act.

Under the second option, the Commonwealths/Territories could choose to claim FFP for family planning (provided to the CHIP related Medicaid expansion groups) at the enhanced FMAP (which is lower than the regular Federal matching rate for such expenditures). Under this option, the Federal payments available at the enhanced FMAP rate would apply against the Commonwealth/Territory CHIP allotment, but would not apply against the Commonwealth/Territory limit under section 1108 of the Act.

3. Family Planning Expenditures Based on Presumptive Eligibility Under Section 1920A of the Act

As indicated in section II. J. 2. above, under the Medicaid program the title XIX Federal matching rates for States' family planning provided to CHIP related Medicaid expansion groups are not the enhanced FMAP rates, but rather are the regular Medicaid FMAP rates associated with such expenditures: 90 percent. Furthermore, as amended by section 4911(a) of the BBA, the Federal matching rate for expenditures made on the basis of the presumptive eligibility provisions of section 1920A of the Act may not be at the enhanced FMAP. Therefore, with respect to family planning and IHS expenditures provided on the basis of a section 1920A presumptive eligibility determination, the only available Federal matching rates would be 90 and 100 percent. Therefore, the options offered under section 2 above are not available if the basis for the expenditures is the section 1920A presumptive eligibility provisions. In such case, in the Commonwealths and Territories, the Federal payments are at the ''regular'' Medicaid FMAP rate associated with such expenditures; such payments are not applied against the CHIP allotment; and such payments would be applicable against the section 1108 Commonwealth/Territorial limit.

III. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4), and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). Because participation in the CHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimburse by the federal government are made voluntarily. These regulations would implement narrowly defined statutory language on the allocation of funds for CHIP and will not create unfunded mandate on States, tribal or local governments. Therefore we are not required to perform an assessment of the costs and benefits of these regulations.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the

exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule sets forth the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds available to individual States, Commonwealths and Territories for the new State CHIP established under title XXI of the Social Security Act. This rule would also establish in regulations the payment and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive FFP for expenditures under the State CHIP and related Medicaid program provisions.

Budget authority for title XXI is statutorily specified in section 2104(a) of the BBA with additional money authorized in Pub. L. 105–100. The total national amount available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for the life of CHIP, is established as follows:

TOTAL AMOUNT OF ALLOTMENTS

Year	Amount
1998	$4,235,000,000
1999	4,215,000,000
2000	4,215,000,000
2001	4,215,000,000
2002	3,090,000,000
2003	3,090,000,000
2004	3,150,000,000
2005	4,050,000,000
2006	4,050,000,000
2007	5,000,000,000

The spending levels shown in the table above are based entirely on the spending and allocation formulas contained in the statute. The Secretary has no discretion over these spending levels and initial allotments of funds allocated to States. In addition, under Pub. L. 105–277, an additional $32 million was appropriated for allotment only to the Commonwealths and Territories, and only for FY 1999.

Administrative resources needed in HCFA's Program Management account to carry out the new responsibilities of the Children's Health Insurance Program have been estimated at $10.1 million. This estimate has been included in the baseline of HCFA's FY 1999 President's Budget to Congress.

For these reasons, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 457.226 Fiscal Policies and Accountability

A State plan must provide that the State CHIP agency and, where applicable, local agencies administering the plan will; (a) maintain supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements, (b) retain records for 3 years from date of submission of a final expenditure report, (c) maintain records beyond the 3-year period if audit findings have not been resolved, and (d) retain certain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

We have determined that these record keeping requirements meet the criteria set forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.234 State Plan Requirements

A State plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's CHIP program.

The burden associated with this requirement is captured pursuant to the completion of HCFA collection, HCFA–R–211, approved under OMB number 0938–0707.

Section 457.238 Documentation of Payment Rates

The CHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

We have determined that these record keeping requirements meet the criteria set forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.606 Conditions for State Allotments and Federal Payments for a Fiscal Year

In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with section 2106 of the Act and approved by the end of the fiscal year.

The burden associated the submission of the State Child Health Plan is currently captured pursuant to the completion of the HCFA–R–211, approved under OMB number 0938–0707.

Section 457.614 General Payment Process

In order to receive Federal financial participation for a State's claims for payment for the State's expenditures, a State must submit budget estimates of quarterly funding requirements for Medicaid and the Children's Health Insurance Programs and submit an expenditure report.

The burden associated with these reporting requirements are currently captured pursuant to the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. Respectively, the OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067.

Section 457.630 Grants Procedures

A State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. In addition a State must submit a budget request for the fourth quarter of the fiscal year.

The State Children's Health Insurance Program agency must submit Form HCFA–21B (Children's Health Insurance Program Budget Report for Children's

Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly Children's Health Insurance Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

The burden associated with these reporting requirements are currently captured pursuant to the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. Respectively, the OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 457.226, 457.234, 457.238, 457.606, 457.614, and 457.630.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official and HCFA/OIS whose names appear in the **ADDRESSES** section of this preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATE** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Children's Health Insurance Program, Reporting and recordkeeping requirements.

45 CFR Part 92

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting recordkeeping requirements.

45 CFR Part 95

Claims, Computer technology, Grant programs—Health, Grant programs—social programs, Reporting and recordkeeping requirements.

42 CFR chapter IV, would be amended as set forth below:

A. 42 CFR Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.88 is added to read as follows:

Subpart A—Payments: General Provisions

§ 447.88 Options for claiming FFP payment for section 1920A presumptive eligibility medical assistance payments.

(a) The FMAP rate for medical assistance payments made available to a child during a presumptive eligibility period under section 1920A of the Act is the regular FMAP under title XIX, based on the category of medical assistance; that is, the enhanced FMAP is not available for section 1920A presumptive eligibility expenditures.

(b) States have the following 3 options for identifying Medicaid section 1920A presumptive eligibility expenditures and the application of payments for those expenditures:

(1) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended with no further adjustment based on the results of a subsequent actual eligibility determination (if any).

(2) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended but may adjust reported expenditures based on results of the actual eligibility determination (if any) to reflect the actual eligibility status of the individual, if other than presumptively eligible.

(3) A State may elect to delay submission of claims for payments of section 1920A presumptive eligibility expenditures until after the actual eligibility determination (if any) is made and, at that time identify such expenditures based on the actual eligibility status of individuals if other than presumptively eligible. At that time, the State would, as appropriate, recategorize the medical assistance expenditures made during the section 1920A presumptive eligibility period based on the results of the actual eligibility determination, and claim them appropriately.

B. Subchapter D is redesignated as subchapter F—PEER REVIEW ORGANIZATIONS; Parts 462, 466, 473, and 476 are redesignated as parts 475, 476, 478 and 480, respectively; and the section numbers are revised to conform to the new parts numbers.

