to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12612

Executive Order 12612, "Federalism" (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the federal government and the states, or in the distribution of power and responsibilities among the various levels of government. If there are substantial effects, the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing the policy action. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a federalism assessment. Today's interim final rule deals with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors. This rule will not have a substantial direct effect on states, the relationship between the states and federal government, or the distribution of power and responsibilities among various levels of government.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This interim final rule does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 708

Administrative practice and procedure, Energy, Fraud, Government contracts, Occupational Safety and Health, Whistleblowing.

Issued in Washington, on July 6, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, Chapter III of title 10 of the Code of Federal Regulations is amended as set forth below:

PART 708—[AMENDED]

1. The authority citation for Part 708 continues to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i) and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

2. Part 708 is amended by adding § 708.40 to subpart C to read as follows:

§ 708.40 Are contractors required to inform their employees about this program?

Yes. Contractors who are covered by this part must inform their employees about these regulations by posting notices in conspicuous places at the work site. These notices must include the name and address of the DOE office where you can file a complaint under this part.

3. Part 708 is amended by adding § 708.41 to subpart C to read as follows:

§ 708.41 Will DOE ever refer a complaint filed under this part to another agency for investigation and a decision?

Notwithstanding the provisions of this part, the Secretary of Energy retains the right to request that a complaint filed under this part be accepted by another Federal agency for investigation and factual determinations.

4. Part 708 is amended by adding § 708.42 to subpart C to read as follows:

§ 708.42 May the deadlines established by this part be extended by any DOE official?

Yes. The Secretary of Energy (or the Secretary's designee) may approve the extension of any deadline established by this part, and the OHA Director may approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

[FR Doc. 99-17658 Filed 7-9-99; 8:45 am]

BILLING CODE 6415-01-P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1999-10]

Treatment of Limited Liability Companies Under the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has adopted new regulations that address the treatment of limited liability companies ("LLC") for purposes of the Federal Election Campaign Act ("FECA" or the "Act"). The new rules provide that LLCs will be treated as either partnerships or corporations for FECA purposes, consistent with the tax treatment they select under the Internal Revenue Code.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-1650 or (800) 424-9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is publishing today new regulations at 11 CFR 110.1(g) governing the treatment of Limited Liability Companies under the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* LLCs are non-corporate business entities, created under State law, that have characteristics of both partnerships and corporations. These entities did not exist when the FECA was originally enacted in 1971, and were in their infancy when the pertinent provisions of the FECA were last amended in 1979.

On December 18, 1998, the Commission published a Notice of Proposed rulemaking ("NPRM") in which it sought comments on this issue. 63 FR 70065 (Dec. 18, 1998). Written comments were received from the American Medical Association, the Internal Revenue Service, and Nicholas G. Karambelas.

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the FECA controls the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Enforcement Fairness Act, Pubic Law 104-121, section 251, 110 Stat. 857, 869 (1996). Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by

the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on Friday, June 25, 1999.

Explanation and Justification

The Federal Election Campaign Act, as amended, contains various restrictions and prohibitions on the right of "persons" to contribute to Federal campaigns. The Act defines "person" to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. 431(11).

The Act prohibits corporations and labor organizations from making any contribution or expenditure in connection with a Federal election, 2 U.S.C. 441b(a), although these entities may establish separate segregated funds ("SSF") and solicit contributions from their restricted class to the SSF. 2 U.S.C. 441b(b)(2)(C). The Act also prohibits contributions by Federal contractors, 2 U.S.C. 441c, and foreign nationals, 2 U.S.C. 441e. Contributions by persons whose contributions are not prohibited by the Act are subject to the limits set out in 2 U.S.C. 441a(a), generally $1,000 per candidate per election to Federal office; $20,000 aggregate in any calendar year to national party committees; and $5,000 aggregate in any calendar year to other political committees. 2 U.S.C. 441a(a)(1). Individual contributions may not aggregate more than $25,000 in any calendar year. 2 U.S.C. 441a(a)(3).

Contributions by partnerships are permitted, subject to the 2 U.S.C. 441a(a) limits. In addition, partnership contributions are attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1(e).

