relied on by BLM, and adopted by the Commission in Order No. 338, are in any way unrepresentative of the permeability of the subject formations. The Commission reaffirms its conclusion that the summary data relied upon by BLM constitutes substantial evidence supporting the conclusion that the subject formations meet the permeability standards prescribed in § 271.703(c)(2)(i)(A) of the Commission's regulations.

With respect to the issue of infill drilling, MDU argues that the Commission's findings in Order No. 338 are in conflict with standards applied by the Commission in Order No. 148,[10] involving certain formations located in Colorado. MDU argues that in Order No. 148 the Commission found that portions of a recommended tight formation were substantially developed because of additional drilling which took place prior to the date of the recommendation, and that such drilling constitued infill drilling within the meaning of the Commission's regulations. MDU argues that the Commission should determine whether portions of the Dakota Group and Frontier formation have been "substantially developed" as that term is described in Order No. 148.

In Order No. 148, the Commission found evidence indicating that certain areas within the recommended formation had been authorized to be developed by infill drilling prior to the date the tight formation recommendation was made and that certain drilling units within the area had been substantially developed by infill drilling without the incentive price. The Commission determined that 46 percent of thirteen drilling units contained three or more wells and 62 percent of those units contained two or more wells. Absent infill drilling authorization, only one well per drilling unit would have been permitted under applicable state spacing rules. Since the evidence showed that certain sections had been substantially developed by infill drilling, the Commission excluded those sections from designation as tight formations.

As previously noted, there are no well spacing rules applicable to the Dakota Group or Frontier formation due to their location on an Indian reservation. However, assuming that state spacing rules were applicable and that infill drilling had been authorized, the evidence demonstrates that no infill drilling had occurred at the time BLM's recommendation was made. Support for this conclusion is provided by information supplied by ARCO, accepted by BLM, and adopted by the Commission in Order No. 338, demonstrating that not more than one well per drilling unit had been completed in any of the subject formations as of the date of the recommendation.[11] Accordingly, application of the test set forth in Order No. 148 to the facts of this case leads to the conclusion that the subject formations had not been substantially developed.

Finally, MDU renews its contention that the record lacks substantial evidence in support of the need for an incentive price given the production history of the subject acreage. In Order No. 99,[12] the Commission made a generic finding that an incentive price is necessary under NGPA section 107(b), and thus is available to producers of gas from tight formations under section 107(c), provided the formation meets the standards set forth in the regulations, and provided that the producer is authorized by contract to collect the incentive rate. The Commission reaffirms its prior conclusion on this issue and declines to attempt to determine the need for incentive prices in individual cases where the applicable generic standards are satisfied.

### Conclusion

The Commission concludes that the recommendation of BLM, as adopted by the Commission in Order No. 338, is supported by substantial evidence. The issues raised by MDU were considered by the Commission in Order No. 338 and have been reconsidered in this order. MDU has presented no facts or principles of law which would warrant modifying Order No. 338, reopening the record, or remanding the proceeding to BLM. MDU's request for rehearing and its petition to reopen and remand are accordingly denied. By the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 85-26970 Filed 11-12-85; 8:45 am]

BILLING CODE 6717-01-M

[10] 46 FR 29699 (June 3, 1981).

[11] *See* BLM Docket No. W-353-2 and W-354-2, ARCO Exhibit Nos. 1 and 2. This fact is acknowledged by MDU in its comments filed on June 14, 1984. (MDU states only that the subject drilling units contain "at least" one well. It does not allege that any drilling unit contains more than one well. Exhibit No. 2 of Appendix A to MDU's comments shows that, in fact, none of the drilling units contained more than one well as of the date of BLM's recommendation).

