forwarded to the Small Business Administration.

This action does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The elimination of the information collection components for this action is expected to result in the elimination of 6,383 paperwork reduction hours.

In addition, pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' the Agency has determined that there are no environmental justice-related issues with regard to this action since this final rule simply eliminates reporting requirements for a chemical that, under the criteria of EPCRA section 313, does not pose a concern for human health or the environment.

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

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: July 25, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entry for bis(2-ethylhexyl) adipate under paragraph (a) and the entire CAS number entry for 103-23-1 under paragraph (b).

[FR Doc. 96–19452 Filed 7–31–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 95

RIN 0970–AB46

Reduction of Reporting Requirements for the State Systems Advance Planning Document (APD) Process

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: This final rule decreases the reporting burden on States relative to the State systems advance planning document (APD) process by increasing the threshold amounts above which APDs and related procurement documents need to be submitted for Federal approval. The APD process is the procedure by which States obtain approval for Federal financial participation in the cost of acquiring automatic data processing equipment and services. Additionally, this rule eliminates the requirement for State submittal of biennial security plans for Federal review.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Davis, State Systems Policy Staff, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–6404.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), information collection requirements relating to automated data processing and information retrieval systems have been approved by OMB Approval No. 0992–0005. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

Statutory Authority

These regulations are published under the general authority of sections 402(a)(5), 452(a)(1), 1902(a)(4), and 1102 of the Social Security Act (the Act).

Background and Description of Regulatory Provisions

State public assistance agencies acquire automatic data processing (ADP) equipment and services for computer operations which support the Aid to Families with Dependent Children, Adult Assistance, Child Support Enforcement, Medicaid, Child Welfare, Foster Care and Adoption Assistance, Job Opportunities and Basic Skills Training (JOBS), and Refugee Resettlement programs. Conditions and procedures for acquiring such systems are found at 45 CFR part 95. To reduce the reporting burden on States and to provide better use of Federal resources, we issued a notice of proposed rulemaking revising these requirements which was published in the Federal Register July 24, 1995 (60 FR 37858). We received 23 letters of public comment regarding the proposed rule from State agencies and other interested parties. Specific comments and responses follow the discussion of regulatory provisions. These comments did not generate any changes to the regulatory provisions outlined in the proposed rule.

Currently any competitive acquisition over $500,000 or any sole source acquisition over $100,000 in total State and Federal costs which will be matched at the regular Federal financial participation (FFP) rate, as defined in Section 95.605 of these rules, requires written prior approval of an APD. Project cost increases of more than $300,000 require the submission of an APD Update. Also, most procurement documents (Request for Proposals (RFPs) and contracts) over $300,000, and contract amendments over $100,000 must be approved by the Federal funding agencies.

As a first step toward reducing the reporting burden on States and improving the use of Federal resources, we are raising the threshold amounts for regular match acquisitions. We will continue to require written prior approval for all equipment and services acquired at an enhanced matching rate.

Accordingly, these rules revise 45 CFR 95.611(a)(1), which provides that States must obtain prior written approval for ADP equipment or services anticipated to have total acquisition costs of $500,000 or more in Federal and State funds, to increase the $500,000 threshold amount to $5 million or more. Similarly, paragraph (a)(4), which requires prior written approval with respect to State plans to acquire noncompetitively from a non-government source, ADP equipment and services, with a total acquisition cost of greater than $100,000, is revised to require that a State obtain prior written approval of its justification for a sole source acquisition with total State and Federal costs of more than $1 million but no more than $5 million and to provide that noncompetitive acquisitions of greater than $5 million continue to be subject to the requirements of paragraph (b), which

provides specific prior written approval requirements.

We are also eliminating paragraph (a)(3), which provides a separate threshold amount for acquisitions in support of State Medicaid systems funded at the 75 percent FFP rate. The Health Care Financing Administration (HCFA) will apply the new thresholds to Title XIX funded projects. Additionally, we are modifying paragraph (a)(2) to delete a reference to paragraph (a)(3) and to redesignate paragraphs (a)(4) through (a)(7) as paragraphs (a)(3) through (a)(6). We are also revising paragraph (a)(4), as redesignated, to change the reference from (a)(6) to (a)(5) and to update the office names from Office of Information Management Systems to Office of State Systems and State Data Systems Staff to State Systems Policy Staff to reflect a recent organizational change. And we are correcting a typographical error in paragraph (a)(6) so that ''ADP'' now reads ''APD''.