In recent years the Commission received several advisory opinion requests ("AOR") seeking guidance on the treatment of LLCs for purposes of the Act, and has issued advisory opinions ("AO") in response to these AORs. *See* AOs 1998–15, 1998–11, 1997–17, 1997–4, 1996–13, and 1995–11. The AOs generally considered how the LLCs were treated under State law to determine their treatment for purposes of the Act. As the number of AORs on this topic increased, the Commission decided that it would be advisable to draft a generally-applicable rule to deal with these entities.

The NPRM sought comments on two alternative approaches. Under Alternative A, LLCs would be treated as partnerships for FECA purposes. Contributions by an LLC would be attributed to the LLC and to each member of the LLC in direct proportion to member's share of the LLCs profits, as reported to the recipient by the LLC, or by agreement of the members, as long as certain conditions were met.

Under Alternative B, the Commission would defer to the IRS "check the box" rules in classifying LLCs as either partnerships or corporations for FECA purposes. The IRS rules allow certain business entities to opt for corporate tax treatment under federal law without regard to their State law status. *See*, 26 CFR 301.7701–3. Generally, an eligible entity is one that is not required to be treated as a corporation for federal tax purposes. Under 26 U.S.C. 7704, read in conjunction with 26 CFR 301.7701–3, the IRS considers LLCs eligible entities so long as the LLC is not publicly traded. If an eligible LLC makes no election under these rules, the IRS' "default rule" treats the LLC as a partnership. 26 CFR 301.7701–3(b). Alternatively, if an LLC selects corporate tax status by "checking the box," it is taxed as a corporation for federal tax purposes. 26 CFR 301.7701–3(b)(3).

Like the IRS rules, the Commission would treat all LLCs as partnerships unless an LLC opts for federal corporate tax treatment pursuant to the "check the box" provisions. Both LLCs which "check the corporate box" and those that are publicly traded would be treated as corporations for FECA purposes.

For the reasons set forth below, the Commission is adopting Alternative B and will follow the IRS' "check the box" approach for purposes of these rules. The new rules therefore supersede AOs 1998–15, 1998–11, 1997–17, 1997–4, 1996–13, and 1995–11, in which the Commission determined that LLCs should be treated as "persons" for FECA purposes.

The Commission notes that these rules should be viewed as a narrow exception to its general practice of looking to State law to determine corporate status. The Commission will continue to treat all entities that qualify as corporations under State law as corporations for FECA purposes.

Section 110.1(g) Contributions by Limited Liability Companies

Section 110.1(g)(1) Definition

LLCs are a relatively recent creation of state law. Wyoming enacted the first LLC statute in 1977, but the majority of these laws have been enacted since 1990. Callison and Sullivan, *Limited Liability Companies*, section 1.5 (1994). LLCs are a cross between the traditional corporation and a partnership, sharing both corporate and partnership attributes. Like partnerships, LLC members are generally taxed as partners at the state level, but enjoy the liability protection of corporate shareholders. To varying extents, LLCs possess other corporate attributes, including free transferability of interest, centralized management, and the ability to accumulate capital. This section defines a limited liability company as a business entity recognized as a limited liability company under the laws of the State in which it is established.

Section 110.1(g)(2) Treatment of Certain LLCs as Partnerships

This section follows the IRS "check the box" rules at 26 CFR 301.7701–3, stating that a contribution by an LLC that elects to be treated as a partnership by the IRS, or does not elect treatment as either a partnership or a corporation, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e). Since most LLCs choose this tax classification, or acquire it through default, they will be covered by this paragraph.

One commenter urged the Commission to adopt Alternative A, which would treat all LLCs as partnerships. However, the structure of LLCs that elect corporate tax treatment is such that they would find it impracticable, if not impossible, to comply with such a requirement. As the Tax Court has explained, partnerships, and by analogy partnership-like LLCs, "must maintain a capital account for each member that directly reflects the actual amounts paid in respect to that particular membership interest. There is no such requirement for corporations. A corporation is a separate legal entity, whereas a partnership is an aggregate of its partners. A corporation does not have individual drawing accounts for each of its shareholders." *Board of Trade of Chicago* v. *Comm. of Internal Revenue*, 106 T.C. 369, 391 n.21 (1996). Therefore, corporate-like LLCs would be hard-pressed to comply with this requirement.