[12] 45 FR 56034 (Aug. 22, 1980).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

## Social Security Administration

## 20 CFR Part 416

## 42 CFR Part 435

## Medicaid and Supplemental Security Income; Eligibility to Severely Impaired Individuals Who Perform Substantial Gainful Activity

**AGENCY:** Social Security Administration and Health Care Financing Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** These regulations reflect the amendment to section 201(d) of Pub. L. 96-265 made by section 14(a) of Pub. L. 98-460, the Social Security Disability Benefits Reform Act of 1984. Section 201(d) provided that the provisions of section 201 (a) and (b) of Pub. L. 96-265 were effective January 1, 1981, through December 31, 1983; section 14(a) of Pub. L. 98-460 simply extended the expiration date, without other modification, from December 31, 1983 to June 30, 1987. Sections 201 (a) and (b) provide for the continuation of Supplemental Security Income (SSI) benefits and eligibility for Medicaid for certain severely impaired SSI recipients who work and engage in substantial gainful activity (SGA), and for retaining eligibility status for Medicaid for certain of these recipients who become ineligible for SSI benefits because of their earnings. They also provide that States which elect to do so may augment these benefits with State supplementary payments.

**DATES:** These rules are being issued as final regulations and they are effective on November 13, 1985. The statutory change they implement was enacted on October 9, 1984 and made retroactive to January 1, 1984.

**FOR FURTHER INFORMATION CONTACT:**

*For SSI Provisions:* Fred Miranda, Legal Assistant, Office of Regulation, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7341.

*For Medicaid Provisions:* Marinos Svolos, Director, Division of Medicaid Eligibility Policy, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 594-9050.

**SUPPLEMENTARY INFORMATION:** The purpose of these final regulations is to reflect the amendment of section 201(d) of Pub. L. 96–265 by section 14(a) of Pub. L. 98–460, the Social Security Disability Benefits Reform Act of 1984. Section 201(d), when it was enacted as a provision of the Social Security Disability Amendments of 1980 (Pub. L. 96–265), provided that the provisions of sections 201 (a) and (b) of that Act were effective January 1, 1981 through December 31, 1983. Section 14(a) of Pub. L. 98–460 extended this effective period through June 30, 1987.

Section 201 was one of the several work incentive provisions included in Pub. L. 96–265. It established a 3-year demonstration project under section 1619 of the Act (hereafter referred to as the 1619 demonstration project). The 1619 demonstration project provided that certain individuals with disabling impairments, who lost their eligibility for regular SSI benefits based on disability, could become eligible for special cash benefits and retain eligibility for Medicaid. Further, certain of these individuals who, because of their earnings, became ineligible for SSI cash benefits (including special benefits) could still retain eligibility status for Medicaid. The special cash benefits payable under the 1619 demonstration project are computed in the same way as regular SSI benefits payable to recipients who are disabled. Also, States which elected to do so could augment the special benefits with State supplementary payments.

The expectation, when section 1619 was enacted, was that information would be gathered regarding the characteristics of those who benefit from section 1619 and the impact of such a program on reducing work disincentives for the disabled. A major reason that section 1619 was extended was to enable us to collect additional and more complete data on the effects of the provision.

The amendment extending the section 1619 program also directed us, in cooperation with the Department of Education, to develop and disseminate information and establish training programs for staff personnel, regarding the potential availability of benefits and services under the provisions of section 1619. This mandate was motivated by congressional concern that, unless we made a greatly increased effort to get information out to a broad range of individuals and organizations, many disabled individuals would not be made aware of this congressional attempt to eliminate the work disincentives for those disabled individuals who are able and who wish to work despite their impairment.

In late 1983, neither the Social Security Administration nor the Health Care Financing Administration had been able to compile enough data to determine effectively whether permitting work by severely impaired recipients while continuing their SSI benefits and/or Medicaid eligibility status acted as an incentive for these recipients to begin or continue working. Consequently, on March 15, 1984, we announced in the **Federal Register** (at 49 FR 9774) the establishment of the demonstration project under section 1110 of the Act (hereafter the 1110 demonstration project) which used the criteria of the 1619 demonstration project that had expired on December 31, 1983. The 1110 demonstration project was to also have the purpose of testing whether providing extended assistance encouraged work efforts. This project was to remain in effect for the 1984 calendar year—expiring on December 31, 1984. This project was superseded by the provisions of section 14(a) of Pub. L. 98–460, which were retroactive to January 1, 1984, the effective date of the 1110 demonstration project.

