

E.O. 12612

This rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

Regulatory Flexibility Act

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. section 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and record keeping requirements.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.206(c)(2) is revised to read as follows:

§ 351.206 Critical circumstances.

* * * * *

(c) * * *

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination; or

(iii) If, pursuant to paragraph (i) of this section, the period examined for purposes of determining whether critical circumstances exists is earlier than normal, the Secretary will issue the preliminary finding as early as possible after initiation of the investigation, but normally not less than 45 days after the

petition was filed. The Secretary will notify the Commission and publish in the **Federal Register** notice of the preliminary finding.

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[FR Doc. 99-23208 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Selamectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for an additional indication for control of tick (*Dermacentor variabilis*) infestations in dogs.

EFFECTIVE DATE: September 8, 1999.

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

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017-5755, filed supplemental NADA 141-152 that provides for topical veterinary prescription use of Revolution™ (selamectin) solution in dogs for the additional indication for control of tick (*D. variabilis*) infestations. The supplemental NADA is approved as of August 5, 1999, and the regulations are amended in 21 CFR 524.2098 in paragraphs (d)(1) and (d)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for nonfood-producing animals

qualifies for 3 years of marketing exclusivity beginning August 5, 1999, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, or any studies of animal safety, required for approval of the application and conducted or sponsored by the applicant.

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

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

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.2098 [Amended]

2. Section 524.2098 *Selamectin* is amended in paragraph (d)(1) by removing the words "once a month" and in paragraph (d)(2) by revising the second sentence to read "Treatment and control of sarcoptic mange (*Sarcoptes scabiei*) and control of tick (*Dermacentor variabilis*) infestations in dogs."

Dated: August 27, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99-23336 Filed 9-7-99; 8:45 am]

BILLING CODE 4160-01-F

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This rule makes final various revisions to the procedural rules of the Federal Mine Safety and Health Review Commission (the "Commission"). In these final rules, the Commission has addressed various problems that were unforeseen when the procedural rules were last revised in 1993 (see 58 FR 12158 (March 3, 1993)), in a continued effort to ensure "the just, speedy, and inexpensive determination of all proceedings" before the Commission (29 CFR 2700.1(c)).

DATES: These revised rules will take effect on November 8, 1999.

The final rules will apply to cases initiated after the rules take effect. The final rules also will apply to further proceedings in cases then pending, except to the extent that such application would be infeasible or unfair, in which event the present procedural rules would apply.

ADDRESSES: Questions may be mailed to Norman Gleichman, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Norman Gleichman, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone 202-653-5610 (202-566-2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is an independent adjudicative agency that provides administrative trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1994) ("Mine Act"). The Commission's rules of procedure govern practice and procedure in proceedings at both the trial and appellate levels.

The Commission initially adopted its procedural rules in June 1979. See 44 FR 38226 (June 29, 1979). In March 1993, the Commission published significant revisions to its procedural rules, reflecting more than 10 years' experience with the rules and evolving Commission case law. See 58 FR 12158 (March 3, 1993). In May 1998, the Commission published proposed revisions to various rules in an attempt to address problems that were unforeseen in 1993. See 63 FR 25183 (May 7, 1998). Those proposed rules included revisions relating to motion practice before the Commission, expansions of the requirements for certain pleadings, and revisions and

clarifications for filing pleadings in temporary reinstatement proceedings. See 63 FR 25183-87. For instance, the Commission proposed requiring moving parties to state in motions whether there is opposition to the motion (see proposed § 2700.10(c) (63 FR 25186)); instituting a page limit for petitions for discretionary review (see proposed § 2700.70(d) (63 FR 25187)); changing requirements for filing and serving requests for extensions of time and extensions of page limits (see proposed §§ 2700.9, 2700.70(d), 2700.75(f) (63 FR 25186, 25187)); revising procedures for filing pleadings in temporary reinstatement proceedings (see proposed § 2700.45 (63 FR 25186-87)); and expanding the opportunities for filing and serving by facsimile transmission (see proposed §§ 2700.9, 2700.45(f) (63 FR 25186-87)).

Although notice-and-comment rulemaking under the Administrative Procedure Act does not apply to rules of agency procedure (see 5 U.S.C. 553(b)(3)(A)), the Commission permitted written comments on the proposed rules to be submitted on or before August 5, 1998. The only written comments received by the Commission were submitted by the Department of Labor's Office of the Solicitor on behalf of the Mine Safety and Health Administration ("MSHA"). MSHA commented on the following proposed revisions: (1) the proposed requirement that when filing is by facsimile transmission, service must be by facsimile or an equally expeditious means (proposed § 2700.7 (63 FR 25186)); (2) the proposed insertion that would permit the Commission to rule upon a motion prior to the expiration of the time for response (proposed § 2700.10(d) (63 FR 25186)); and (3) the proposed deadline for filing a motion requesting an extension of page limit (proposed §§ 2700.70, 2700.75 (63 FR 25187)). In addition, MSHA proposed that the procedural rules be revised in three ways not proposed in the **Federal Register** notice: (1) that subpart H be revised to include a requirement that all documents filed in review proceedings before the Commission in which MSHA is a party, be served on the Counsel for Appellate Litigation in the Mine Safety and Health Division of the Office of Solicitor; (2) that 29 CFR 2700.75(e) be revised to permit both opening briefs and response briefs to be up to 35 pages in length; and (3) that § 2700.75(e) be revised to specify that all briefs be typed double-spaced and using a typeface designated by the Commission. MSHA did not state any objections to the remainder of the proposed revisions.