Another commenter requested that the Commission continue the approach set forth in past advisory opinions, i.e., treat LLCs as persons subject to the 2 U.S.C. 441a(a) contribution limits. The Commission is concerned that this approach could lead to possible proliferation problems, since a person who was a member of numerous LLCs could contribute up to the statutory limits through each of them. Also, if any

of the LLC's members were prohibited from contributing, e.g., were foreign nationals or government contractors, the LLC itself would be precluded from making contributions, under this approach.

Section 110.1(g)(3) Treatment of Certain LLCs as Corporations

This section states that an LLC that elects to be treated as a corporation by the IRS pursuant to 26 CFR 301.7701–3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114. Part 114 contains the Commission's rules governing corporate and labor organization activity under the FECA.

The Commission notes that, in order to determine the type of entities subject to corporate treatment under the FECA, it must first identify those business entities that should be defined as corporations. This term is not explicitly defined anywhere in the Act or the regulations. The only reference in the legislative history directs the Commission to look to State law to determine the status of professional corporations, but is silent as to all other types of corporations. *See* H.R. Rept. 1438 (Conf.), 93d Cong., 2d Sess. 68–69 (1974).

Since Congress did not "directly address the precise question at issue"—whether the definition of *corporation* includes LLCs—the Commission is free to refer to the IRS rules, as long as its interpretation is not "manifestly contrary to the statute." *Chevron U.S.A., Inc.* v. *National Resources Defense Council, Inc.*, 837 U.S. 837, 842–44 (1984). The Chevron analysis is the standard used by Federal courts to determine whether or not an agency has construed the statute permissibly. *See also, Clifton* v. *FEC*, 114 F.3d 1309, 1318 (1st Cir. 1997); *Bush-Quayle '92 Primary Committee, Inc.* v. *FEC*, 104 F.3d 448, 452 (D.C.Cir. 1997)

When an LLC elects corporate status for IRS purposes, it is essentially telling the IRS that its organizational structure and functions are more akin to a corporation than a partnership. This allows the LLC to accumulate capital at the corporate level, and to take advantage of favorable tax treatment of corporate losses and dividends received. Rather than attempting to determine whether an LLC more closely resembles a corporation versus a partnership, or simply classifying an LLC as a partnership without any reference to its actual structure or form, the Commission believes it can most effectively carry out FECA's intent by classifying LLCs according to their federal tax status, which most accurately describes whether an LLC's structure and function are more akin to a "corporation" or a "partnership."

The U.S. Supreme Court has interpreted congressional intent behind the FECA's prohibition of corporate contributions as a legitimate "need to restrict the influence of political war chests funneled through the corporate form" and to "regulate the substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization." *FEC* v. *National Conservative Political Action Committee*, 470 U.S. 480, 501 (1985), quoting *National Right to Work Committee* v. *FEC*, 197, 210 (1982). Following the IRS' "check the box" approach carries out this policy.

An LLC electing federal corporate status "checks the box" because it seeks to enjoy the benefits of corporate status. Such corporate advantages include, *inter alia*, flexible merger rules, the avoidance of personal income tax for LLC members, preferential tax treatment on dividends received and deductions for corporate losses, subject to certain rules. LLCs might also elect corporate status in preparation for an upcoming corporate merger.

Election of IRS corporate status confers specific benefits on those LLCs, just as State-chartered corporations enjoy similar advantages. Thus the Commission is fulfilling the purpose behind FECA's corporate prohibitions by regulating these entities as corporations.

As explained above, the Commission's adoption of the IRS treatment is consistent with the underlying policy regarding the ability of corporate-like LLCs to amass capital through the special advantages conferred upon them by the Federal Government. Moreover, the courts have consistently held that, where a corporation does not exist under State law, Federal agencies may appropriately refer to the policies behind Federal statutes in identifying the "corporate-like" activities of non-corporate forms. In *Morrissey* v. *Commissioner*, 296 U.S. 344 (1935), the Supreme Court held that a trust could be classified as an association, conferring what was, at that time, the equivalent of corporate tax status, for Federal income tax purposes. Instead of looking to State status or "labels," the Court explained that, "[w]hile the use of corporate forms may furnish persuasive evidence of the existence of an association, the absence * * * of the usual terminology of corporations cannot be regarded as decisive. Thus an association may not have 'directors' or 'officers' but the 'trustees' may function 'in much the same manner as the directors in a corporation' for the purpose of carrying on the enterprise." *Id.* at 358 (internal citations omitted). Similarly, in *U.S.* v. *McDonald & Eide, Inc.*, 865 F.2d 73, 76 (3d Cir. 1989), the Third Circuit Court of Appeals held that, because there is no Federal common law of corporations, "state law is used where persuasive, but ignored when not in accord with the policies" of the underlying federal statute, in this case the Internal Revenue Code.