### Provisions of Section 14 of Pub. L. 98–460

Section 14(a) of Pub. L. 98–460 amended section 201(d) of Pub. L. 96–265 by providing that the provisions of sections 201 (a) and (b) of the statute would remain in effect through June 30, 1987, rather than only through December 31, 1983. Those sections, as discussed above, authorized the work incentive demonstration project under section 1619 of the Act that was effective for the period January 1, 1981, through December 31, 1983.

Under section 1619(a) of the Act, an individual with a disabling impairment who lost his or her SSI benefits because he or she performed work demonstrating the ability to engage in substantial gainful activity (SGA) could become eligible for special SSI cash benefits. These special benefits under section 1619(a) were computed in the same way as the SSI benefits which were paid to aged, blind and disabled SSI recipients. In addition, they could be augmented by State supplementary payments if a State elected to do so.

An individual qualified for special SSI cash benefits under section 1619(a) if—

(1) In the month before the month for which eligibility was being determined he or she was eligible for regular SSI benefits or special SSI cash benefits under section 1619(a) or federally administered State supplementary payments; and

(2) In the month for which eligibility was being determined he or she has a disabling physical or mental impairment, but, because he or she had engaged in SGA, he or she was not eligible for regular SSI benefits based on disability.

An individual who received special SSI cash benefits under section 1619(a) maintained his or her eligibility for Medicaid in a State in which he or she was eligible as an SSI recipient. A recipient with income which include earnings that reduced his or her Federal SSI benefits to zero also lost his or her eligibility for the special SSI cash benefits under section 1619(a) but could retain Medicaid eligibility. Under section 1619(b) of the Act, a beneficiary who was a severely impaired or blind individual (under age 65) and who was eligible for regular SSI benefits, special SSI cash benefits under section 1619(a) or State supplementary payments in the month before the first month for which eligibility is being determined, could acquire a special SSI eligibility status for purposes of Medicaid services if he or she met certain conditions. These conditions were that he or she: (1) Continued to be blind or to have disabling impairment; (2) would be eligible for cash benefits but for these earnings; (3) would be seriously hindered from working if he or she lost Medicaid coverage; and (4) did not have earnings from work that were reasonably equivalent to the total of SSI benefits, State supplementary payments and Medicaid that he or she would have received but for these earnings.

### Regulatory Provisions

We are amending §§416.260, 416.261 and 416.1332 of our regulations to reflect the amendment to section 201(d) of Pub. L. 96.265 made by section 14(a) of Pub. L. 98.460. Current section 416.260, as the introductory section to §§416.261 through 416.269, briefly outlines the demonstration project that was established under section 1619 of the Act by section 201 of Pub. L. 96–265. This section explains that for the 3-year period beginning January 1, 1981 and ending December 31, 1983, a person who works despite a disabling impairment may qualify for special SSI cash benefits as well as for Medicaid when his or her earnings exceed the established SGA limits described in § 416.974(b) of our rules. It also points out that for purposes of determining eligibility or continuing eligibility for Medicaid during this period, a blind or medically impaired person (no longer eligible for SSI), who except for earnings would otherwise be eligible for SSI benefits, may be eligible for an SSI eligibility status under which he or she is considered a blind or disabled individual receiving SSI benefits. Section 416.260 as amended provides that the period for which the special SSI cash benefits may be provided and during which the special SSI eligibility status can be acquired has been extended through June 30, 1987.

Section 416.261 of our rules, which discusses the nature of the special SSI cash benefits and when they are payable, has been amended in a manner similar to that in which § 416.260 has been amended. Section 416.261 as amended, provides that special SSI cash benefits are benefits that may be paid for months through June 30, 1987, to an individual who is not otherwise eligible for regular SSI benefits because he or she demonstrates the ability to engage in SGA. Prior to this change in our rules, § 416.261 provided that these special SSI cash benefits could be paid only for months from January 1, 1981 through December 31, 1983.

Section 416.1332 of our rules currently provide that if you are no longer eligible for regular SSI benefits because you demonstrate that you are able to engage in SGA, you can qualify for special SSI cash benefits in the period January 1, 1981 through December 31, 1983 if you meet the eligibility requirements discussed in § 416.262. Section 416.1332 as amended, provides that you now can qualify for the special SSI cash benefits through June 30, 1987.

