DEPARTMENT OF EDUCATION

Electronic Bulletin Board; Availability

AGENCY: Department of Education.

ACTION: Publication of notice of an electronic bulletin board.

SUMMARY: The Secretary announces the availability of an electronic bulletin board, known as the OPEnet, for anyone wishing to obtain electronically disseminated policy documents of the Office of Postsecondary Education of the United States Department of Education (OPE).

SUPPLEMENTARY INFORMATION: The purpose of the electronic bulletin board is to disseminate OPE policy guidelines and information expeditiously to the postsecondary education community and to reduce OPE's costs for printing, mailing, and handling of documents. This electronic information network will make possible the paperless dissemination of: Regulations; notices of proposed rulemaking (NPRMs); "Dear Colleague" letters; Questions and Answers; news bulletins; calendars; an index of OPE student financial assistance program policy-related publications; data and program files; and electronic messages. Since the OPEnet establishes an electronic information network facilitating the electronic dissemination of policy documents, OPE will evaluate this mode of dissemination as an alternative to the mass mailings of selected documents. As subscribers become familiar with the electronic bulletin board and as it is expanded, OPE expects that the need to receive printed materials will diminish to the point where many of OPE's mailings may become superfluous.

The above described database will be accessible on a 24-hour basis through the use of terminals or microcomputers. The database may be reviewed, retrieved, or searched, thereby, reducing the need to submit questions to OPE.

The OPEnet is available through Dialcom, the Department's E-Mail contractor. Anyone may participate in OPEnet by registering with Dialcom. The Department of Education will absorb the cost of maintaining and storing the database, but all access costs will be charged to the users. Inquiries regarding costs may be addressed to: OPEnet, U.S. Department of Education c/o DIALCOM Inc., 600 Maryland Avenue, SW., Suite 307 West, Washington, DC 20024.

While anyone may register and use OPEnet, the Secretary encourages institutions and schools participating in the student aid programs authorized by Titles III and IV of the Higher Education Act of 1965, guarantee agencies, lenders, servicers, and professional organizations to register and use OPEnet. Electronic dissemination is both cost and time effective and designed to be used by persons with little computer experience.

The Secretary emphasizes that notices of proposed rulemaking solicit public comment and will indicate the deadline by which comments must be submitted.

For final regulations, interested parties are urged to note the Effective Date Section in the Preamble.

Request to Participate in the OPEnet

Inquiries concerning OPEnet should be addressed to: OPEnet, U.S. Department of Education c/o DIALCOM Inc., 600 Maryland Avenue SW., Suite 307 West, Washington, DC 20024, or Division of Program Operations and Systems, Office of Postsecondary Education, 400 Maryland Avenue SW., (ROB–3, Room 5004), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Keith Wilson, Systems Analyst, Data Management Branch, Division of Program Operations and Systems, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue, SW., (ROB–3, Room 5012), Washington, DC 20202, Telephone (202) 732–4842.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: February 16, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–3592 Filed 2–18–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
February 19, 1988

Part VII

Department of Education

34 CFR Part 30

Debt Collection; Administrative Offset; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 30

Debt Collection

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education (Secretary) proposes to amend Part 30 of Title 34 of the Code of Federal Regulations. The amendments would implement revisions to the Federal Claims Collection Standards (FCCS), which require each Federal agency to issue its own debt collection regulations, adapted to the agency's particular requirements, implementing those aspects of the FCCS that require further regulation. The proposed regulations are intended to strengthen the ability of the Secretary to collect outstanding debts.

DATES: Comments must be received on or before April 19, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James A. Neilson, U.S. Department of Education, Office of Management, 400 Maryland Avenue SW., Room 3034 FOB–6, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James A. Neilson, (202) 732–4194.

SUPPLEMENTARY INFORMATION: The Federal Claims Collection Standards (FCCS) (4 CFR Parts 101–105) were revised on March 9, 1984 (49 FR 8889), to reflect changes made by the Debt Collection Act of 1982 to the Federal Claims Collection Act of 1966. The FCCS, published jointly by the Department of Justice and the General Accounting Office, require agencies to publish implementing regulations.

The Secretary has already published various rulemaking documents to implement some of the revised FCCS requirements, including—

1. Proposed regulations regarding the charging of interest, published in the **Federal Register** on July 11, 1984 (49 FR 28264). (That NPRM proposed to amend various regulations, including the Education Department General Administrative Regulations. However, the Department now plans to publish those regulations in Subpart D of Part 30);

2. Final regulations regarding referral of debts to the Interal Revenue Service (IRS) for offset against tax refunds, published in the **Federal Register** on July 1, 1986 (51 FR 24095) (34 CFR 30.33);

3. Final regulations providing for: (a) Offset of debts owed under programs and activities of the Department or referred to the Department by other Federal agencies; and (b) referral of debts to other Federal agencies for offset, published in the **Federal Register** on October 7, 1986 (51 FR 35645) (34 CFR Part 30, Subpart C); and

4. Final regulations regarding the reporting of debts to Consumer Reporting Agencies, published in the **Federal Register** on October 7, 1986 (51 FR 35645) (34 CFR 30.35).

The Department has also published final regulations in Parts 31 and 32 that provide salary offset procedures. The offset procedures in Part 31 are used to recover debts owed under the Department's financial assistance programs by employees of all Federal agencies. The offset procedures in Part 32 are used to collect debts, other than those covered by Part 31 or 30, that are owed by the Department's current and former employees.

This NPRM includes regulations on debt collection matters not covered by the other rulemaking documents. This rulemaking action, together with most of the other debt collection rules of the Department, will complete a unified set of debt collection regulations in 34 CFR Part 30.

Unless otherwise provided in these proposed rules, the Secretary proposes to adopt the standards and procedures in the FCCS. Thus, these regulations supplement the FCCS in those instances where the FCCS requires agency-specific rules or the nature of a particular debt collection activity administered by the Department calls for further clarification of the FCCS. In some cases, these regulations clarify the relationship between the laws administered by the Secretary and the requirements of the FCCS.

The citations of legal authority appearing after the various sections of these regulations include references to 31 U.S.C. 3711(e), 20 U.S.C. 1221e–3(a)(1), and the Secretary's general debt collection authority under 20 U.S.C. 1226a–1. Various other statutory provisions contain authority for the promulgation of these rules with respect to particular programs administered by the Secretary. See, e.g., 20 U.S.C. 1082(a) (Guaranteed Student Loan Program). These supplemental authorities have been omitted from the citations of legal authority contained in these rules for the sake of brevity. This omission is not intended to limit in any way the programs or activities under which the Secretary is authorized to engage in debt collection under these or other procedures. Further, the Secretary reserves the right to rely on these other authorities to support these regulations. A discussion of the procedures and standards proposed by this NPRM follows.

Section 30.1 What administrative actions may the Secretary take to collect a debt?