The IRS' "check the box" rules, read in conjunction with 26 U.S.C. 7704, which requires publicly-traded partnerships to be taxed as corporations for tax purposes, require publicly-traded LLCs to be taxed as corporations. Paragraph 110.1(g)(3), therefore, further provides that publicly-traded LLCs shall be treated as corporations for FECA purposes.

Section 110.1(g)(4) Contributions by Single Member LLCs

The IRS in its comment pointed out that single member LLCs are not eligible for treatment as partnerships—that is, they cannot "check the box" to elect partnership treatment. Consistent with this approach, section 110.1(g)(4) states that a contribution by a single-member LLC that does not elect corporate tax treatment shall be attributed only to that member. Because of the unity of the member and the LLC in this situation, it is appropriate for attribution of the contribution to pass through the LLC and attach to the single member under these circumstances.

Section 110.1(g)(5) Information Provided to Recipient Committees

One commenter pointed out that, if this approach were adopted, a recipient committee might inadvertently accept an illegal contribution, because the committee would have no way of knowing whether the LLC had opted for corporate tax treatment and was therefore prohibited from contributing to Federal campaigns. The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided. Section 110.1(g)(5) accordingly states that an LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that the LLC is eligible to make the contribution.

Subchapter S Corporations

Subchapter S corporations are corporations that, if they meet certain size and other requirements, can choose to be taxed as unincorporated businesses for Federal income tax purposes under Subchapter S of the Internal Revenue Code, 26 U.S.C. 1361-1379. Because there is some general similarity between the Federal income taxation of LLCs and Subchapter S corporations, the NPRM also sought comments as to whether Subchapter S corporations should be allowed to make otherwise lawful contributions in Federal elections. Under that approach, contributions by a Subchapter S corporation would be attributed only to the individual stockholders of the corporation as their personal (noncorporate) contributions and would be subject to their limits under the Act.

Because Subchapter S corporations are considered corporations under the laws of all fifty States, the final rules do not address this issue.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that limited liability companies are already covered by the Act, and the proposed revisions would clarify the extent to which they could contribute to Federal campaigns. In some instances this amount would be greater than is presently the case, while in others it would be smaller. In neither case would the amount involved qualify as "significant" for purposes of the Regulatory Flexibility Act.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.1 is amended by adding new paragraph (g) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)

* * * * *

(g) *Contributions by limited liability companies ("LLC").*

(1) *Definition.* A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established.

(2) A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).

(3) An LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701-3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114.

(4) A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member.

(5) An LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.

* * * * *

Dated: June 25, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99-16605 Filed 7-9-99; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Selamectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for veterinary prescription use of selamectin solution as a topical parasiticide for dogs and cats.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7540.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017-5755, filed NADA 141-152 that provides for topical veterinary prescription use of Revolution™ (selamectin) solution. Selamectin kills adult fleas and prevents flea eggs from hatching for 1 month, and it is indicated for the prevention and control of flea infestations (*Ctenocephalides felis*), prevention of heartworm disease caused by *Dirofilaria immitis*, and treatment and control of ear mite (*Otodectes cynotis*) infestations in dogs and cats; in dogs for treatment and control of sarcoptic mange (*Sarcoptes scabiei*); and in cats for treatment of intestinal hookworm (*Ancylostoma tubaeforme*) and roundworm (*Toxocara cati*) infections. The NADA is approved as of May 26, 1999, and the regulations are amended by adding 21 CFR 524.2098 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning May 26, 1999, because no active ingredient (including any ester or salt of the drug) has been previously approved in any other application filed under section 512(b)(1) of the act.

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

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.