Paragraph (b)(1)(iii), which provides that unless specifically exempted by the Department, written approval must be received prior to release of a Request for Proposal (RFP) or execution of a contract where costs are anticipated to exceed $300,000, is revised to increase the threshold to $5 million with respect to competitive procurements and $1 million for noncompetitive acquisitions from nongovernment sources.

With respect to contract amendments, 45 CFR 95.611(b)(1)(iv) is revised to provide that prior written approval is needed, unless specifically exempted by the Department, prior to execution of a contract amendment involving cost increases of greater than $1 million or time extensions of more than 120 calendar days. In addition, States will be required to submit for written approval contract amendments under these threshold amounts on an exception basis or if HHS determines that the contract amendment was not adequately described and justified in the APD.

As indicated, with respect to both changes to paragraph (b), HHS retains the right to review and prior approve all RFPs, contracts, and contract amendments, regardless of dollar amount, on an exception basis.

Paragraph (c)(1), which provides specific approval requirements with respect to regular FFP requests, is also revised to provide increased thresholds. First, under paragraph (c)(1)(i), the $1 million threshold with respect to the need for written approval from the Department of Annual Advanced Planning Document Updates (APDU) is increased to $5 million. In paragraph (c)(1)(ii)(A), the threshold with respect to the requirement for approval of an ''as needed'' APDU of projected cost increases is raised from the lesser of $300,000 or 10 percent of the project cost, to projected cost increases of $1 million or more.

We are also changing the rules to provide prompt Department action on State funding requests by providing that if the Department has not provided a State written approval, disapproval, or a request for information within 60 calendar days of issuing an acknowledgement of receipt of a State's request, the request is deemed to have provisionally met the prior approval requirements.

Accordingly, 45 CFR 95.611(d) is revised to provide that, if the Department has not provided written approval, disapproval, or a request for information within 60 calendar days of issuing an acknowledgement of receipt of a State's request, the request will be provisionally deemed to have met the prior approval requirements. As indicated in the proposed rule, provisional approval does not absolve a State from meeting all Federal requirements which pertain to the computer project or acquisition. Such projects continue to be subject to Departmental audit and review, and the determinations made from such audits and reviews.

Finally, to further the goal of reduced burden and increased efficiency, these rules amend 45 CFR 95.621(f)(6), by eliminating the requirement that States submit biennial security reports for Federal review and approval, to require simply that such reports be maintained by States for on-site review by HHS. As such, States must continue to perform security reviews and will be responsible for maintaining review reports for inspection by HHS staff during on-site reviews.

Response to Comments

We received a total of 23 comments on the proposed rule published in the Federal Register July 24, 1995 (60 FR 37858) from State agencies and other interested parties. Specific comments and our responses follow.

General Comments

1. *Comment:* Two commenters felt that the changes provided by the proposed rule did not go far enough to provide significant relief from the existing burden associated with the APD process. However, the majority of commenters voiced support for the rule. In fact, 13 of the respondents offered no other comment than to provide their support.

Response: We disagree. With this rule we are providing a ten-fold increase in the prior approval threshold for APDs, an even greater increase for RFPs and contracts, and other significant changes. This rule will greatly reduce the State burden associated with the APD process.

Increased Thresholds

1. *Comment:* Two commenters asked that the increased thresholds also apply to systems funded at enhanced rates, or at a minimum to Request for Proposals (RFPs) and contracts after approval of APDs for enhanced funded projects.

Response: We do not agree with these suggestions. We are convinced that enhanced funded projects, where the Federal Government pays up to 90 percent of costs, should be given greater attention and scrutiny than regular match projects. HHS reviews RFPs and contracts to ensure State plans as expressed in related APDs, and Federal requirements are being met. Accordingly, thresholds for APDs, RFPs, and contracts for enhanced funded projects will remain at current levels, even in cases where enhanced funding becomes available after the beginning of the project.

2. *Comment:* One commenter was concerned that the allowance for review of documents by ''exception'' as stated in the proposed rule, should truly be used on an exception basis and not become the norm. The commenter suggested that criteria be developed for exercising the option and be disseminated to States. The commenter also asked that when the exception option is used, adequate notice be given to States.

Response: We would like to assure the commenter that we fully intend that this option will only be exercised on an exception basis. While we have not developed an exhaustive list of criteria for use of the exception, as provided in the preamble to the proposed rule, the criteria ''* * * could include instances where new program requirements or technology are involved, as in electronic benefits transfer, or when adequate description and justification has not been provided in the APD.'' However, States will always receive written notification when documents must be submitted for review.