The proposed introductory section lists the major techniques that the Secretary uses to collect debts owed to the United States. The FCCS describe the many techniques used to collect debts under statutory and other authority. Those aspects of the FCCS for which the Secretary has established additional regulations are listed in paragraph (c) of this section. As specified in proposed paragraph (c)(7), the fact that a particular technique is not listed in these proposed regulations would not limit the Secretary's authority to rely on that technique. Paragraph (c)(3) of the proposed regulations refers to a Subpart D regarding the charging of interest on debts. As indicated at the beginning of this preamble, the Secretary plans to publish final interest regulations in Subpart D of Part 30.

If the interest regulations are not published as final regulations before these regulations are published in final, the Secretary will revise paragraph (c)(3) of this section accordingly.

Under the Perkins Loan Program, the Secretary has authority to collect Perkins loans referred to him by an institution of higher education (20 U.S.C.

1087gg). Even though the debt in such a case is not assigned to the United States, the Secretary has a statutory right to collect the debt. In any event, the reference in paragraph (a) to "a debt owed to the United States" is in no way intended to prohibit the Secretary from using the same means authorized for collecting Federal debts to collect loans referred to him by an institution under the Perkins Loan Program.

Section 30.2 On what authority does the Secretary rely to collect a debt under this Part?

This proposed section lists the various authorities available to the Secretary for collecting debts. The proposed section is patterned after § 30.20, the introductory section to the offset regulations promulgated on October 7, 1986. If one authority prohibits use of a particular type of collection action, the Secretary may rely on another authority that permits that type of collection action. The listing of the Secretary's common-law authority in this section is intended to make clear that the Secretary will rely on his common-law authority to collect debts if that reliance is not prohibted by law. Because proposed § 30.2 is broader in scope than § 30.20 of the offset regulations, the Secretary intends to amend § 30.20 to remove its duplicative provisions when these regulations become final.

Section 30.60 What costs does the Secretary impose on delinquent debtors?

The FCCS directs agencies to charge delinquent debtors for the cost of collection. The Secretary proposes to charge debtors for the actual documented costs of particular collection actions. In those cases where the Secretary has contracted with collection agencies to collect certain debts, the Secretary proposes to collect from debtors an amount in addition to the amount of each debt so that the Secretary recovers both the full amount of the debt and the amount the Secretary must pay the agency for its collection services. The Secretary currently charges student loan debtors some or all of the actual contingent fee incurred to collect the debt. This proposed rule articulates this Department practice, which is authorized by current law.

The Secretary also proposes to modify that practice, as discussed below regarding weighted average collection costs.

The amount of the contingent fee charged by the collection agency for its services is one of several actual costs incurred by the Department in handling delinquent accounts, and in assessing this cost against the debtor the Secretary relies upon the authority of 31 U.S.C. 3717(e)(1), as specifically interpreted in the FCCS in 4 CFR 102.(13)(d) to include costs incurred by a Federal agency in using a private debt collector. Other statutory or contractual provisions also authorize the assessment of collection costs against a delinquent or defaulting debtor; these include, as particularly pertinent to the Department's use of collection contractors to recover on defaulted student loans, section 484A(b) of the Higher Education Act. 20 U.S.C. 1091a(b).

The Secretary recognizes that local law may limit the ability of other creditors to recover from a debtor the full cost incurred by the creditor for a contingent fee charge; however, in determining the elements of damages and costs that compromise a debt owed to the Department, the Secretary proceeds under the authority of Federal law, not State or local law. Because Federal law establishes that the cost *incurred by a Federal agency* to collect a delinquent claim are chargeable against the debtor, local rules to the contrary are preempted here. Such preempted rules include both those that would bar imposition of any collection costs, and those that would permit the creditor to assess against the debtor only that portion of the contingent fee actually incurred by the creditor which represents the cost the creditor would have incurred had it chosen to collect the debt using its own staff and resources. The Federal rule is that the real costs of collection are the actual costs paid by the agency. The charge to be assessed against the debtor is therefore the actual contingent fee paid by the Federal agency, not some speculative reconstruction of what might have been incurred if the agency had chosen to do precisely what it lacked the resources to do—collect the debt using its own staff.

The legislative history of 31 U.S.C. 3718 shows that Congress based the reasonableness of contingent fee charges not on whether the charges exceeded the amounts that Federal agencies might have spent to perform the task themselves, but rather on the results of competitive bidding among potential contractors. Sen. Rep. No. 378, 97th Cong. 2d Sess. (1982) at 19, 30, 31. The experience of the Department in the use of collection contractors secured through competitive bidding over the past nine years has been that the rates secured have in all instances equaled or bettered those commonly charged in the industry for similar levels of collection activity, and that this experience will continue with future contracting.

Federal law does require that agencies ensure that contracts for debt collection provide that the debt collector comply with applicable Federal and State law regarding debt collection practices. (31 U.S.C. 3718(a)(2).) This provision plainly governs the decisions and conduct of the contractor in dealings with the debtor and with third parties regarding the debt, which are matters within its discretion and for which it is rightly held responsible; however, the contractor has no discretion to determine the amount owed the Department. The Secretary believes this authority to engage debt collection contractors must be read with the preceding section of the same statute that authorizes him to charge the debtor the costs incurred in handling the debt. 31 U.S.C. 3717(e)(1). By directing that the contractor shall be subject to State law related to debt collection practices, 31 U.S.C. 3718(a) holds the contractor responsible for its *own* practices, and in no way limits the authority of the Department under 3717(e) to inlcude contingent fee costs in the amount of the debt owed by the debtor and lawfully collected by the contractor. A consistent reading of these companion provisons leads to the conclusion, therefore, the State law can neither directly limit the authority of the Secretary to include the contingent fee cost in the amount of the debt, nor indirectly limit this authority by barring his agent from collecting the amount of the cost from the debtor.

The Secretary also proposes to recover the weighted average collection costs that the agencies charge under their contracts with the Department.

There are many costs associated with the collection of debts that can only be recovered as average costs associated with certain types of collection activities. These costs include, among others, costs for maintaining and operating computers used in collection activity and salaries and other expenses incurred by Federal loan servicing and debt collection personnel.

If a debtor has agreed to pay specified collection costs at a stipulated rate or amount in a repayment or settlement agreement for a particular debt, the Secretary would, under proposed paragraph (e), assess those costs according to the terms of the agreement without having to document the actual costs for collection.

Section 30.61 What penalties does the Secretary impose on delinquent debtors?

The Secretary proposes to impose penalties under 4 CFR 101.13(e) and this section.

Section 30.62 When does the Secretary forego interest, administrative costs, or penalties?

This section contains standards for when the Secretary foregoes interest, administrative costs, and penalties, either by refraining from the collection of these costs in the case of loans, or waiving the charging or collection of these costs for debts not involving loans. The notice of proposed rulemaking for the interest regulations of the Department published in the **Federal Register** on July 11, 1984 (49 FR 28264) did not contain provisions regarding refraining from the collection of interest under loans, or waiving the charging of interest for debts not involving loans. Upon issuance of these regulations in final form, the Secretary will modify the interest regulations as necessary. The Secretary is interested in comments on whether waiver is appropriate under other non-loan circumstances.