### Related Amendment to Medicaid Regulations

Section 14(a) of Pub. L. 98–460 extends the provision under section 1619 of the Social Security Act that permits certain severely impaired individuals who receive a special payment under SSI (despite monthly earnings that exceed the limits for SGA) to retain Medicaid eligibility until June 30, 1987. The section 1619 provision for Medicaid coverage previously was in effect from January 1, 1981 until December 31, 1983. We have amended the regulations governing Medicaid eligibility groups at 42 CFR 435.120 to reflect the extension of time for this provision.

### Effective Dates

The statutory amendment extending the period during which we may continue special SSI benefits and/or eligibility for Medicaid under section 1619 for certain severely impaired SSI recipients who work and engage in substantial gainful activity was enacted October 9, 1984, and made retroactive to January 1, 1984. The SSI regulations are effective November 13, 1985.

The Medicaid regulations under § 435.120(a)(3) are effective on November 13, 1985 and apply to SSI eligibility determinations made under section 1619(b) of the Social Security Act through June 30, 1987.

### Final Rule

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) Notice of Proposed Rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this regulation since opportunity for public comment is unncessary in this case because the statutory provision upon which the regulations are based simply extends the effective date of section 1619 and allows for no discretion. Therefore, these rules are being issued as final rules and will become effective on the date they are published in the **Federal Register**.

### Regulatory Procedures

*Executive Order 12291*

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule because they will not have an annual effect on the economy of $100 million or more and will not cause increases in costs or prices. Therefore, a regulatory impact analysis is not required.

Fiscal SSI program savings are estimated as $5.6 million annually, whereas estimated Medicaid program costs are $1.1 million for FY 85 and $1.2 million for FY 86. Thus, the estimated net program savings are $4.5 million for FY 85 and $4.4 million for FY 86. In addition, fiscal nonprogram or administrative expenses are $420,000 annually. This includes a $60,000 increase in costs that is directly attributable to the enactment of section 14(a) of Pub. L. 98–460.

*Paperwork Reduction Act of 1980*

These reductions impose no additional reporting and recordkeeping requirement requiring Office of Management and Budget clearance under the requirements of the Paperwork Reduction Act.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only States and a limited number of individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance and Program No. 13.807, Supplemental Security Income Program)

### List of Subjects

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

*42 CFR Part 435*

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid, program—health, Health Facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental Security Income (SSI).

Dated: June 13, 1985.

**Martha A. McSteen,**

*Acting Commissioner of Social Security.*

**Carolyne K. Davis,**

*Administrator, Health Care Financing Administration.*

Approved: November 6, 1985.

**Margaret M. Heckler,**

*Secretary of Health and Human Services.*

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

### Subpart B—Eligibility

1. The authority citation for §§ 416.261 through 416.266 of Subpart B of Part 416 is revised to read as follows:

**Authority:** Secs. 1102, 1611, 1616, 1618, 1619, 1631, and 1634 Social Security Act as amended, sec. 212 of Pub. L. 93–66, as amended: 49 Stat. 647, as amended, 86 Stat. 1466, 1474, 1475, and 1478, 90 Stat. 2901, 87 Stat. 155, and 94 Stat. 445, 42 U.S.C. 1302, 1382e, 1382g, 1383, 1383c, 1382h and 1396, sec. 14(a) of Pub. L. 98–460, 98 Stat. 1808.

§ 416.260 [Amended]

2. In § 416.260, the second sentence is revised by removing the words "for a 3-year period beginning January 1, 1981, and ending December 31, 1983." and adding the words "for the period beginning January 1, 1981, and ending June 30, 1987" in lieu thereof.

§ 416.261 [Amended]

3. In § 416.261, the first sentence is revised by removing the words "through December 31, 1983," and adding the words "through June 30, 1987" in lieu thereof.

### Subpart M—Suspensions and Terminations

4. The authority citation for Subpart M is revised to read as follows:

Authority: Secs. 1102, 1611–1615, and 1631 Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1466–1477, (42 U.S.C. 1302, 1382–1382d, 1383), sec. 14(a) of Pub. L. 96–460, 98 Stat. 1808 unless otherwise noted.