3. *Comment:* One commenter suggested that after Federal review of an APD, the RFPs and contracts should not be reviewed by HHS.

Response: We do not agree with this suggestion. We will continue to review RFPs and contracts, in accordance with revised thresholds, to ensure that State

plans as expressed in related APDs, and Federal requirements are being met.

4. *Comment:* One commenter suggested that HHS should limit its review of State ADP acquisitions to new development efforts. This commenter stated that ongoing operations, equipment upgrades, and systems enhancements should be exempt from Federal review.

Response: We do not agree with this recommendation. Equipment upgrades and systems enhancements, above the threshold limits, will continue to be subject to prior approval.

5. *Comment:* Three commenters recommended that large States should have higher thresholds than other States. The commenters believe that because the systems activities of large States are proportionally larger and more costly than those of other States, large States should have proportionally more of their systems expenditures exempt from HHS prior approval.

Response: In establishing the dollar thresholds under which a State need not obtain HHS' prior approval for an ADP acquisition, HHS sought to achieve a balance between exercising its responsibility and providing States a measure of flexibility. HHS is responsible under Federal law and regulation for ensuring that it provides Federal matching funds for purposes which are necessary for effective and efficient program operations. At the same time, however, HHS seeks to provide flexibility to States who manage and carry-out these ADP projects.

In establishing a $5,000,000 threshold, HHS is making a ten-fold increase to the current threshold. We believe that at this time the increased threshold provides an appropriate balance between its responsibility for assuring the effective use of Federal dollars and providing States flexibility of action.

While it is true that large States have commensurately large systems expenditures, such large expenditures should appropriately receive a higher level of review to reduce the risk to taxpayers.

6. *Comment:* One State commenter suggested that HHS should not review any RFPs, contracts and contract amendments, asserting that Federal agencies micro-manage State projects and cause delays in nearly every case where approval is requested. The commenter included a list of State procedures and approvals required for ADP acquisitions, which the commenter believes makes Federal approval procedures redundant. The commenter asserts that Federal review causes delays in nearly every case.

On the other hand, a commenter from another State could not recall ever having been delayed by the Federal review process.

Response: As these comments indicate, States are not of a single mind as to whether the requirement for prior Federal approval delays States in developing ADP projects. Underlying the first commenter's assertion is the suggestion that HHS rely on State procedures and officials to meet its responsibilities for assuring that the expenditure of Federal funds on State systems is necessary for effective and efficient operation of the programs.

With the information received through the APD procedures, accountable HHS officials are able to meet their responsibilities for assuring that the expenditure of Federal funds on State systems is necessary for the effective and efficient operation of the programs. As stated in response to another commenter, HHS intends to continue to review RFPs, contracts and contract amendments, subject to applicable dollar thresholds, to ensure that programmatic requirements are being met.

7. *Comment:* One commenter noted that the regulation now includes the Medicaid 75 percent match rate in the regular match category and noted that now all Medicaid 75 percent acquisitions will require prior approval.

Response: We believe the commenter misunderstood this provision of the regulation. The revision now puts Medicaid 75 percent funding in the $5 million threshold category. HCFA will further clarify this in a revision to Chapter 11 of the Medicaid Management Manual, which deals with Medicaid Management Information System requirements.

8. *Comment:* One State was confused by our statement that some RFPs and contracts under the threshold amounts would require prior approval. The commenter was concerned as to how they would know if approval was required.

Response: Approval of RFPs, contracts, and contract amendments will be required, on an exception basis, for projects utilizing new technology, such as Electronic Benefits Transfer (EBT), and in those cases in which the procurement is not well defined in the approved APD. States will know when approval of these documents is required because HHS will inform them, in writing, when these documents must be submitted for approval.

9. *Comment:* One commenter noted that contract amendments that are funded at the regular FFP rate and exceed the $1 million threshold, or contract time extensions of more than 120 days require prior approval. The commenter suggested that since a project that costs $1 million will usually have a duration of more than one year, the number of days should be changed to 365.

Response: The commenter implies a necessary connection, with which we do not agree, between increased project cost and the duration of a project. There are two different issues here. A contract amendment which exceeds $1 million in cost requires prior approval. Additionally, a contract amendment for a time extension of more than 120 days requires prior approval. For example, the cost of a project may increase with no change in project time frame. Similarly, the time frame for a project may increase with no increase in project cost.