Section 30.70 How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt?

This section describes the relationship between the Secretary's authority to compromise debts, or to suspend or terminate collection action, under the FCCS Parts 103 and 104 and the Secretary's ability to compromise debts under other authorities, including the Education Appeal Board provisions of the General Education Provisions Act (GEPA) (GEPA sections 451–456, 20 U.S.C. 1234–1234e).

For those programs or activities that are subject to the compromise authority of GEPA section 452(f) (20 U.S.C. 1234a(f)), the Secretary may compromise a debt without referral to the Justice Department if the initial determination of the debt is not more than $50,000. For those programs and activities that are not subject to the GEPA compromise authority, the Secretary may compromise a debt that is not more than $20,000. If the debt is more than $20,000 and arose under a program or activity not subject to the GEPA compromise authority, the Secretary refers any final decision on a compromise to the Justice Department.

The Secretary has independent authority to compromise a debt in any amount under the Guaranteed Student Loan Program or the Perkins Loan Program. Section 30.70 also recognizes the independent authority of a contracting officer under applicable law to resolve a contract dispute.

Because § 30.70 describes the relationships among the various authorities for compromise, suspension, and termination, the section does not address the substance of the Secretary's authority under the FCCS or purport to exhaust the circumstances providing the Secretary with authority to compromise, suspend, or terminate. Therefore, for example, § 30.70 does not address such issues as the Secretary's authority to redetermine a claim in any amount, including his authority to terminate collection action in any amount, without referral to the Justice Department, if the Secretary determines that the basis for collection of the debt is plainly erroneous or clearly without legal merit.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major regulations because they do not meet the criteria for major regulations established in that Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. While some small local educational agencies and small nonprofit organizations would be affected by these regulations, the Secretary does not expect the total number of these entities to be significant in comparison to the total number of entities that would be subject to those regulations.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3034, FOB #6, 400 Maryland Avenue SW., Washington DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Education Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 30

Claims, Debt collection.

Dated: November 13, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Part 30 of Title 34 of the Code of Federal Regulations, as follows:

1. The table of contents is amended by adding Subparts A, E, and F, and revising the authority citation, to read as follows:

PART 30—DEBT COLLECTION

Subpart A—General

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e), 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

2. New Subparts A, E, and F are added, to read as follows:

Subpart A—General

§ 30.1 What administrative actions may the Secretary take to collect a debt?

(a) The Secretary may take one or more of the following actions to collect a debt owed to the United States:

(1) Collect the debt under the procedures authorized in the regulations in this part.

(2) Refer the debt to the General Accounting Office for collection.

(3) Refer the debt to the Department of Justice for compromise, collection, or litigation.

(4) Take any other action authorized by law.

(b) In taking any of the actions listed in paragraph (a) of this section, the Secretary complies with the requirements of the Federal Claims Collection Standards (FCCS) at 4 CFR Parts 101–105 that are not inconsistent with the requirements of this part.

(c) The Secretary may—

(1) Collect the debt under the offset procedures in Subpart C of this part;

(2) Report a debt to a consumer reporting agency under the procedures in Subpart C of this part;

(3) Charge interest on the debt as provided in Subpart D of this part;

(4) Impose upon a debtor a charge based on the costs of collection as determined under Subpart E of this part;

(5) Impose upon a debtor a penalty for failure to pay a debt when due under Subpart E of this part;

(6) Compromise a debt, or suspend or terminate collection of a debt, under Subpart F of this part;

(7) Take any other actions under the procedures of the FCCS in order to protect the United States Government's interests; or

(8) Use any combination of the procedures listed in this paragraph (c) as may be appropriate in a particular case.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e))

§ 30.2 On what authority does the Secretary rely to collect a debt under this part?

(a)(1) The Secretary takes an action referred to under § 30.1(a) in accordance with—

(i) 31 U.S.C. Chapter 37, Subchapters I and II;

(ii) Other applicable statutory authority; or

(iii) The common law.

(2) If collection of a debt in a particular case is not authorized under one of the authorities described in paragraph (a)(1) of this section, the Secretary may collect the debt under any other available authority under which collection is authorized.

(b) The Secretary does not use a procedure listed in § 30.1(c) to collect a debt, or a certain type of debt, if—

(1) The procedure is specifically prohibited under a Federal statute; or

(2) A separate procedure other than the procedure described under § 30.1(c) is specifically required under—

(i) A contract, grant, or other agreement;

(ii) A statute other than 31 U.S.C. 3716; or

(iii) Other regulations.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e)).

* * * * *

Subpart E—What Costs and Penalties Does the Secretary Impose on Delinquent Debtors?

§ 30.60 What costs does the Secretary impose on delinquent debtors?

(a) The Secretary may charge a debtor for the costs associated with the collection of a particular debt. These costs include, but are not limited to—

(1) Salaries of employees performing Federal loan servicing and debt collection activities;

(2) Telephone and mailing costs;

(3) Costs for reporting debts to credit bureaus;

(4) Costs for purchase of credit bureau reports;

(5) Costs associated with computer operations and other costs associated with the maintenance of records;

(6) Bank charges;

(7) Collection agency costs;

(8) Court costs and attorney fees; and

(9) Costs charged by other Governmental agencies.

(b) Notwithstanding any provision of State law, if the Secretary uses a collection agency to collect a debt on a contingent fee basis, the Secretary charges the debtor, and collects through the agency, an amount sufficient to recover—

(1) The entire amount of the debt; and

(2) The amount that the Secretary is required to pay the agency for its collection services.

(c)(1) The amount recovered under paragraph (b) of this section is the entire amount of the debt, multiplied by the following fraction:

$$\frac{1}{1-cr}$$

(2) In paragraph (c)(1) of this section, cr equals the commission rate the Department pays to the collection agency.

(d) If the Secretary uses more than one collection agency to collect similar debts, the commission rate (cr) described in paragraph (c)(2) of this section is calculated as a weighted average of the commission rates charged by all collection agencies collecting similar debts, computed for each fiscal year based on the formula

$$\sum_{i=1}^{N} \left(\frac{Xi \cdot Yi}{Z} \right)$$

where:

(1) Xi equals the dollar amount of similar debts placed by the Department with an individual collection agency as of the end of the preceding fiscal year;

(2) Yi equals the commission rate the Department pays to that collection agency for the collection of the similar debts;

(3) Z equals the dollar amount of similar debts placed by the Department with all collection agencies as of the end of the preceding fiscal year; and

(4) N equals the number of collection agencies with which the Secretary has placed similar debts as of the end of the preceding fiscal year.

(e) If a debtor has agreed under a repayment or settlement agreement with the Secretary to pay costs associated with the collection of a debt at a specified amount or rate, the Secretary collects those costs in accordance with the agreement.