§ 416.1332 [Amended]

5. In § 416.1332, the first sentence is revised by removing the words "in the period January 1, 1981 through December 31, 1983" and adding the words "for the period beginning January 1, 1981, and ending June 30, 1987".

## PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, AND THE NORTHERN MARIANA ISLANDS

Part 435 of Title 42 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 435 continues to read as follows:

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

2. The introductory text of § 435.120(a) is reprinted and paragraph (a)(3) is revised to read as follows:

§ 435.120 Individuals receiving SSI.

(a) *General provisions.* Except as allowed under § 435.121, the agency must provide Medicaid to aged, blind, and disabled individuals or couples who receive SSI, including—

* * * * *

(3) For the period beginning January 1, 1981, and ending June 30, 1987, individuals considered to be receiving SSI under section 1619(b) of the Act (blind individuals or those with disabling impairments whose income equals or exceeds a specific Supplemental Security Income limit). (Regulations at 20 CFR 416.263 through 416.269 contain requirements governing determinations of eligibility under this provision.)

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[FR Doc. 85-26941 Filed 11-12-85; 8:45 am]

BILLING CODE 4190-11-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 251

[Docket No. R-85-1259; FR-2143]

### Technical Rule To Clarify Labor Standards Responsibilities in Connection With Coinsurance of Multifamily Housing Projects; Announcement of Effective Date

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of announcement of effective date for final rule.

**SUMMARY:** This notice announces the effective date for the final rule published in the **Federal Register**, on October 2, 1985 (50 FR 40195), that clarified Part 251 to indicate that the Federal Housing Commissioner retains responsibility for enforcement of labor standards and prevailing wage requirements. It also delegated to the coinsuring lender only routine administration and enforcement functions, subject to monitoring by the Commissioner.

The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

**DATE:** The effective date for the final rule published October 2, 1985 (50 FR 40195), is November 5, 1985.

**FOR FURTHER INFORMATION CONTACT:** James Hamernick, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6132, Washington, D.C. 20410, telephone (202) 755-6500. (This is not a toll-free number.)

Dated: November 6, 1985.

Grady J. Norris,

*Assistant General Counsel for Regulations.*

[FR Doc. 85-26908 Filed 11-12-85; 8:45 am]

BILLING CODE 4210-27-M

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## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Veterans Education; Delegation of Authority

**AGENCY:** Veterans Administration.

**ACTION:** Final Regulations.

**SUMMARY:** A discrepancy exists between two VA regulations as to who has authority to approve special restorative training of more than 12 months for children entitled to dependents' educational assistance. One of those regulations is amended to bring it into agreement with the other. The Director, Vocational Rehabilitation and Counseling Servcie is delegated the authority to make these decisions.

**EFFECTIVE DATE:** November 5, 1985.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420 (202) 389-2092.

**SUPPLEMENTARY INFORMATION:** On pages 23145 and 23146 of the **Federal Register** of May 31, 1985 there was published a notice of intent to amend Part 21 to bring into agreement the two regulations which govern who has authority to approve special restorative training of more than 12 months for children entitled to dependents' educational assistance.

Interested people were given 30 days to submit comments, suggestions, or objections. The VA (Veterans Administration) received one letter from an educational organization.

The letter stated that there was no objection to the proposal. Accordingly, the VA is making the proposal final without change.

This amended regulation affects only internal VA management. Therefore, it is not subject to E.O. 12291, entitled Federal Regulation.

The Administrator of Veterans' Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA). Under 5 U.S.C. 605(b), this regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this amended regulation affects only internal VA management. The regulation will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.117.

### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

By direction of the Administrator.

Approved: November 5, 1985.

**Everett Alvarez, Jr.,**
*Deputy Administrator.*

## PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.4001(c)(3), and by adding paragraph (g) so that the revised and added material reads as follows:

**§ 21.4001 Delegations of authority.**

* * * * *

(c) * * *

(3) Approval of courses under § 21.4250(c)(2).