C. Subchapter E is redesignated as subchapter G—STANDARDS AND CERTIFICATION with no changes in part designations.

D. A new subchapter D—CHILDREN'S HEALTH INSURANCE PROGRAMS, consisting of part 457, is added to read as follows:

SUBCHAPTER D—CHILDREN'S HEALTH INSURANCE PROGRAMS (CHIPs)

PART 457—ALLOTMENTS AND GRANTS TO STATES

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure To Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

Sec.

Subparts C through E—[Reserved]

Subpart F—Payment to States

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure To Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

§ 457.200 Program reviews.

(a) *Review of State and local administration of the State CHIP plan.* In order to determine whether the State is complying with the Federal requirements and the provisions of its plan, HCFA reviews State and local administration of the State CHIP plan through analysis of the State's policies and procedures, on-site reviews of selected aspects of agency operation, and examination of samples of individual case records.

(b) *Action on review findings.* If Federal or State reviews reveal serious problems with respect to compliance with any Federal or State plan requirement, the State must correct its practice accordingly.

§ 457.202 Audits.

(a) *Purpose.* The Department's Office of Inspector General (OIG) periodically audits State operations in order to determine whether —

(1) The program is being operated in a cost-efficient manner; and

(2) Funds are being properly expended for the purposes for which they were appropriated under Federal and State law and regulations.

(b) *Reports.* (1) The OIG releases audit reports simultaneously to State officials and the Department's program officials.

(2) The reports set forth OIG opinion and recommendations regarding the practices it reviewed, and the allowability of the costs it audited.

(3) Cognizant officials of the Department make final determinations on all audit findings.

(c) *Action on audit exceptions.* (1) *Concurrence or clearance.* The State agency has the opportunity of concurring in the exceptions or submitting additional facts that support clearance of the exceptions.

(2) *Appeal.* Any exceptions that are not disposed of under paragraph(c)(1) of this section are included in a disallowance letter that constitutes the Department's final decision unless the State requests reconsideration by the Appeals Board. (Specific rules are set forth in § 457.212.)

(3) *Adjustment.* If the decision by the Board requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.204 Withholding of payment for failure to comply with Federal requirements.

(a) *Basis for withholding.* HCFA withholds payments to the State, in whole or in part, only if, after giving the State notice, a reasonable opportunity for correction, and an opportunity for a hearing, the Administrator finds—

(1) That the plan is in substantial noncompliance with the requirements of title XXI of the Act; or

(2) That the State is conducting its program in substantial noncompliance with either the State plan or the requirements of title XXI of the Act. (Hearings are generally not called until a reasonable effort has been made to resolve the issues through conferences and discussions. These efforts may be continued even if a date and place have been set for the hearing.)

(b) *Noncompliance of the plan.* A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.

(c) *Noncompliance in practice.* A question of noncompliance in practice may arise from the State's failure to actually comply with a Federal requirement, regardless of whether the plan itself complies with that requirement.

(d) *Notice, reasonable opportunity for correction, and implementation of withholding.* If the Administrator makes a finding of noncompliance under paragraph (a) of this section, the following steps apply:

(1) *Preliminary notice.* The Administrator provides a preliminary notice to the State—

(i) Of the findings of noncompliance;

(ii) The proposed enforcement actions to withhold payments; and

(iii) If enforcement action is proposed, that the State has a reasonable opportunity for correction, described in paragraph (d)(2) of this section, before the Administrator takes final action.

(2) *Opportunity for corrective action.* If enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification.

(3) *Final notice.* Taking into account any evidence submitted by the State under paragraph (d)(2) of this section, the Administrator makes a final determination related to the findings of noncompliance, and provides a final notice to the State—

(i) Of the final determination on the findings of noncompliance;

(ii) If enforcement action is appropriate—

(A) No further payments will be made to the State (or that payments will be made only for those portions or aspects of the programs that are not affected by the noncompliance); and

(B) The total or partial withholding will continue until the Administrator is satisfied that the State's plan and practice are, and will continue to be, in compliance with Federal requirements.

(4) *Hearing.* An opportunity for a hearing will be provided to the State prior to withholding under paragraph (d)(5) of this section.

(5) *Withholding.* HCFA withholds payments, in whole or in part, until the Administrator is satisfied regarding the State's compliance.

§ 457.206 Administrative appeals under the State CHIP.

Three distinct types of determinations are subject to Departmental reconsideration upon request by a State.

(a) *Compliance with Federal requirements.* A determination that a State's plan or proposed plan amendments, or its practice under the plan do not meet (or continue to meet) Federal requirements are subject to the hearing provisions of 42 CFR part 430, subpart D of this chapter.

(b) *FFP in State CHIP expenditures.* Disallowances of FFP in State CHIP expenditures (mandatory grants) are subject to Departmental reconsideration by the Departmental Appeals Board (the Board) in accordance with procedures set forth in 45 CFR part 16.

(c) *Discretionary grants disputes.* Determinations listed in 45 CFR part 16, appendix A, pertaining to discretionary grants, such as grants for special demonstration projects under section 1115 of the Act, that may be awarded to a State CHIP agency, are subject to reconsideration by the Departmental Grant Appeals Board.

§ 457.208 Judicial review.

(a) *Right to judicial review.* Any State dissatisfied with the Administrator's final determination on approvability of plan material or compliance with

Federal requirements (§ 457.204) has a right to judicial review.

(b) *Petition for review.* (1) The State must file a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, within 60 days after it is notified of the determination.

(2) After the clerk of the court files a copy of the petition with the Administrator, the Administrator files in the court the record of the proceedings on which the determination was based.

(c) *Court action.* (1) The court is bound by the Administrator's findings of fact, if they are supported by substantial evidence.

(2) The court has jurisdiction to affirm the Administrator's decision, to set it aside in whole or in part, or, for good cause, to remand the case for additional evidence.

(d) *Response to remand.* (1) If the court remands the case, the Administrator may make new or modified findings of fact and may modify his or her previous determination.

(2) The Administrator certifies to the court the transcript and record of the further proceedings.

(e) *Review by the Supreme Court.* The judgment of the appeals court is subject to review by the U.S. Supreme Court upon certiorari or certification, as provided in 28 U.S.C. 1254.

§ 457.210 Deferral of claims for FFP.

(a) *Requirements for deferral.* Payment of a claim or any portion of a claim for FFP is deferred only if—

(1) The Regional Administrator or the Administrator questions its allowability and needs additional information in order to resolve the question; and

(2) HCFA takes action to defer the claim (by excluding the claimed amount from the grant award) within 60 days after the receipt of a Quarterly Statement of Expenditures (prepared in accordance with HCFA instructions) that includes that claim.

(b) *Notice of deferral and State's responsibility.* (1) Within 15 days of the action described in paragraph (a)(2) of this section, the Regional Administrator sends the State a written notice of deferral that—

(i) Identifies the type and amount of the deferred claim and specifies the reason for deferral; and

(ii) Requests the State to make available all the documents and materials the HCFA regional office believes are necessary to determine the allowability of the claim.