(f) The Secretary does not impose collection costs against State or local governments under paragraphs (a) through (d) of this section.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e), 3717(e)(1), 3718)

§ 30.61 What penalties does the Secretary impose on delinquent debtors?

(a) If a debtor does not make a payment on a debt, or portion of a debt, within 90 days after the date specified in the first demand for payment sent to the debtor, the Secretary imposes a penalty on the debtor.

(b)(1) The amount of the penalty imposed under paragraph (a) of this section is 6 percent per year of the amount of the delinquent debt.

(2) The penalty imposed under this section runs from the date specified in the first demand for payment to the date the debt (including the penalty) is paid.

(c) If the debtor has agreed under a repayment or settlement agreement with the Secretary to pay a penalty for failure to pay a debt when due, or has such an agreement under a grant or contract under which the debt arose, the Secretary collects the penalty in accordance with the agreement, grant, or contract.

(d) The Secretary does not impose a penalty against State or local governments under paragraph (a) and (b) of this section.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e))

§ 30.62 When does the Secretary forgo interest, administrative costs, or penalties?

(a) For a debt of any amount based on a loan, the Secretary may refrain from collecting interest or charging administrative costs or penalties to the extent that compromise of these amounts is appropriate under the standards for compromise of a debt contained in 4 CFR Part 103.

(b) For a debt not based on a loan the Secretary may waive, or partially waive, the charging of interest, or the collection of administrative costs or penalties, if—

(1) Compromise of these amounts is appropriate under the standards for compromise of a debt contained in 4 CFR Part 103; or

(2) The Secretary determines that the charging of interest or the collection of administrative costs or penalties is—

(i) Against equity and good conscience; or

(ii) Not in the best interests of the United States.

(c) The Secretary may exercise waiver under paragraph (b)(1) of this section without regard to the amount of the debt.

(d) The Secretary may exercise waiver under paragraph (b)(2) of this section if—

(1) The Secretary has accepted an installment plan under 4 CFR 102.11;

(2) There is no indication of fault or lack of good faith on the part of the debtor; and

(3) The amount of interest, administrative costs, and penalties is such a large portion of the installments that the debt may never be repaid if that amount is collected.

(e)(1) The Secretary does not charge interest on any portion of a debt, other than a loan, owed by a person subject to 31 U.S.C. 3717 if the debt is paid within 30 days after the date of the first demand for payment.

(2) The Secretary may extend the period under paragraph (e)(1) of this section if the Secretary determines that the extension is appropriate.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e))

Subpart F—What Requirements Apply to the Compromise of a Debt or the Suspension or Termination of Collection Action?

§ 30.70 How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt?

(a) The Secretary uses the standards in the FCCS, 4 CFR Part 103, to determine whether compromise of a debt is appropriate if—

(1) The debt must be referred to the Department of Justice under this section; or

(2) The amount of the debt is less than or equal to $20,000 and the Secretary does not follow the procedures in paragraph (e) of this section.

(b) The Secretary refers a debt to the Department of Justice to decide whether to compromise a debt if—

(1) The debt was incurred under a program or activity subject to section 452(f) of the General Education Provisions Act and the initial determination of the debt was more than $50,000; or

(2) The debt was incurred under a program or activity not subject to section 452(f) of the General Education Provisions Act and the amount of the debt is more than $20,000.

(c) The Secretary may compromise the debt under the procedures in paragraph (e) of this section if—

(1) The debt was incurred under a program or activity subject to section 452(f) of the General Education Provisions Act; and

(2) The initial determination of the debt was less than or equal to $50,000.

(d) The Secretary may compromise a debt without following the procedures in paragraph (e) of this section if the amount of the debt is less than or equal to $20,000.

(e) The Secretary may compromise the debt pursuant to paragraph (c) of this section if—

(1) The Secretary determines that—

(i) Collection of any or all of the debt would not be practical or in the public interest; and

(ii) The practice that resulted in the debt has been corrected and will not recur;

(2) At least 45 days before compromising the debt, the Secretary publishes a notice in the **Federal Register** stating—

(i) The Secretary's intent to compromise the debt; and

(ii) That interested persons may comment on the proposed compromise; and

(3) The Secretary considers any comments received in response to the **Federal Register** notice before finally compromising the debt.

(f)(1) The Secretary uses the standards in the FCCS, 4 CFR Part 104, to determine whether suspension or termination of collection action is appropriate.

(2) The Secretary—

(i) Refers the debt to the Department of Justice to decide whether to suspend or terminate collection action if the amount of the debt at the time of the referral is more than $20,000; or

(ii) May decide to suspend or terminate collection action if the amount of the debt at the time of the Secretary's decision is less than or equal to $20,000.

(g) In determining the amount of a debt under paragraphs (a) through (f) of this section, the Secretary excludes interest, penalties, and administrative costs.

(h) Notwithstanding paragraphs (b) through (f) of this section, the Secretary may compromise a debt, or suspend or terminate collection of a debt, in any amount if the debt arises under the Guaranteed Student Loan Program authorized under Title IV, Part B, of the Higher Education Act of 1965, as amended, or the Perkins Loan Program authorized under Title IV, Part E, of the Higher Education Act of 1965, as amended.

(i) The Secretary refers a debt to the General Accounting Office (GAO) for review and approval before referring the debt to the Department of Justice for litigation if—

(1) The debt arose from an audit exception taken by GAO to a payment made by the Department; and

(2) The GAO has not granted an exception from the GAO referral requirement.

(j) Nothing in this section precludes—

(1) A contracting officer from exercising his authority under applicable statutes, regulations, or common law to settle disputed claims relating to a contract; or

(2) The Secretary from redetermining a claim.

(Authority: 20 U.S.C. 1082(a) (5) and (6), 1087hh, 1221e–3(a)(1), 1226a–1, and 1234a(f), 31 U.S.C. 3711(e))

[FR Doc. 88–3591 Filed 2–18–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
February 19, 1988

Part VIII

Environmental Protection Agency

40 CFR Parts 141 and 143

National Primary Drinking Water Regulations; Analytical Techniques; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[-FRL-3254-5]

National Primary Drinking Water Regulations; Analytical Techniques

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the National Primary Drinking Water Regulations (NPDWRs) promulgated pursuant to Sections 1401, 1412 and 1445 of the Safe Drinking Water Act (SDWA). (42 U.S.C. 300f *et seq.*, as amended). These amendments specify two alternate analytical techniques that have been added to the list of analytical methods approved by EPA to measure the concentration of six inorganic chemicals and four organochlorine pesticides in drinking water. These techniques are the: (1) Inductively coupled plasma (ICP) atomic emission spectrometric method for inorganic contaminants, and (2) solid phase extraction method for pesticides. In addition, this notice amends the National Secondary Drinking Water Regulations (NSDWRs) by adding the ICP technique to the list of analytical techniques that may be used in the determination of four inorganic chemicals.