(38 U.S.C. 212(c))

* * * * *

(g) Authority is delegated to the Director, Vocational Rehabilitation and Counseling Service to exercise the functions required of the Administrator for approval of courses under § 21.4250(c)(1).

(38 U.S.C. 212(a))

[FR Doc. 85-26968 Filed 11-12-85; 8:45 am]

BILLING CODE 8320-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 158 and 162

[OPP-30078A; FRL #2859-9]

### Product Performance Requirements for Vertebrate Control Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends EPA's pesticide registration data requirements to reinstate a requirement for the submission of efficacy data for certain vertebrate control products. At the same time, EPA is revising its conditional registration regulations to rescind an efficacy data waiver that would be inconsistent with the new requirement. Applicants for registration of such products must submit or cite to the Agency efficacy data to support the registration of each pesticide product that claims to control vertebrates having human health implications. EPA uses the information to make regulatory judgments with respect to the efficacy of each vertebrate control product proposed for registration or experimental use.

**EFFECTIVE DATE:** This rule will become effective after 60 calendar days of continuous Congressional session following the date of promulgation. EPA will issue a notice in the **Federal Register** stating the actual effective date of the rule.

**FOR FURTHER INFORMATION CONTACT:** By mail: Bernard A. Schneider, Benefits and Use Division (TS-768C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 705, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2161).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA regulates the sale and distribution of pesticide products, in part by a pre-market registration scheme. To obtain registration, an applicant must demonstrate to the Agency (by submitting or citing data) that the product will not cause (or significantly increase the risk of) unreasonable adverse effects on man and the environment.

EPA issued a final rule concerning pesticide data requirements (40 CFR Part 158), which was published in the **Federal Register** of October 24, 1984 (49 FR 42856). That final rule listed the data requirements applicable to pesticide products, including efficacy data for certain products that are intended to control pests of public health significance. In that final rule, the Agency announced its intention of adding a requirement for efficacy data for vertebrate control products intended for the control of pests that directly or indirectly transmit disease to humans. The Agency decided to take this action based on comments received on its proposal, which had not included vertebrate efficacy data requirements. A significant number of commenters had urged that the Agency include these requirements in its final rule.

The efficacy data requirement for vertebrate control products would have been included in Part 158 at the time of its October 1984 promulgation but for the fact that another regulation contained in 40 CFR 162.163 waived the submission of efficacy data for such products. Section 162.163 provides a general waiver of efficacy data submission for all products unless specifically stated otherwise. Currently only microorganisms infectious to man in the inanimate environment and toxin-producing fungi are specifically listed. To promulgate a requirement for vertebrate efficacy data submission while elsewhere waiving such submission would have created an inconsistency in Agency regulations that could have been confusing to pesticide applicants and registrants.

Therefore, the Agency subsequently proposed to revise § 162.163 to eliminate the inconsistency by rescinding the general waiver with respect to vertebrate control products. That proposal was published in the **Federal Register** of September 12, 1984 (49 FR 35804). This final rule accomplishes both the rescission of the efficacy data waiver in § 162.163 and the inclusion of efficacy data requirements for certain vertebrate control products in § 158.160.

### II. Comments Received

In response to the Agency's proposal of pesticide data requirements (Part 158) that excluded efficacy data for vertebrate control products, the Agency received a total of 20 comments, all but 1 of which opposed granting a waiver of efficacy data submission for public health products, including vertebrate control products. Commenters cited various reasons for opposing a waiver of efficacy data:

1. The marketplace does not work to regulate inefficacious products as rapidly or as effectively as claimed by the Agency in proposing the waiver.

2. A waiver of data will lead to increased numbers of inefficacious products marketed by "fly-by-night" companies at the expense of reliable companies.

3. States do not have sufficient authority or funding to regulate efficacy, and do not have facilities for independently evaluating efficacy of pesticide products.

These comments were reinforced by Agency scientists' concerns over apparent lack of efficacy of a number of vertebrate control products already on the market. The reasons for the Agency's decision to inlcude an efficacy data requirement for vertebrate control products were discussed further in the September 12, 1984, proposal to rescind the waiver.