(2) It is the responsibility of the State to establish the allowability of a deferred claim.

(c) *Handling of documents and materials.* (1) Within 60 days (or within 120 days if the State requests an extension) after receipt of the notice of deferral, the State must make available to the HCFA regional office, in readily reviewable form, all requested documents and materials except any that it identifies as not being available.

(2) HCFA regional office staff initiates review within 30 days after receipt of the documents and materials.

(3) If the Regional Administrator finds that the materials are not in readily reviewable form or that additional information is needed, he or she promptly notifies the State that it has 15 days to submit the readily reviewable or additional materials.

(4) If the State does not provide the necessary materials within 15 days, the Regional Administrator disallows the claim.

(5) The Regional Administrator has 90 days, after all documentation is available in readily reviewable form, to determine the allowability of the claim.

(6) If the Regional Administrator cannot complete review of the material within 90 days, HCFA pays the claim, subject to a later determination of allowability.

(d) *Effect of decision to pay a deferred claim.* Payment of a deferred claim under paragraph (c)(6) of this section does not preclude a subsequent disallowance based on the results of an audit or financial review. (If there is a subsequent disallowance, the State may request reconsideration as provided in paragraph (e)(2) of this section.)

(e) *Notice and effect of decision on allowability.* (1) The Regional Administrator or the Administrator gives the State written notice of his or her decision to pay or disallow a deferred claim.

(2) If the decision is to disallow, the notice informs the State of its right to reconsideration in accordance with 45 CFR part 16.

§ 457.212 Disallowance of claims for FFP.

(a) *Notice of disallowance and of right to reconsideration.* When the Regional Administrator or the Administrator determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

(1) The date or dates on which the State's claim for FFP was made.

(2) The time period during which the expenditures in question were made or claimed to have been made.

(3) The date and amount of any payment or notice of deferral.

(4) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were computed.

(5) Findings of fact on which the disallowance determination is based or a reference to other documents previously furnished to the State or included with the notice (such as a report of a financial review or audit) that contain the findings of fact on which the disallowance determination is based.

(6) Pertinent citations to the law, regulations, guides and instructions supporting the action taken.

(7) A request that the State make appropriate adjustment in a subsequent expenditure report.

(8) Notice of the State's right to request reconsideration of the disallowance and the time allowed to make the request.

(9) A statement indicating that the disallowance letter is the Department's final decision unless the State requests reconsideration under paragraph (b)(2) of this section.

(b) *Reconsideration of FFP disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under title XXI.

(2) A State may request reconsideration with a request to the Chair, Departmental Appeals Board, within 30 days after receipt of the disallowance letter, which must include—

(i) A copy of the disallowance letter;

(ii) A statement of the amount in dispute; and

(iii) A brief statement of why the disallowance is wrong.

(c) *Reconsideration procedures.* The reconsideration procedures are those set forth in 45 CFR part 16.

(d) *Implementation of decisions.* If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.216 Treatment of uncashed or canceled (voided State CHIP) checks.

(a) *Purpose.* This section provides rules to ensure that States refund the Federal portion of uncashed or canceled (voided) checks under title XXI.

(b) *Definitions.* As used in this section—

Canceled (voided) check means a CHIP check issued by a State or fiscal agent that prior to its being cashed is canceled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

Fiscal agent means an entity that processes or pays vendor claims for the State CHIP agency.

Uncashed check means a CHIP check issued by a State or fiscal agent that has not been cashed by the payee.

Warrant means an order by which the State CHIP agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued; that is, the date of the check, it is no longer regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks that remain uncashed beyond a period of 180 days after issuance. The State CHIP agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued in accordance with the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for canceled (voided) checks*—(1) *General provisions.* If the State has claimed and received FFP for the amount of a canceled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State CHIP agency must identify those checks that were canceled (voided). The State must refund all FFP that it received for canceled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

§ 457.218 Repayment of Federal funds by installments.

(a) *Basic conditions.* When Federal payments have been made for claims that are later found to be unallowable, the State may repay the Federal Funds by installments if the following conditions are met:

(1) The amount to be repaid exceeds 2½ percent of the estimated or actual annual State share for the State CHIP program; and

(2) The State has given the Regional Administrator written notice, before total repayment was due, of its intent to repay by installments.

(b) *Annual State share determination.* HCFA determines whether the amount to be repaid exceeds 2½ percent of the annual State share as follows:

(1) If the State CHIP program is ongoing, HCFA uses the annual estimated State share of State CHIP expenditures. This is the sum of the estimated State shares for four consecutive quarters, beginning with the quarter in which the first installment is to be paid, as shown on the State's latest HCFA–21B form.

(2) If the State CHIP program has been terminated by Federal law or by the State, HCFA uses the actual State share. The actual State share is that shown on the State's Quarterly Statement of Expenditures reports for the last four quarters before the program was terminated.

(c) *Repayment amounts, schedules, and procedures*—(1) *Repayment amount.* The repayment amount may not include any amount previously approved for installment repayment.

(2) *Repayment schedule.* The number of quarters allowed for repayment is determined on the basis of the ratio of the repayment amount to the annual State share of State CHIP expenditures. The higher the ratio of the total repayment amount is to the annual State share, the greater the number of quarters allowed, as follows:

Total repayment amount as percentage of State share of annual expenditures for State CHIP	Number of quarters to make repayment
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

(3) *Quarterly repayment amounts.* The quarterly repayment amounts for each of the quarters in the repayment schedule may not be less than the following percentages of the estimated State share of the annual expenditures for State CHIP:

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

(4) *Extended schedule.* The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100 percent of the estimated State share of annual expenditures. In these circumstances, the repayment schedule in paragraph (c)(2) of this section is followed for repayment of the amount equal to 100 percent of the annual State share. The remaining amount of the repayment is in quarterly amounts equal to not less than 17.5 percent of the estimated State share of annual expenditures.

(5) *Repayment process.* Repayment is accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule. If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(6) *Offsetting of retroactive claims.* (i) The amount of a retroactive claim to be paid a State is offset against any amounts to be, or already being, repaid by the State in installments. Under this provision, the State may choose to:

(A) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(B) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

(ii) A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more before the beginning of the quarter in which HCFA would pay that claim.

§ 457.220 Public funds as the State share of financial participation.

(a) Public funds may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The public funds are appropriated directly to the State or local State CHIP agency, or transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

(c) The public funds are not Federal funds, or are Federal funds authorized by the Federal law to be used to match other Federal funds.

§ 457.222 FFP for equipment.

Claims for Federal financial participation in the cost of equipment under the State CHIP are determined in accordance with subpart G of 45 CFR part 95. Requirements concerning the management and disposition of equipment under the State CHIP Program are also prescribed in subpart G of 45 CFR part 95.

§ 457.224 FFP: Conditions relating to cost sharing.