EPA proposed the approval of the two techniques listed above on October 23, 1986 (51 FR 37608). The Agency requires that only approved analytical techniques be used for determining compliance with the maximum contaminant levels (MCLs) for NPDWR contaminants. The Agency also provides guidance on the adequacy of analytical techniques for the determination of NSDWR contaminants. The Agency has determined that the proposed techniques are substantially equivalent in both precision and accuracy to techniques already approved.

EFFECTIVE DATE: This rule is effective March 21, 1988. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purposes of judicial review at 1:00 eastern daylight savings time on March 4, 1988.

ADDRESSES: The public comments and supporting documents are in the public docket. The public docket is located in the Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water (WH-550D), WSM, Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460. The public docket is available for review by contacting Mrs. Colleen Campbell-Jozefczyk (202) 382-3027.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph. D., Director, Criteria and Standards Division, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-7575.

SUPPLEMENTARY INFORMATION:

I. Summary of Today's Action

Today's action makes available two additional analytical methods for determining compliance with existing NPDWRs. They are: (1) The Inductively Coupled Plasma (ICP) Atomic Emission Spectrometric Method for the determination of arsenic, barium, cadmium, chromium, lead and silver, and (2) the Solid Phase Extraction (SPE) Method for the determination of endrin, lindane, methoxychlor and toxaphene. In addition, the ICP method is being added to the list of analytical techniques that may be used for determining compliance with existing NSDWRs for copper, iron, manganese and zinc.

II. Statutory Authority and Regulatory Background

A. *Statutory Authority*

The SDWA requires the EPA to promulgate NPDWRs which include MCLs or treatment techniques which public water systems must meet. SDWA section 1412. NPDWRs also contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to ensure compliance with such levels * * * SDWA sections 1401(1)(D); 42 U.S.C. 330F(1)(D). In addition, section 1445(b), 42 U.S.C. 300j-4(b), authorizes the Administrator to require monitoring to assist in determing whether persons are acting in compliance with the Act. EPA's promulgation of analytical techniques is authorized under these sections of the Act.

The Act also requires EPA to promulgate NSDWRs for contaminants in drinking water that primarily affect the aesthetic qualities relating to the public acceptance of drinking water. SDWA section 1412. These regulations are not Federally enforceable but are guidelines for the States. The NSDWRs also include analytical techniques for determining compliance with the regulations.

EPA promulgated NPDWRs in 1975, 1976, 1980, and 1987 for a total of 32 drinking water contaminants. *See* 40 CFR 141.11-.16. At the same time, EPA promulgated analytical techniques for these contaminants. *See* 40 CFR 141.21-.30. Under these regulations, persons must use one of several approved analytical techniques for determining compliance with the MCLs. In addition, under 40 CFR 141.27, alternate analytical techniques may be used by public water systems upon request and after concurrence by the State and EPA.

B. *Regulatory Background*

EPA proposed the approval of two analytical techniques in the October 23, 1986 **Federal Register.** (1) The Inductively Coupled Plasma (ICP) Atomic Emission Spectrometric Method for the determination of arsenic, barium, cadmium, chromium, lead and silver, and (2) the Solid Phase Extraction Method for the determination of endrin, lindane, methoxychlor and toxaphene.

In addition, the ICP method was proposed for determining compliance with existing NSDWRs for copper, iron, manganese and zinc.

These techniques have been reviewed by EPA and they are deemed equivalent to the EPA's approved test procedures in terms of precision and accuracy at the established MCLs. EPA will reexamine all the approved procedures as part of its revision of the existing primary drinking water regulations being conducted pursuant to the 1986 amendments to the Safe Drinking Water Act. Below is a description of these techniques.

1. Inductively Coupled Plasma (ICP)—Atomic Emission Spectrometric Method

This method (also know as "EPA Method 200.7") describes a technique for the simultaneous or sequential multi-element determination of trace elements in solution. This method was developed by EPA's Environmental Monitoring and Support Laboratory (EMSL) in Cincinnati and has been validated through an interlaboratory method study. The Agency proposed the approval of this technique for the

determination of six primary contaminants—arsenic, barium, cadmium, chromium, lead and silver—and of four secondary contaminants—copper, iron, manganese and zinc. The basis of the method is the measurement of atomic emission by an optical spectroscopic technique. Samples are nebulized and the aerosol that is produced is transported to the plasma torch where excitation occurs. Characteristic atomic line emission spectra are produced by a radio frequency ICP. The spectra are dispersed by a grating spectrometer and the intensities of the lines are monitored by photomultiplier tubes. The photocurrents from the photomultiplier tubes are processed and controlled by a computer system. A background correction technique is required to compensate for variable background contribution to the determination of trace elements. Background must be measured adjacent to analyte lines on samples during analysis.

Pursuant to 40 CFR 141.27, the Agency has granted limited approval in the past to laboratories requesting the use of Method 200.7 as an alternative analytical technique for certain inorganics in drinking water samples. The acceptability of this technique has been demonstrated through various data sources including: (1) Performance evaluation study data and (2) the interlaboratory method validation study (i.e., EPA Method Study 27, Method 200.7, Trace Metals by ICP).

The Agency developed a concentration technique that allows for the determination of trace metals at levels significantly lower than the established MCLs. This procedure has been written as an Appendix to Method 200.7 entitled, "Inductively Coupled Plasma Atomic Emission Analysis of Drinking Water." The concentration technique requires concentration of samples at least four times prior to analysis. The concentration step is necessary because Method 200.7, without concentration of the samples, is not sensitive enough for the determination of arsenic and lead at the established MCLs. This concentration technique improves the sensitivity of ICP to other elemental contaminants as well. EMSL gathered performance data (i.e., precision, accuracy, limits of detection) for the following primary elemental contaminants—arsenic, barium, silver, cadmium, chromium, and lead—and for four secondary elemental contaminants—copper, iron, manganese, and zinc. These data showed improved performance for all the analytes of interest.

2. Solid Phase Extraction Method

The Solid Phase Extraction (SPE) Method describes the use of an SPE procedure developed by J.T. Baker Chemical Company as an alternative to the present liquid/liquid extraction procedure. The new test procedure is described in a document entitled, "Methods for Organochlorine Pesticides and Chlorophenoxy Acid Herbicides in Drinking Water and Raw Source Water." This method was proposed for the analysis of endrin, lindane, methoxychlor, and toxaphene. The method uses a serological polypropylene column which is packed with a 40 um average particle diameter 60A° silica gel covalently bonded and endcapped with a reversed phase organosilane. The packing is held in place by compression between two 40 um polyethylene frits.

After conditioning the column with suitable solvents, the drinking water sample is drawn or forced through the column. The low levels of contaminants are selectively extracted and concentrated in the packing. Co-extracted interferences and impurities are selectively removed with a solvent/solution wash. The compounds of interest are then eluted with a small volume of solvent, typically 1 ml. The collected eluants are subsequently analyzed for organochlorine pesticides using the USEPA-approved test procedure. Use of the Baker Solid Phase columns eliminates the liquid/liquid extraction step in the USEPA approved test procedure, thereby saving considerable time and resources. Since the analytes are adsorbed onto the bonded surface of the column packing, the extracted compounds of interest are in an "immobilized" state and the extraction columns can be easily transported to central laboratories for immediate analyte elution.