Federal Response Deadline

1. *Comment:* One commenter expressed concern that the definition and use of ''provisional approval'' in the proposed rule was unclear. Specifically, the commenter noted that the phrases ''deemed to have provisionally met the prior approval requirements'' and ''provisionally met the prior approval requirements'' were used interchangeably, but was concerned that they may in fact have different meanings.

Response: These phrases were not intended to have different meanings. We use the term ''provisional approval'' rather than ''approval'' to make it clear that States are still subject to all Federal requirements (other than prior approval). These are the same requirements, such as those listed in 45 CFR part 74, which States must comply with for any acquisition in which Federal financial participation is requested. As stated in the preamble to the proposed rule, ''Even written prior approval by the Department does not guarantee absolutely that there will be no subsequent determination of violation of the pertinent Federal statutes and regulations.''

The proposed rule preamble further states that ''States which are confident that their project is in compliance would be able, however, to proceed after the 60-day period has expired without further delay awaiting Federal approval.'' However, if it is subsequently determined that the State's project does not meet Federal requirements, appropriate changes will be necessary.

2. *Comment:* One commenter suggested that establishing 60 days as the standard response time may have the effect of lengthening the response

time in all situations to a full 60 days. This commenter suggested that the standard be between 30 and 40 days.

Response: We are not establishing 60 days as the standard response time. In fact, the Department of Health and Human Services considers responses to State requests to be ''overdue'' in 30 days. Sixty days is the outside time period at which point a request will be considered ''provisionally approved.'' If the State has not received a response within 60 days and is confident that a request meets Federal requirements, this provision permits the State to proceed as if it had prior written approval.

3. *Comment:* One commenter was concerned that we might delay sending out an acknowledgement letter to effectively increase the 60-day response time limit.

Response: We would like to assure the commenter that this will not happen. We will continue our policy of promptly acknowledging State requests.

Security Review Reports

1. *Comment:* One commenter suggested that the requirement for biennial security reports be eliminated.

Response: This regulation eliminates the requirement for States to submit the biennial security reports to HHS for review. However, the requirement to conduct the bi-annual reviews and maintain the reports will remain in place as a minimal requirement to assist States in assuring the security of their data processing assets and systems. These reports must be available for review by HHS staff during site visits to States to assist in assessing the security status of Federally funded data processing activities.

Other

1. *Comment:* One commenter stated that the Federal depreciation requirements should be changed.

Response: Federal depreciation requirements are not set by the Department of Health and Human Services but by the Office of Management and Budget under OMB Circular A–87 and thus are not within the purview of this final rule. However, the Department of Health and Human Services previously agreed to exempt data processing equipment costing no more than $5,000 from the depreciation requirements.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely decreases reporting burden on States.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354), which requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs, Social programs, Social Security.

(Catalog of Federal Domestic Assistance Program 93.645 Child Welfare Services—State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.563, Child Support Enforcement Program; 93.174, Medical Assistance Program; 93.570, Assistance Payments—Maintenance Assistance)

Dated: January 23, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: April 18, 1996.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR Part 95 is amended as follows:

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

1. The authority citation for Part 95, Subpart F continues to read as follows:

Authority: Secs. 402(a)(5), 452(a)(1), 1102, and 1902(a)(4) of the Social Security Act, 42 U.S.C. 602(a)(5), 652(a)(1), 1302, 1396a(a)(4); 5 U.S.C. 301 and 8 U.S.C. 1521.

2. Section 95.611 is amended by removing paragraph (a)(3); redesignating paragraphs (a)(4) through (a)(7) as (a)(3) through (a)(6); revising paragraphs (a)(1), (a)(2), newly redesignated paragraphs (a)(3), (a)(4) and (a)(6); paragraphs (b)(1)(iii), (b)(1)(iv), (c)(1)(i), (c)(1)(ii)(A) and (d); and republishing newly redesignated paragraph (a)(5) to read as follows:

§ 95.611 Specific Conditions for FFP.

(a) * * *

(1) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of $5,000,000 or more in Federal and State funds.

(2) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR 205.35, 45 CFR part 307 or 42 CFR part 433, subpart C, regardless of the acquisition cost.