(a) No FFP is available for the following amounts, even when related to services or benefit coverage which is or could be provided under a State CHIP program—

(1) Any cost sharing amounts that beneficiaries should have paid as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar charges.

(2) Any amounts paid by the agency for health benefits coverage or services furnished to individuals who would not be eligible for that coverage or those services under the approved State child health plan, whether or not the individual paid any required premium or enrollment fee.

(b) The amount of expenditures under the State child health plan must be reduced by the amount of any premiums and other cost-sharing received by the State.

§ 457.226 Fiscal policies and accountability.

A State plan must provide that the State CHIP agency and, where applicable, local agencies administering the plan will—

(a) Maintain an accounting system and supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements;

(b) Retain records for 3 years from date of submission of a final expenditure report;

(c) Retain records beyond the 3-year period if audit findings have not been resolved; and

(d) Retain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

§ 457.228 Cost allocation.

A State plan must provide that the single or appropriate State CHIP Agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

§ 457.230 FFP for State ADP expenditures.

FFP is available for State ADP expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures regarding the availability of FFP for ADP expenditures are in 45 CFR part 74, 45 CFR part 95, subpart F, and part 11, State Medicaid Manual.

§ 457.232 Refunding of Federal Share of CHIP overpayments to providers and referral of allegations of waste, fraud or abuse to the Office of Inspector General.

(a) Quarterly Federal payments to the States under title XXI (CHIP) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) The Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

(c) Allegations or indications of waste fraud and abuse with respect to the CHIP program shall be referred promptly to the Office of Inspector General.

§ 457.234 State plan requirements.

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Children's Health Insurance Program and giving assurance that it will be administered in conformity with the specific requirements of title XXI, the applicable regulations in Chapter IV, and other applicable official issuance of the Department. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for FFP in the State plan program.

§ 457.236 Audits.

The CHIP agency must assure appropriate audit of records on costs of provider services.

§ 457.238 Documentation of payment rates.

The CHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

Subparts C Through E—[Reserved]

Subpart F—Payments to States

§ 457.600 Purpose and basis of this subpart.

This subpart interprets and implements—

(a) Section 2104 of the Act which specifies the total allotment amount available for allotment to each State for child health assistance for fiscal years 1998 through 2007, the formula for determining each State allotment for a fiscal year, including the Commonwealth and Territories, and the amounts of payments for expenditures that are applied to reduce the State allotments.

(b) Section 2105 of the Act which specifies the provisions for making payment to States, the limitations and conditions on such payments, and the

calculation of the enhanced Federal medical assistance percentage.

§ 457.602 Applicability.

The provisions of this subpart apply to the 50 States and the District of Columbia, and the Commonwealths and Territories.

§ 457.606 Conditions for State allotments and Federal payments for a fiscal year.

(a) *Basic conditions.* In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with section 2106 of the Act, and

(1) For fiscal years 1998 and 1999, the State child health plan must be approved before October 1, 1999;

(2) For fiscal years after 1999, the State child health plan must be approved by the end of the fiscal year;

(3) An allotment for a fiscal year is not available to a State prior to the beginning of the fiscal year; and

(4) Federal payments out of an allotment are based on State expenditures which are allowable under the approved State child health plan.

(b) Federal payments for States' Children's Health Insurance program (CHIP) expenditures under an approved State child health plan are—

(1) Limited to the amount of available funds remaining in State allotments calculated in accordance with the allotment process and formula specified in §§ 457.608 and 457.610, and payment process in §§ 457.614 and 457.616.

(2) Available based on a percentage of State CHIP expenditures, at a rate equal to the enhanced Federal medical assistance percentage (FMAP) for each fiscal year, calculated in accordance with § 457.622.

(3) Available through the grants process specified in § 457.630.

§ 457.608 Process and calculation of State allotments for a fiscal year.

(a) *General.* (1) State allotments are determined by HCFA for each State and the District of Columbia with an approved State child health plan, as described in paragraph (d) of this section, and for each Commonwealth and Territory, as described in paragraph (f) of this section.

(2) In order to determine each State allotment, HCFA determines the national total allotment amount for each fiscal year available to the 50 States and the District of Columbia, as described in paragraph (b) of this section, and the total allotment amount available for each fiscal year for allotment to the Commonwealths and Territories, as described in paragraph (c) of this section.

(b) *National total allotment amount for the 50 States and the District of Columbia.* (1) The national total allotment amount available for allotment to the 50 States and the District of Columbia is determined by subtracting the following 3 amounts in the following order from the total appropriation specified in section 2104(a) of the Act for the fiscal year—

(i) The total allotment amount available for allotment for each fiscal year to the Commonwealths and Territories, as determined in paragraph (c)(1) of this section;

(ii) The total amount of the grant for the fiscal year for children with Type I Diabetes under section 4921 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002; and

(iii) The total amount of the grant for the fiscal year for diabetes programs for Indians under section 4922 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(2) The formula below illustrates the calculation of the national total allotment amount for a fiscal year available for allotment to the 50 States and the District of Columbia:

$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_{TA} = National total allotment amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a) of the Act.

$T_{2104(c)}$ = Total allotment amount for a fiscal year available for allotment to the Commonwealths and Territories; as determined under paragraph (c)(1) of this section.

D_{4921} = Amount of total grant for children with Type I Diabetes under section 4921 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

D_{4922} = Amount of total grant for diabetes programs for Indians under section 4922 of Pub. L. 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(c) *Total allotment amount available to the Commonwealths and the Territories.*—(1) *General.*—The total allotment amount available to all the Commonwealths and Territories equals .25 percent of the total appropriation for the fiscal year indicated in section 2104(a) of the Act.

(2) *Additional Amount for Allotment to the Commonwealths and Territories for FY 1999.* For FY 1999, $32 million in addition to the amount specified in paragraph (1) of this section, is available for allotment to the Commonwealths and Territories. This additional appropriation was provided for the Commonwealths and Territories under Pub. L. 105–277.

(d) *Methodology for determining the State allotments for a fiscal year.*—(1) *General methodology and data used for FY 2000 and subsequent fiscal years.* The methodology for determining the State allotment amount for a fiscal year is in accordance with the following formula:

Formula for Calculating the State Allotment for a Fiscal Year

$$SA_i = \frac{C_i \times SCF_i}{\sum (C_i \times SCF_i)} \times A_{TA}$$

SA_i = Allotment for a State for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(I)) for a fiscal year.

This number is based on the number of low-income children for a State for a fiscal year and the number of low-income children for a State for a fiscal year with no health insurance coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the 3 most recent March supplements to the Current Population Survey of the Bureau of the Census officially available prior to October 1 before the beginning of the fiscal year. (section 2104(b)(2)(B)).

For each of the fiscal years 1998 through 2000, the number of children is equal to the number of low-income children in the State for the fiscal year with no health insurance coverage. For fiscal year 2001, the number of children is equal to the sum of 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 25 percent of the number of low-income children in the State for the fiscal year. For fiscal years 2002 and thereafter, the number of children is equal to the sum of 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 50 percent of the number of low-income children in the State for the fiscal year.