J.T. Baker Chemical Co. completed a study which indicated comparability of the SPE technique to the approved technique for four organochlorine pesticides: endrin, lindane, methoxychlor, and toxaphene. Details regarding the proposed and approved methods used for developing the comparability data, spiking levels, and the data points from analysis of water supplies were provided in a report to the Agency. (Collaborative Study, Proposed J.T. Baker Chemical Co. Solid Phase Extraction (SPE) Alternate Test Procedure (ATP); Test Method No. SPE-500 for EPA Test—Methods for Organochlorine Pesticide and Chlorophenoxy Acid Herbicides in Drinking Water and Raw Source Water, NIPDWR Compliance Monitoring, February 5, 1985). Statistical analyses of the data provided in this report were performed by EMSL-Cincinnati. The results show that in those cases where there were statistical differences between the two methods, the SPE procedure provided more complete recovery of the compound tested or the SPE procedure was more precise than the EPA-approved procedure. Inspection of the recoveries and precision by each method and analyte indicated that these differences were very small and were insignificant relative to the applicable maximum contaminant level for endrin, lindane, methoxychlor, and toxaphene.

III. Comments and Responses

EPA requested comments on the suitability of the ICP for determining compliance with primary and secondary MCLs for metals. EPA also requested comments on the suitability of the Solid Phase Extraction technique for determining compliance with four primary MCLs for organochlorine pesticides.

EPA received a total of nine comments on the proposed rule. Of these comments, one was a general comment commending EPA for its efforts to approve suitable, new and improved analytical techniques. The other eight commenters provided specific comments on the ICP technique and/or the SPE technique. Seven comments addressed the ICP technique and four comments addressed the Solid Phase Extraction (SPE) technique. The commenters were generally in favor of approval of these analytical techniques, with the exception of one negative comment on the ICP technique and one negative comment on the SPE technique. For each technique, a general summary of the comments received, with EPA's responses, are presented below. A detailed comment-response document is contained in the record for this rulemaking.

A. Approval of Inductively Coupled Plasma (ICP)—Atomic Emission Spectrometric Method

Seven comments were received concerning the approval of the ICP technique for the primary contaminants—arsenic, barium, cadmium, chromium, lead and silver—and of four secondary contaminants—copper, iron, manganese and zinc. Six commenters agreed with EPA's recommendation for approval of this technique and one disagreed with the proposed action. One of the favorable commenters stated that "the ICP method is routinely used to monitor select inorganic constituents in various water matrices with success, and the

technique is considerably more cost-effective than other EPA-approved techniques for compliance monitoring."

The commenter opposing approval of the ICP method cited three reasons why the Agency should not approve the technique for compliance monitoring purposes. First, the commenter claimed that the concentration procedure provided for in the appendix to the method could potentially cause variability in the results obtained by the method. The commenter argued that the Agency should have assessed the extent of that variability by conducting an interlaboratory validation study of the concentration component of the method. Second, the commenter asserted that the method detection limits cited in the appendix to Method 200.7 were too low; the commenter calculated alternate MDLs in order to demonstrate that the ICP technique was not sufficiently sensitive to serve as a monitoring method for lead and arsenic. Third, the commenter claimed that certain procedures followed in Method Study 27 were flawed and undermined the reliability of the study's results. The discussion below reponds to each of these comments in turn.

1. Potential variability due to concentration procedure, and necessity of conducting interlaboratory validation study

EPA agrees with the commenter that concentration procedures can introduce additional variability in the results obtained by an analytical method. However, data gathered and summarized in the appendix to Method 200.7 demonstrate that the overall precision of the method improves significantly as a result of the four-fold concentration of the sample which is required for drinking water samples. The commenter asserts that, in the general population of laboratories, error added by the concentration step may be sufficiently large to offset any additional precision which may be obtained through concentration. To judge the variability across different laboratories, the commenter asserts that an interlaboratory study is necessary.

EPA rejects these contentions on several grounds. First, EPA believes that the concerns expressed by the commenter are addressed by the mandatory quality control requirements described in the Appendix to Method 200.7. EPA believes that the best way to assure acceptable analytical results is to require that each laboratory which proposes to use a method demonstrate its ability to meet specified quality control requirements. As long as laboratories properly follow the procedures described in the Appendix, the ICP technique will yield satisfactory results. Second, while the precision and bias estimates in the Appendix to Method 200.7 are based on single laboratory data, the Agency has also examined multilaboratory performance evaluation (PE) data on the ICP Method collected by EPA's Environmental Monitoring and Support Laboratory. These data indicate that better precision is attained by laboratories using the ICP as opposed to the approved atomic absorption methods, and refute the commenter's argument that unacceptable variability will occur during the day-to-day operations of various laboratories.

The commenter's position also appears to be based on the erroneous assumption that interlaboratory validation studies must always be conducted prior to approval of an analytical technique. While such studies are generally beneficial, EPA has repeatedly approved the use of alternative analytical techniques without having perfomed any interlaboratory studies. This was the case with the gas chromatographic methods for trihalomethanes and the furnace atomic absorption methods for metals which were approved in 1979 and 1980, respectively. In 1987, the Agency approved five analytical methods for some volatile organic chemicals (VOCs) that were modifications of existing methods for VOCs without having conducted interlaboratory validation studies of those methods. The costs to the Agency of conducting interlaboratory validation studies for every analytical method or modification of existing methods would be prohibitive. Thus, emphasis is given in the drinking water program to the demonstration of the laboratory's ability to attain results within specified accuracy limits. This demonstration of capabilities is an integral part of the Drinking Water Laboratory Certification Program. This program provides a mechanism for the evaluation of laboratories to help assure the validity of data generated. Laboratories wishing to analyze compliance samples must meet the requirements of this program.

2. Method detection limit of the ICP technique

The commenter also objects to approval of the ICP technique on the basis of the requirement written in the appendix to Method 200.7 that the detection limits for each element must not exceed one-fifth of its corresponding MCL. Using established procedures contained in 40 CFR Part 136 Appendix B, EPA projected MDLs for each element, and included those MDLs in the Appendix to Method 200.7. The commenter seemed to challenge the validity of these MDLs, and performed calculations using data from Method Study 27 (interlaboratory validation of Method 200.7) to project different MDLs.