(3) A State shall obtain prior written approval from the Department of its justification for a sole source acquisition, when it plans to acquire noncompetitively from a nongovernmental source ADP equipment or services, with proposed FFP at the regular matching rate, that has a total State and Federal acquisition cost of more than $1,000,000 but no more than $5,000,000. Noncompetitive acquisitions of more than $5,000,000 are subject to the provisions of paragraph (b) of this section.

(4) Except as provided for in paragraph (a)(5) of this section, the State shall submit requests for Department approval, signed by the appropriate State official, to the Director, Administration for Children and Families, Office of State Systems. The State shall send to ACF one copy of the request for each HHS component, from which the State is requesting funding, and one for the State Systems Policy Staff, the coordinating staff for these requests. The State must also send one copy of the request directly to each Regional program component and one copy to the Regional Director.

(5) States shall submit requests for approval which involve solely Title XIX funding (i.e., State Medicaid Systems), to HCFA for action.

(6) The Department will not approve any Planning or Implementation APD that does not include all information required as defined in § 95.605.

(b) * * *

(1) * * *

(iii) For the Request for Proposal and Contract, unless specifically exempted by the Department, prior to release of the RFP or prior to the execution of the contract when the contract is anticipated to or will exceed $5,000,000 for competitive procurement and $1,000,000 for noncompetitive acquisitions from nongovernmental sources. States will be required to submit RFPs and contracts under these threshold amounts on an exception basis or if the procurement strategy is not adequately described and justified in an APD.

(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases exceeding $1,000,000 or contract time extensions of more than 120 days. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD.

* * * * *

(c) * * *

(1) * * *

(i) For an annual APDU for projects with a total acquisition cost of more than $5,000,000, when specifically required by the Department.

(ii) For an ''As Needed APDU'' when changes cause any of the following:

(A) A projected cost increase of $1,000,000 or more.

* * * * *

(d) *Prompt action on requests for prior approval.* The ACF will promptly send to the approving components the items specified in paragraph (b) of this section. If the Department has not provided written approval, disapproval, or a request for information within 60 days of the date of the Departmental letter acknowledging receipt of a State's request, the request will automatically be deemed to have provisionally met the prior approval conditions of paragraph (b) of this section.

3. Section 95.621 is amended by revising paragraph (f)(6) to read as follows:

§ 95.621 APD reviews.

* * * * *

(f) * * *

(6) The State agency shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for HHS on-site review.

[FR Doc. 96–19488 Filed 7–30–96; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 96–306]

Implementation of the Equal Acess to Justice Act in Agency Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules implementing the Equal Access to Justice Act to conform to and carry out the intent of recent amendments of that Act to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees, not exceeding $125.00 per hour, and other expenses. In addition, such an award is permitted when the demand of the Commission for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Finally, a small entity as defined in 5 U.S.C. 601 is declared to be an eligible party for such relief.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: John I. Riffer, Office of General Counsel, (202) 418–1756.

SUPPLEMENTARY INFORMATION:

Adopted: July 15, 1996.
Released: July 18, 1996.

1. By this Order, we amend our rules implementing the Equal Access to Justice Act (EAJA) for Commission proceedings in conformance with recent amendments of that Act adopted as part of the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996).

2. The pertinent provisions of the Contract with America Advancement Act of 1996 amend the EAJA to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees, not exceeding $125.00 per hour, and other expenses. In addition, the legislation provides for such an award when the demand of the Commission for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Finally, the statute establishes that a small entity as defined in 5 U.S.C. 601 is an eligible party for such relief. The revised rules, as set forth below, simply incorporate the changes in the EAJA and make those changes applicable to Commission proceedings. These changes merely reiterate the specific terms of the statute and do not involve any discretionary action. Under these circumstances, this action comes within the ''good cause'' exemptions of the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d), and the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.

3. Accordingly, it is ordered, That, effective July 31, 1996, part 1 is amended as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. The second sentence of § 1.1501 is revised to read as follows:

§ 1.1501 Purpose of these rules.

* * * An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust, or when the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. * * *

3. Section 1.1502 is revised to read as follows:

§ 1.1502 When the EAJA applies.

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. The provisions of § 1.1505(b) apply to any adversary adjudications commenced on or after March 29, 1996.

4. Section 1.1504 is amended by removing the period at the end of paragraph (b)(5), adding in its place a semicolon, and adding a new paragraph (b)(6) to read as follows:

§ 1.1504 Eligibility of applicants.

* * * * *

(6) For purposes of § 1.1505(b), a small entity as defined in 5 U.S.C. 601.

* * * * *