SCF_i = *State cost factor for a State* (section 2104(b)(1)(A)(ii)of the Act).

For a fiscal year, this is equal to:

$.15 + .85 \times (W_i/W_N)$ (Section 2104(b)(3)(A)).

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I)).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II)).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years officially available prior to the beginning of the fiscal year on October 1. (section 2104(b)(3)(B)).

$\frac{1}{8}(C^i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B)).

A_{TA} = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year as determined under paragraph (b) of this section.

(2) *Data used for calculating the FY 1998 CHIP allotments.* The FY 1998 CHIP allotments, were calculated in accordance with the methodology described in paragraph (d)(1) of this section, using the most recent official data that were available from the Bureau of the Census and Bureau of Labor Statistics, respectively, prior to the September 1 before the beginning of FY 1998 (that is, through August 31, 1997). In particular, through August 31, 1997, the only official data available on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995.

(3) *Data used for calculating the FY 1999 CHIP allotments.* In accordance with Public Law 105–277, the FY 1999 allotments were calculated in accordance with the methodology described in paragraph (d)(1) of this section, using the same data as were used in calculating the FY 1998 CHIP allotments.

(e) *Minimum State allotment for a fiscal year.* Each State and the District of Columbia with an approved State child health plan will receive a minimum allotment for a fiscal year in the amount of $2 million. In the event that a State allotment for a fiscal year determined under the formula in § 457.608(d) is below the $2 million minimum and needs to be increased, the increase will be offset by reducing the State allotments for the other States and the District of Columbia in a pro rata manner (but not below $2 million) so that the total of such State allotments in a fiscal year does not exceed the national total allotment amount available for allotment to the 50 States and the District of Columbia, determined under § 457.608(b).

(f) *Methodology for determining the Commonwealth and Territory allotments for a fiscal year.* The total amount available for the Commonwealths and Territories for each fiscal year, as determined under paragraph (c) of this section, is allotted to each Territory and Commonwealth below which has an approved State child health plan. These allotments are in the proportion that the following percentages for each Commonwealth Territory bear to the sum of such percentages, as specified in section 2104(b)(2) of the Act:

Puerto Rico—91.6 percent
Guam—3.5 percent
Virgin Islands—2.6 percent
American Samoa—1.2 percent
Northern Mariana Islands—1.1 percent

(g) *Reserved State allotments for a fiscal year.* (1) In order to provide an estimate of each States' fiscal year allotments, HCFA uses the formula and methodology described in paragraphs (a) through (f) of this section, and applies it as if all 50 States, the District of Columbia, and the Commonwealths and Territories have an approved State child health plan for the fiscal year.

(2) For FY 2000 and subsequent fiscal years, HCFA determines and publishes the State reserved allotments for a fiscal year for each State, the District of Columbia, and Commonwealths and Territories in the **Federal Register** based on the most recent official data available prior to the beginning of the fiscal year on October 1 for the number of children and the State cost factor. For FY 1998 and FY 1999, HCFA determines and published the State reserved allotments using the available data described in paragraphs (d)(2) and (d)(3) of this section, respectively.

(h) *Final allotments.* (1) Final State allotments for fiscal year 1998 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of fiscal year 1999, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(2) Final State allotments for a fiscal year for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA for each State fiscal year after fiscal year 1998 based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of the fiscal year, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(3) HCFA determines and publishes the States' final fiscal year allotments in the **Federal Register** based on the same data, with respect to the number of children and State cost factor, as were used in determining the reserved allotments for the fiscal year.

(3) If all States, the District of Columbia, and the Commonwealths and Territories have approved State child health plans in place prior to the beginning of the fiscal year, as appropriate, HCFA may publish the reserved and final fiscal year allotments in the **Federal Register** concurrently.

§ 457.610 Period of availability for State allotments for a fiscal year.

The amount of a final allotment for a fiscal year, as determined under § 457.608(h) and reduced to reflect certain Medicaid expenditures in accordance with § 457.616, remains available until expended for Federal payments based on expenditures claimed during a 3-year period of availability, beginning with the fiscal year of the final allotment and ending with the end of the second fiscal year following the fiscal year.

§ 457.614 General payment process.

(a) A State may make claims for Federal payment based on expenditures incurred by the State prior to or during the period of availability related to that fiscal year.

(b) In order to receive Federal financial participation (FFP) for a State's claims for payment for the State's expenditures, a State must—

(1) Submit budget estimates of quarterly funding requirements for Medicaid and the Children's Health Insurance Programs; and

(2) Submit an expenditure report.

(c) Based on the State's quarterly budget estimates, HCFA—

(1) Issues an advance grant to a State as described in § 457.630;

(2) Tracks and applies Federal payments claimed quarterly by each State, the District of Columbia, and each Commonwealth and Territory to ensure that payments do not exceed the applicable allotments for the fiscal year; and

(3) Track and apply relevant State, District of Columbia, Commonwealth and Territory expenditures reported each quarter against the 10 percent limit on expenditures other than child health assistance for standard benefit package, on a fiscal year basis as specified in § 457.618.

§ 457.616 Application and tracking of payments against the fiscal year allotments.

(a) In accordance with the principles described in paragraph (c) of this

section, the following categories of payments are applied to reduce the State allotments for a fiscal year:

(1) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(2) of the Act.

(2) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(3) of the Act.

(3) Payments made to a State under section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1920A of the Act.

(4) Payments made to a State under its title XXI Children's Health Insurance Program with respect to section 2105(a) of the Act for expenditures claimed by the State during a fiscal year.

(b) HCFA applies the principles in paragraph (c) of this section to—

(1) Coordinate the application of the payments made to a State for the State's expenditures claimed under the Medicaid and State child health insurance program against the State allotment for a fiscal year;

(2) Determine the order of these payments in that application; and

(3) Determine the application of payments against multiple State child health insurance program fiscal year allotments.

(c) *Principles for applying Federal payments against the allotment.* HCFA—

(1) Applies the payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, against the State child health plan allotment for a fiscal year before State child health plan expenditures specified in paragraph (a)(4) of this section are applied.

(2) Applies the payments attributable to Medicaid and State child health plan expenditures specified in paragraph (a) of this section against the applicable allotments for a fiscal year based on the quarter in which the expenditures are claimed by the State.

(3) Applies payments against the State allotments for a fiscal year in a manner that is consistent for all States.

(4) Applies payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, in an order that maximizes Federal reimbursement for States. Expenditures for which the enhanced FMAP is available are applied before expenditures for which the regular FMAP is available.

(5) Applies payments for expenditures against State Child Health Insurance Program fiscal year allotments in the least administratively burdensome, and most effective and efficient manner; payments are applied on a quarterly basis as they are claimed by the State, and are applied to reduce the earliest fiscal year State allotments before the payments are applied to reduce later fiscal year allotments.