EPA examined the statistical manipulations performed by the commenter and concluded that many assumptions made by the commenter are not technically justifiable. The manipulation of Method Study 27 data to estimate MDLs does not follow the procedure in 40 CFR Part 136 which EPA has determined is appropriate for determining MDLs. Therefore, EPA believes that the conclusions derived from these manipulations are inaccurate. Multilaboratory method studies are simply not designed to estimate MDLs. The lowest concentrations actually tested in Method Study 27 are higher than those which, under EPA procedures, must be used to estimate MDLs (Glaser et. al., *Env. Sci. Tech.*, 15, 1426, 1981). Generally, the use of concentrations higher than required by EPA procedures results in overestimates of MDLs. As a result, the detection limits calculated by the commenter were too high. This is not to say that all laboratories will be able to achieve the method detection limit calculated under ideal research conditions by EPA laboratories. EPA recognizes that detection limits can vary depending upon the precision attainable by individual laboratories. To minimize this variability and insure satisfactory analytical results, Method 200.7 with appendix requires laboratories to demonstrate that they can reliably analyze compliance samples at the maximum containment levels.

3. Challenges to design of interlaboratory validation Study—Method Study 27

The commenter also questions the appropriateness of that portion of the interlaboratory study for ICP where participants collected and spiked their own tap, surface and reagent waters. The commenter expressed concern that this practice caused the study results to be non-uniform and, therefore, not of sufficient quality to ensure that the precision and bias of the ICP Method 200.7 were acceptable for compliance monitoring purposes.

The commenter asserted that this problem arose in connection with the interlaboratory validation study of the furnace atomic absorption methods (Method Study 31) because in that study as well, participants collected and spiked their own samples of reagent, tap

and surface waters. According to the commenter, Method Study 31 concluded that the performance data were adversely affected by this practice. While noting that no such conclusions were drawn in Method Study 27, the commenter hypothesized that non-uniformity would have had a negative influence on the precision and bias of the ICP technique, if the preconcentration procedure had been studied along with Method 200.7.

EPA agrees that concentration may interfere with the recovery of an analyte in certain water matrices (i.e., cause matrix effects), but disputes the commenter's belief that the procedure described in the Appendix to Method 200.7 poses such problems. The commenter's reliance on Method Study 31 is misplaced. While the study observed some statistically significant matrix effects for a few elements in surface and effluent waters, no such effects were noted in the drinking water matrices. This observation indicates that drinking water, being relatively free of contaminants, is not likely to contain many elements which interfere with accurate recoveries of elements of concern.

In addition, the appendix to Method 200.7 addresses potential interferences caused by concentration of samples. High levels of calcium and magnesium are the primary interferents which result from concentration of samples prior to ICP analysis. The method requires that a matrix-matched calibration standard be used when the concentration of calcium or calcium and magnesium combined exceed certain levels. Laboratories following this practice will not experience matrix effects due to the concentration procedure contained in the Appendix to Method 200.7.

B. Approval of Solid Phase Extraction Method

Four comments were received concerning the approval of the SPE technique for endrin, lindane, methoxychlor and toxaphene. Three of the commenters agreed with EPA's recommendation for approval of this technique. One of these commenters provided specific research references that support the use of solid-phase extraction methods for organochlorine pesticide analysis. The fourt commenter, the Chemical Manufacturers Association (CMA), stated that the applicant, J.T. Baker Chemical Company, failed to establish equivalency for the SPE method, and argued, therefore, that this method should not be granted approval. J.T. Baker conducted a collaborative study to compare the performance of the proposed SPE method and the USEPA-approved method. The analyses were conducted by two different laboratories, Rutgers University and Virginia Polytechnic Institute. J.T. Baker provided a report to the Agency that included the concentration levels used and the data points generated from analysis of water samples using the proposed and approved methods.

CMA stated that the Baker "Collaborative Study" submitted to EPA in support of their application does not contain an interpretative text, statistical evaluation of data, or any interlaboratory assessments of precision and accuracy. However, the purpose of the J.T. Baker study was only to provide the Agency analytical data using both the proposed and the approved procedures. The Agency does not require the report to contain statistical evaluation, data interpretation, or assessments of precision and accuracy. The subject report satisfies the comparability data requirements for nationwide approval of alternate test procedures. To satisfy these requirements, J.T. Baker was instructed to collect drinking water from six geographically dispersed water supply systems which utilized ground and surface water. From each system, six grab samples were collected, spiked with known amounts of lindane, endrin, methoxychlor, or toxaphene, split, and analyzed eight times; four each using the approved liquid/liquid extraction method as specified in 40 CFR Part 141, and four using the Baker SPE technique.

Two EPA laboratories conducted statistical analysis and technical reviews of the data provided by J.T. Baker. CMA's critique of Baker's collaborative study appears to be based on their assumption that the applicant had to provide statistical analysis of the submitted data. CMA apparently did not obtain copies of the technical reviews listed under the Public Docket/References section of the proposed rule. During the technical reviews, EPA addressed the specific issues raised by CMA: (1) That one of the universities involved in the study experienced serious problems with the recovery/analysis of methoxychlor, (2) that there are some questionable results, and (3) that there are a high number of false negatives. EPA responses to these issues are summarized below.

1. The commenter correctly points out that one university had difficulty with the recovery/analysis of methoxychlor. However, this difficulty was experienced with both the proposed and the approved analytical methods. This problem in quantitation using both analytical methods indicates that the preparation technique which is the unique feature of the proposed method was not the cause of the recovery problem. Since both the approved and proposed methods utilize identical procedures to determine the presence and the amount of analyte in a sample, and since there were recovery problems with both methods, it is likely that those problems were due to deficiencies in the determinative procedure. Therefore, the experience of this laboratory does not refute other evidence that the solid phase extraction technique is equivalent to the approved analytical methods.

2. Approximately forty-one questionable data points were encountered, the majority of which were immediately noticeable by excessively high recoveries. All but five were documentable reporting or calculation errors and were corrected prior to statistical analysis. The remaining number of questionable data points is not significant considering the total number of results.

3. EPA's review also revealed false negative results, i.e., zero percent recoveries for an analyte extracted by the SPE procedure when the approved extraction yielded acceptable recoveries. Of the 960 individual analyses reported, six such results were observed. However, this number is slightly smaller than the incidence of zero percent recoveries for samples extracted using the approved procedure when the SPE technique yielded acceptable results. EPA does not consider the number of false negative results obtained by the SPE technique to be significant considering the total number of data points.

In fact, it appears that the SPE technique performed better than the approved liquid-liquid extraction procedure. The statistical analyses of the comparability data indicated that in those cases where there were statistically significant differences between the two methods, the mean recoveries of the SPE procedure were slightly higher or the SPE procedure was significantly more precise than the approved technique. Therefore, the Agency maintains that the Baker SPE procedure is suitable for monitoring compliance with MCLs for the four organochlorine pesticides: endrin, lindane, methoxychlor, and toxaphene.

IV. Future Review of Analytical Methods

EPA is approving the use of these new analytical methods to make them available to the regulated community as soon as possible. However, the Agency

will also generally examine the approved drinking water methods as part of its promulgation of MCLs pursuant to the 1986 amendments to the SDWA. Before EPA promulgates MCLs for inorganic contaminants and pesticides, the Agency expects to reevaluate all methods (including those approved today) and determine whether to continue their approval.