(6) Applies payments for expenditures for a fiscal year's allotment against a subsequent fiscal year's allotment; however, the subsequent fiscal year's allotment must be available at the time of application. For example, if the allotment for fiscal year 1998 has been fully expended, payments for expenditures claimed in fiscal year 1998 are carried over for application against the fiscal year 1999 allotment when it becomes available.

(7) Carries over unexpended amounts of a State's allotment for a fiscal year for use in subsequent fiscal years through the end of the 3-year period of availability. For example, if the amounts of the fiscal year 1998 allotment are not fully expended by the end of fiscal year 1998, these amounts are carried over to fiscal year 1999 and are available to provide FFP for expenditures claimed by the State for that fiscal year.

(d) The amount of the Federal payment for expenditures claimed by a State, District of Columbia, or the Commonwealths and Territories is determined by the enhanced FMAP applicable to the fiscal year in which the State paid the expenditure. For example, Federal payment for an expenditure paid by a State in fiscal year 1998 that was carried over to fiscal year 1999 (in accordance with paragraph (c)(6) of this section), because the State exceeded its fiscal year 1998 allotment, is available at the fiscal year 1998 enhanced FMAP rate.

§ 457.618 Ten percent limit on certain children's health insurance program expenditures.

(a)(1) *Primary expenditures* are expenditures under a State plan for child health assistance to targeted low-income children in the form of a standard benefit package, and Medicaid expenditures claimed during the fiscal year to the extent Federal payments made for these expenditures on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act that are used to calculate the 10 percent limit.

(2) *Non-primary expenditures* are other expenditures under a State plan. Subject to the 10 percent limit described in paragraph (c) of this section, a State may receive Federal funds at the enhanced FMAP for 4 categories of non-primary expenditures:

(i) Administrative expenditures;

(ii) Outreach;

(iii) Health initiatives; and

(iv) Certain other child health assistance.

(b) Federal payment will not be available based on a State's non-primary expenditures for a fiscal year which exceed the 10 percent limit of the total of expenditures under the plan, as specified in paragraph (c) of this section.

(c) *10 percent limit.* The 10 percent limit is—

(1) Applied on an annual fiscal year basis;

(2) Calculated based on the total computable amounts of expenditures; and

(3) Calculated using the following formula:

L10% = (a1+ u2+ u3)/9;

L10% = 10 Percent Limit for a fiscal year

a1 = Total computable amount of expenditures for the fiscal year under section 2105(a)(1) of the Act for which Federal payments are available at the enhanced FMAP described in section 2105(b) of the Act;

u2 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(2) of the Act; and

u3 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(3) of the Act.

(4) The expenditures under section 2105(a)(2) of the Act that are subject to the 10 percent limit are applied on an annual fiscal year basis.

(5)(i) The 10 percent limit for a fiscal year, as calculated under paragraph (c)(3) of this section, may be no greater than 10 percent of the total computable amount (determined under paragraph

(c)(5)(ii) of this section) of the State allotment or allotments available in that fiscal year. Therefore, the 10 percent limit is the lower of the amount calculated under paragraph (c)(3) of this section, and 10 percent of the total computable amount of the State allotment available in that fiscal year.

(ii) As used in paragraph (c)(5)(i) of this section, the total computable amount of a State's allotment for a fiscal year is determined by dividing the State's allotment for the fiscal year by the State's enhanced FMAP for the year. For example, if a State allotment for a fiscal year is $65 million and the enhanced FMAP rate for the fiscal year is 65 percent, the total computable amount of the allotment for the fiscal year is $100 million ($65 million/.65). In this example, the 10 percent limit may be no greater than a total computable amount of $10 million (10 percent of $100 million).

§ 457.622 Rate of FFP for State expenditures.

(a) *Basis.* Sections 1905(b), 2105(a) and 2105(b) of the Act provides for payments to States from the States' allotments for a fiscal year, as determined under § 457.608, for part of the cost of expenditures for services and administration made under an approved State child health assistance plan. The rate of payment is generally the enhanced Federal medical assistance percentage described below.

(b) *Enhanced Federal medical assistance percentage (Enhanced FMAP)—Computations.* The enhanced FMAP is the lower of the following:

(1) 70 percent of the regular FMAP determined under section 1905(b) of the Act, plus 30 percentage points; or

(2) 85 percent.

(c) *Conditions for availability of enhanced FMAP based on a State's expenditures.* The enhanced FMAP is available for payments based on a State's expenditures claimed under the State's title XXI program from the State's fiscal year allotment only under the following conditions:

(1) The State has an approved title XXI State child health plan;

(2) The expenditures are allowable under the State's approved title XXI State child health plan;

(3) State allotment amounts are available in the fiscal year, that is, the State's allotment or allotments (as reduced in accordance with § 457.616) and available for a fiscal year have not been fully expended.

(4) Expenditures claimed against the 10 percent limit are within the State's 10 percent limit for the fiscal year.

(5) The State is in compliance with the maintenance of effort requirements of section 2105(d)(1) of the Act.

(d) *Categories of expenditures for which enhanced FMAP are available.* Except as otherwise provided below, the enhanced FMAP is available with respect to the following States' expenditures:

(1) Child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 of the Act; and

(2) Subject to the 10 percent limit provisions under § 457.618(a)(2), the following expenditures:

(i) Payment for other child health assistance for targeted low-income children;

(ii) Expenditures for health services initiatives under the State child health assistance plan for improving the health of children (including targeted low-income children);

(iii) Expenditures for outreach activities; and

(iv) Other reasonable costs incurred by the State to administer the State child health assistance plan.

(e) *CHIP administrative expenditures and CHIP related title XIX administrative expenditures*—(1) *General rule.* Allowable title XXI administrative expenditures should support the operation of the State child health assistance plan. In general, FFP for administration under title XXI is not available for costs of activities related to the operation of other programs.

(2) *Exception.* FFP is available under title XXI, at the enhanced FFP rate, for Medicaid administrative expenditures attributable to the provision of medical assistance to children described in sections 1905(u)(2) and 1905(u)(3), and during the presumptive eligibility period described in section 1920A of the Act, to the extent that the State does not claim those costs under the Medicaid program.

(3) FFP is not available in expenditures for administrative activities for items or services included within the scope of another claimed expenditure.

(4) FFP is available in expenditures for activities defined in sections 2102(c)(1) and 2105(a)(2)(C) of the Act as outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in such a program.

(5) FFP is available in administrative expenditures for activities specified in sections 2102(c)(2) of the Act as coordination of the administration of the State children's health insurance program with other public and private health insurance programs. FFP would not be available for the costs of administering the other public and private health insurance programs. Coordination activities must be distinguished from other administrative activities common among different programs.

§ 457.624 Limitations on certain payments for certain expenditures.

(a) *Abortions*—(1) *General rule.* Payment is not made for any State expenditures to pay for abortions or to assist in the purchase, whole or in part, of health benefit coverage that includes coverage of abortion.

(2) *Exception.* Payment may be made for expenditures for health benefits coverage and services that include abortions that are necessary to save the life of the mother or if the pregnancy is the result of rape or incest.

(b) *Waiver for purchase of family coverage.* Payment may be made to a State with an approved State child health plan for the purchase of family coverage under a group plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of HCFA that—

(1) Purchase of this coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved; and

(2) This coverage will not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

§ 457.626 Prevention of duplicate payments.

(a) *General rule.* No payment shall be made to a State for expenditures for child health assistance under its State child health plan to the extent that:

(1) A non-governmental health insurer would have been obligated to pay for those services but for a provision of its insurance contract that has the effect of limiting or excluding those obligations based on the actual or potential eligibility of the individual for child health assistance under the State child health insurance plan.

(2) Payment has been made or can reasonably be expected to be made promptly under any other Federally operated or financed health insurance or benefits program, other than a program operated or financed by the Indian Health Service.

(b) *Definitions.* As used in paragraph (a) of this section—

Non-governmental health insurer includes any health insurance issuer, group health plan, or health maintenance organization, as those terms are defined in 45 CFR 144.103, which is not part of, or wholly owned by, a governmental entity.

Prompt payment can reasonably be expected when payment is required by applicable statute, or under an approved State plan.

Programs operated or financed by the Indian Health Service means health programs operated by the Indian Health Service, or Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement or compact with the Indian Health Service under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.), or by an urban Indian organization in accordance with a grant or contract with the Indian Health Service under the authority of title V of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

§ 457.628 Other applicable Federal regulations.

Other regulations applicable to State CHIP programs include the following:

(a) HHS regulations in 42 CFR subpart B—§§ 433.51–433.74 sources of non-Federal share and Health Care-Related Taxes and Provider-Related Donations; these regulations apply to States' CHIPs in the same manner as they apply to States' Medicaid programs.

(b) HHS Regulations in 45 CFR subtitle A:

Part 16—Procedures of the Departmental Appeals Board.

Part 74—Administration of Grants (except as specifically excepted).

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964.

Part 81—Practice and Procedure for Hearings Under 45 CFR part 80.

Part 84—Nondiscrimination on the Basis of Handicap in Programs and activities Receiving or Benefiting From Federal Financial Assistance.

Part 95—General Administration—grant programs (public assistance and medical assistance).

§ 457.630 Grants procedures.

(a) *General provisions.* Once HCFA has approved a State child health plan, HCFA makes quarterly grant awards to the State to cover the Federal share of expenditures for child health assistance, other child health assistance, special health initiatives, outreach and administration.

(1) For fiscal year 1998, a State must submit a budget request in an appropriate format for the 4 quarters of the fiscal year. HCFA bases the grant awards for the 4 quarters of fiscal year 1998 based on the State's budget requests for those quarters.

(2) For fiscal years after 1998, a State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. HCFA bases the grant awards for the first 3 quarters of the fiscal year on the State's budget requests for those quarters.

(3) For fiscal years after 1998, a State must also submit a budget request for the fourth quarter of the fiscal year. The amount of this quarter's grant award is based on the difference between a State's final allotment for the fiscal year, and the total of the grants for the first 3 quarters that were already issued in order to ensure that the total of all grant awards for the fiscal year are equal to the State's final allotment for that fiscal year.

(4) The amount of the quarterly grant is determined on the basis of information submitted by the State (in quarterly estimate and quarterly expenditure reports) and other pertinent information. This information must be submitted by the State through the Medicaid Budget and Expenditure System (MBES) for the Medicaid program, and through the Child Health Budget and Expenditure System (CBES) for the title XXI program.

(b) *Quarterly estimates.* The State children's health insurance program agency must submit Form HCFA–21B (Children's Health Insurance Program Budget Report for Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

(c) *Expenditure reports.* (1) The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly Children's Health Insurance Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

(2) This report is the State's accounting of actual recorded expenditures. This disposition of Federal funds may not be reported on the basis of estimates.

(d) *Additional required information.* A State must provide HCFA with the following information regarding the administration of the title XXI program:

(1) Name and address of the State Agency/organization administering the program;

(2) The employer identification number (EIN); and

(3) A State official contact name and telephone number.

(e) Grant award.—(1) *Computation by HCFA.* Regional office staff analyzes the State's estimates and sends a recommendation to the central office. Central office staff considers the State's estimates, the regional office recommendations and any other relevant information, including any adjustments to be made under paragraph (e)(2) of this section, and computes the grant.

(2) *Content of award.* The grant award computation form shows the estimate of expenditures for the ensuring quarter, and the amounts by which that estimate is increased or decreased because of an increase or overestimate for prior quarters, or for any of the following reasons:

(i) Penalty reductions imposed by law.

(ii) Deferrals or disallowances.

(iii) Interest assessments.

(iv) Mandated adjustments such as those required by section 1914 of the Act.

(3) *Effect of award.* The grant award authorizes the State to draw Federal funds as needed to pay the Federal share of disbursements.

(4) *Draw procedure.* The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. (The letter of credit payment system was established in accordance with Treasury Department regulations -Circular No.1075.)

(f) *General administrative requirements.* With the following exceptions, the provisions of 45 CFR part 74, that establish uniform administrative requirements and cost principles, apply to all grants made to States under this subpart:

(1) Subpart G—Matching and Cost Sharing; and

(2) Subpart I—Financial Report Requirement.

E. 45 CFR PART 92 is amended as follows:

PART 92—UNIFORM ADMINISTRATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 301.

2. Section 92.4 is amended by revising paragraphs(a)(3)(iv) and (a)(3)(v), and adding a new paragraph (a)(3)(vi) to read as follows:

§ 92.4 Applicability.

(a) * * *

(3) * * *

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act);

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B); and

(vi) State Children's Health Insurance Program (title XXI of the Act).

* * * * *

C. 45 CFR part 95 is amended as follows:

1. The heading of part 95 is revised to read as follows:

PART 95—GENERAL ADMINISTRATION —GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND CHILDREN'S HEALTH INSURANCE PROGRAMS)

2. The authority citation for part 95 is revised to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a): sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b–2; sec. 306(b), 94 Stat. 530, 42 U.S.C. 1320b-2note, unless otherwise noted.

Subpart A—Time Limits for States to file Claims

3. In § 95.1(a), title XXI is added in numerical order immediately following title XX as follows:

§ 95.1 Scope.

* * * * *

(a) * * *

Title XXI—Grants to States for Children's Health Insurance Programs

* * * * *

4. In § 95.4, the definition of ''State agency'' is revised to read as follows:

§ 95.4 Definitions.