The analytical method approved today are only applicable to the existing MCLs. Public water systems are cautioned that detection limits for certain inorganic chemicals such as lead and arsenic are higher using the ICP technique than with atomic absorption methodology. Thus, the ICP technique may not be adequate for very low concentrations.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the adverse effects described in the Executive Order. This rule simply specifies two analytical techniques which may be used by laboratories to measure concentrations of certain pesticides and inorganic chemicals and, therefore, has no adverse economic impacts. However, this action was submitted to OMB for their review under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the *Regulatory Flexibility Act* (5 U.S.C. 602 *et seq.*) because it will not have a significant economic impact on a substantial number of small entities. The methods which are included in this final rule give all laboratories, including small laboratories, the flexibility to use these alternate methods.

C. Paperwork Reduction Act

This rule contains no requests for information and is, therefore, exempt from the requirements of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*

VI. Effective Date

This rule is issued under SDWA section 1401, 1412 and 1445. Although section 1412(b) provides that the National Primary Drinking Water Regulations (as described in section 1401) take effect 18 months after their promulgation, under section 1445 there is no such limitation for monitoring, reporting, and recordkeeping regulations which may be used to assist in determining compliance. To allow the monitoring methods to be used after 30 days of promulgation, EPA is promulgating these regulations under section 1445. Effective 18 months after promulgation, the analytical methods will also be deemed to be promulgated under section 1412.

VII. References and Public Docket

The following references are included in the Public Docket together with other correspondence and information. The Public Docket is available for reviewing in Washington, DC, at the address listed at the beginning of this notice. All public comments received on the proposal are included in the Docket.

- Technical reviews of the proposed analytical techniques.
- Report with recommendations from the Director, Environmental Monitoring and Support Laboratory in Cincinnati to the Director, Office of Drinking Water.
- Copies of the proposed analytical techniques and performance data.
- Method Validation Study Report for ICP technique.
- Collaborative Study Report for SPE technique.
- Public Comments and EPA Responses.

List of Subjects in 40 CFR Parts 141 and 143

Chemicals, Analytical methods, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure.

Dated: February 9, 1988.

Lee M. Thomas,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, Parts 141 and 143 of Title 40, Code of Federal Regulations are amended as set forth below.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g–1, 300g–3, 300j–4, and 300j–9.

2. Section 141.23 is amended by revising paragraphs (f) introductory text, (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) and (f)(9), footnotes 1–4 are republished, and footnote 8 added to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

(f) Analyses conducted to determine compliance with 141.11 shall be made in accordance with the following methods, or their equivalent as determined by the Administrator.

(1) Arsenic-Method [1] 206.2, Atomic Absorption Furnance Technique; or Method [1] 206.3, or Method [4] D2972–78B or Method [2] 301.A VII, pp. 159–162, or Method [3] I–1062–78, pp. 61–63, Atomic Absorption-Gaseous Hydride; or Method [1] 206.4, or Method [4] D–2972–78A, or Method [2] 404–A and 404–B(4), Spectrophotometric, Silver Diethyldithiocarbamate; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(2) Barium-Method [1] 208.1, or Method [2] 301–A IV, pp. 152–155, Atomic Absorption-Direct Aspiration; or Method [1] 208.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(3) Cadmium-Method [1] 213.1 or Method [4] D 3557–78A or B, or Method [2] 301–A II or III, pp. 148–152, Atomic Absorption-Direct Aspiration; or Method [1] 213.2 Atomic Absorption Furnance Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(4) Chromium-Method [1] 218.1 or Method [4] D 1687–77D, or Method [2] 301–A II or III, pp. 148–152, Atomic Absorption-Direct Aspiration; or Chromium-Method [1] 218.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(5) Lead-Method [1] 239.1, or Method [4] D 3559–78A or B, or Method [2] 301–A II or III, pp. 148–152, Atomic Absorption-Direct Aspiration; or Method [1] 239.2, Atomic Absorption Furnace Technique;

---

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA–600/4–79–020), March 1979. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. For approved analytical procedures for metals, the technique applicable to total metals must be used.

[2] "Standard Methods for the Examination of Water and Wastewater," 14th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1976.

[3] Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter A–1, "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Book 5, 1979, Stock #024–001–03177–9. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[4] Annual Book of ASTM Standards, part 31 Water, American Society for Testing and Materials, 1976 Race Street, Philadelphia, Pennsylvania 19103.

* * * * *

[8] "Inductively Coupled Plasma-Atomic Emission Spectrometic Method for Trace Element Analysis of Water and Wastes—Method 200.7" with Appendix to Method 200.7 entitled, "Inductively Coupled Plasma-Atomic Emission Analysis of Drinking Water," March 1987. Available from EPA's Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

or Method [8] 200.7, Inductively Coupled Plasma Technique.

* * * * *

(9) Silver-Method [1] 272.1, or Method [2] 301-A II, pp. 148-152, Atomic Absorption-Direct Aspiration; or Method [1] 272.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

* * * * *

3. Section 141.24 is amended by revising paragraph (e), and the footnotes thereto by republishing footnotes 2 and 5 unamended and by adding a new footnote 6, as follows:

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

* * * * *

(e) Analysis made to determine compliance with § 141.12(a) shall be made in accordance with the following methods, or their equivalent as determined by the Administrator: "Methods for Organochlorine Pesticides and Chlorophenoxy Acid Herbicides in Drinking Water and Raw Source Water," available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268; or "Organochlorine Pesticides in Water," Annual Book of ASTM Standards, part 31, Water, Method D-3086-79; or Method 509-A, pp. 555-565; [2] or Gas Chromatographic Methods for Analysis of Organic Substances in Water,[5] USGS, Book 5, Chapter A-3, pp. 24-39; or Solid Phase Extraction (SPE) [6] Test Method Number SPE-500 for EPA's "Methods for Organochlorine Pesticides and Chlorophenoxy Acid in Herbicides in Drinking Water and Raw Source Water."

[2] See footnote 2 to § 141.23.

* * * * *

[5] Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter A-3, "Methods for Analysis of Organic Substances in Water," Book 5, 1971, Stock #2401-1227. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC.

[6] Solid Phase Extraction (SPE) Test Method Number SPE-550 is available from J.T. Baker Chemical Company, 22 Red School Lane, Phillipsburg, New Jersey 08865.

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

4. The authority citation for Part 143 continues to read as follows:

Authority: 42 U.S.C. 300g-1(c), 300j-4, and 300j-9.

5. Section 143.4 is amended by revising paragraphs (b)(3), (b)(5), (b)(6), and (b)(11) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) * * *

(3) Cooper—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 108-109, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7," available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

* * * * *

(5) Iron—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 110-111, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7," available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

(6) Manganese—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 116-117, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7" available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

* * * * *

(11) Zinc—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 155-156, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7," available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

[FR Doc. 88-3560 Filed 2-18-88; 8:45 am]

BILLING CODE 6560-50-M