* * * * *

State agency for the purposes of expenditures for financial assistance under title IV–A and for support enforcement services under title IV–D means any agency or organization of the State or local government which is authorized to incur matchable expenses; for purposes of expenditures under titles XIX and XXI, means any agency of the State, including the State Medicaid agency or State Child Health Agency, its fiscal agents, a State health agency, or any other State or local organization which incurs matchable expenses; for purposes of expenditures under all other titles, see the definitions in the appropriate program's regulations.

* * * * *

5. In § 95.13, paragraph (b) and the first sentence of paragraph (d) are revised to read as follows:

§ 95.13 In which quarter we consider an expenditure made.

* * * * *

(b) We consider a State agency's expenditure for services under title I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD , XIX, or XXI to have been made in the quarter in which any State agency made a payment to the service provider.

* * * * *

(d) We consider a State agency's expenditure for administration or training under titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD), XIX, or XXI to have been made in the quarter payment was made by a State agency to a private agency or individual; or in the quarter to which the costs were allocated in accordance with the regulations for each program. * * *

5. Section 95.503 is revised to read as follows:

Subpart E—Cost Allocation Plans

§ 95.503 Scope.

This subpart applies to all State agency costs applicable to awards made under titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX, and XXI, of the Social Security Act, and under the Refugee Act of 1980, title IV, Chapter 2 of the Immigration and Nationality Act (8 U.S.C. 1521 *et seq.*), and under title V of Pub. L. 96–422, the Refugee Education Assistance Act of 1980.

6. Section 95.507(a)(3) is revised to read as follows:

§ 95.507 Plan requirements.

(a) * * *

(3) Be compatible with the State plan for public assistance programs described in 45 CFR Chapter II, III and XIII, and 42 CFR Chapter IV Subchapters C and D; and

* * * * *

7. Section 95.601 is revised to read as follows:

Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

General

§ 95.601 Scope and Applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will approve Federal financial participation (FFP) at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, or XXI of the Social Security Act and title IV chapter 2 of the Immigration and Nationality Act. The conditions of approval of this subpart add to the statutory and regulatory requirements for acquisition of ADP equipment and services under the specified titles of the Social Security Act.

8. In § 95.605, the definitions of ''approving component'', ''operation'', ''regular matching rate'', and ''State agency'' are revised to read as follows:

§ 95.605 Definitions.

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Approving component means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. Family Support Administration (FSA) for cash assistance for titles I, IV–A, X, XIV, and XVI(AABD); Office of Human Development Services (OHDS) for social services for Titles IV–B (child welfare services) and IV–E (foster care and adoption assistance); Family Support Administration (FSA) for title IV–D; and Health Care Financing Administration (HCFA) for titles XIX and XXI of the Social Security Act.

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Operation means the automated processing of data used in the administration of State plans for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.38 and 307.10 for specific requirements for titles IV–A and IV–D, and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

Regular matching rate means the normal rate of FFP authorized by titles IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency

administration of programs authorized by those titles.

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State agency means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

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9. In § 95.703 the definition of ''Public Assistance Programs'' is revised to read as follows:

§ 95.703 Definitions.

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Public Assistance Programs means programs authorized by titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX and XXI of the Social Security Act, and programs authorized by the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96–212).

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(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: August 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: February 23, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–4933 Filed 3–3–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 600, 630, 635, 644, and 678

[I.D. 071698B; 010799A]

Atlantic Highly Migratory Species (HMS Fisheries); Fishery Management Plan, Plan Amendment and Consolidation of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of the comment period; additional public hearing.

SUMMARY: On January 20, 1999, NMFS requested comments on a draft Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and draft Amendment 1 to the Atlantic Billfish FMP, and the proposed rule that would implement these FMPs. On February 25, NMFS announced the availability of an addendum to the HMS FMP and published a supplemental proposed rule to implement the addendum. Comments on all documents were requested by March 4, 1999. NMFS hereby extends the public comment period from March 4, 1999, to March 12, 1999, except for proposed import restrictions for swordfish. NMFS also announces an additional public hearing during the extended comment period.

DATES: Comments on the draft HMS FMP and its addendum, Amendment 1 to the Billfish FMP, and their proposed implementing regulations must be received by March 12, 1999. An additional public hearing will be held in Spray Beach, NJ, on March 11, 1999, from 7 to 10 p.m.

ADDRESSES: To submit comments on, or to obtain copies of, the draft HMS FMP, the Addendum to the draft HMS FMP, draft Amendment 1 to the Billfish FMP, the proposed rule, supplemental proposed rule and supporting documents, including the revised Initial Regulatory Flexibility Analysis, or a summary of these items, contact Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282, phone (301) 713–2347, fax (301) 713–1917. Copies of the addendum and supplement are also available on the Sustainable Fisheries Act web site at www.nmfs.gov/sfa/hms/hmspg.html. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

The hearing location is the Spray Beach Inn, Oceanfront and 24th Street, Spray Beach, NJ 08004.

FOR FURTHER INFORMATION CONTACT: Pat Scida regarding tuna issues at (978) 281–9260; Jill Stevenson regarding swordfish issues at (301) 713–2347; Margo Schulze regarding shark issues at (301) 713–2347; Buck Sutter regarding billfish issues at (727) 570–5447; Karyl Brewster-Geisz regarding limited access at (301) 713–2347; and Chris Rogers regarding the regulatory consolidation at (301) 713–2347.

SUPPLEMENTARY INFORMATION: On October 9, 1998 (63 FR 54433), NMFS announced the availability of draft Amendment 1 to the Billfish FMP, and on October 26, 1998, NMFS announced the availability of the draft HMS FMP (63 FR 57093). Information regarding the management of HMS under the HMS and Billfish FMPs was provided in the preamble to the proposed rule to implement those FMPs (64 FR 3154, January 20, 1999) and is not repeated here. NMFS indicated that the preferred alternative for western Atlantic bluefin tuna (BFT) rebuilding would be identified following the November 1998 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), that the preferred alternative and associated analyses would be published as an addendum to the draft HMS FMP, and that proposed measures to implement the preferred rebuilding alternative would be published in a supplement to the proposed rule. The supplement to the proposed rule (February 25, 1999; 64 FR 9298) would implement the rebuilding and bycatch reduction measures of the FMP Addendum and would specify BFT General category effort controls for the 1999 fishing season and clarify mandatory data collection requirements.

In response to public requests that additional time is needed to review the above-referenced documents and prepare responses, NMFS hereby extends the comment period to March 12, 1999.

Specific provisions in the proposed rule regarding swordfish import restrictions had been previously proposed on October 13, 1998 (63 FR 54661). These provisions were restated in the proposed rule to implement the HMS FMP due to the consolidated format of the new 50 CFR part 635 regulations for HMS. Because the public comment period on swordfish import restrictions has been adequate, and NMFS must begin implementation of import monitoring, NMFS intends to finalize these regulations under 50 CFR part 630. The final import restriction regulations will subsequently be incorporated into 50 CFR part 635 when the final consolidated regulations are issued.

Special Accommodations

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent (see **ADDRESSES**) at least 7 days prior to the hearing.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*