Based upon those comments and other developments in Commission proceedings, the Commission published supplemental proposed rules, which clarified when service on an attorney or other authorized attorney is required (see proposed §§ 2700.3(c), 2700.7(d) (64 FR 24549)), added requirements for the format of pleadings (see proposed § 2700.5(f) (64 FR 24549)), and increased the page limit for response briefs (see proposed § 2700.75(c) (64 FR 24549-50)). See 64 FR 24547-50 (May 7, 1999).

The Commission permitted written comments on those supplemental proposed rules to be submitted on or before May 28, 1999. The Commission received comments from MSHA and from the Peabody Group. The majority of comments expressed support for the supplemental proposed revisions. The Commission received an objection to only the proposed requirements for the format of pleadings (see proposed § 2700.5(f) (64 FR 24549)).

The final rules retain much of the same text set forth in the proposed rules and in the supplemental proposed rules. As discussed in the section-by-section analysis, some changes have been made in response to the comments received, such as the service requirements when documents are filed by facsimile transmission (see §§ 2700.7(c), 2700.9(a), 2700.45(f), 2700.70(f), 2700.75(f)); and the deadline for filing requests for extension of page limit (see §§ 2700.70(f), 2700.75(f)). In addition, although not included in the proposed rules or supplemental proposed rules, the Commission made a revision clarifying when a motion for participation as *amicus curiae* and an *amicus curiae* brief must be filed (see § 2700.74). The Commission was unable to invite comments on the revisions to § 2700.74 because the proceedings that brought to light the need for such clarification arose after the supplemental proposed rules had been published in the **Federal Register**. Finally, certain rules have been changed to accord with related changes in others.

II. Section-by-Section Analysis

Set forth below is an analysis of the comments received on the Commission's proposed and supplemental proposed rules and the final actions taken. Minor editorial modifications to present or proposed rules are not discussed.

Subpart A—General Provisions

Section 2700.3 Who May Practice

Paragraph (c) retains the proposed language clarifying the manner of and

time that an attorney or other authorized representative may enter an appearance in Commission proceedings. The Commission received no objections to the proposed rule and adopts the proposed rule without change.

Currently, § 2700.3(c) provides that an entry of appearance by a representative of a party is made by, among other things, "signing the first document filed on behalf of the party." See 29 CFR 2700.3(c). The rule is somewhat ambiguous regarding the agency with whom the document must be filed, and whether the document refers only to pleadings.

In an effort to dispel this ambiguity, the Commission has revised § 2700.3(c) to provide that an entry of appearance shall be made when the first document filed on behalf of a party is filed with the Commission or Commission judge. Revised § 2700.3(c) also clarifies that the documents that may serve as an entry of appearance shall be only those filed with the Commission or Commission judge in a proceeding under the Mine Act or the Commission's procedural rules, rather than documents filed with MSHA.

The revisions to § 2700.3(c) are intended to be consistent with the definition of "party" set forth in § 2700.4(a). Section 2700.4(a) currently provides in part that "[a] person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party." 29 CFR 2700.4(a). Section 2700.3(c) refers to actions that may be taken by a representative of a "party" in order to enter an appearance. Thus, reading current § 2700.4(a) with revised § 2700.3(c), an entry of appearance by an attorney or other authorized representative cannot be made before the represented operator or individual achieves party status as defined in § 2700.4(a). In some circumstances, however, an entry of appearance may be made at the same time that an operator or individual achieves party status. For instance, upon the filing of a notice of contest of a citation or order with the Commission by an authorized representative on behalf of an operator (see 29 CFR 2700.20), the operator is named as a party, thereby achieving party status under current § 2700.4(a), and the attorney filing the contest enters an appearance under revised § 2700.3(c) by filing the document with the Commission.

Section 2700.5 General Requirements for Pleadings and Other Documents; Status or Informational Requests.

Paragraph (c) of the proposed rule added the requirement that all

documents include page numbers. The Commission received no comments concerning that revision and adopts it as proposed.

In addition, consistent with proposed revisions to §§ 2700.9(a) and 2700.45(f), paragraph (d) of proposed § 2700.5 added the provision that the filing of a motion for an extension of time and a petition for temporary reinstatement order is effective upon receipt, rather than upon mailing. The Commission received no comments concerning that revision.

The Commission adopts § 2700.5(d) as proposed with minor changes. For consistency and clarity in motion practice, the Commission has conformed the requirements for filing requests for extensions of page limit with the requirements for filing requests for extensions of time. Therefore, the Commission has added the provision that the filing of a motion to exceed page limit is effective upon receipt. In addition, the Commission has revised § 2700.5(d) to specify that express mail includes delivery by third-party commercial carrier. Therefore, when a document is filed by third party commercial carrier, filing is effective upon delivery to the third party carrier, except for documents specified in paragraph (d) for which filing is effective upon receipt.

The Commission received a comment requesting that § 2700.75(e) be revised to require that all briefs shall be double-spaced using a typeface designated by the Commission in order to ensure adherence with page limitations. Because the Commission believed that formatting requirements should apply to all pleadings filed with the Commission and its judges, the Commission proposed a supplemental rule setting forth formatting requirements in proposed § 2700.5(f), which applies to all pleadings, rather than in § 2700.75, which applies only to briefs before the Commission. The proposed formatting requirements included standards for margins, font size and spacing, and a general prohibition against excessive footnotes. In addition, the Commission proposed adding a provision permitting the Commission to reject a brief based on the failure to comply with the requirements of the subsection or on the use of compacted or otherwise compressed printing features. To avoid affecting basic appeal rights, the Commission limited the provision by allowing only the rejection of briefs, rather than petitions for discretionary review.

The Commission received a comment regarding proposed § 2700.5(f), in which the commenter stated that the

requirement that footnotes appear in the same type size as text may prove difficult for drafters because most word processing systems automatically size footnote print smaller than the print of a document's body. The commenter suggested that the rule should be further revised to institute a word limit for parties who have word processing systems with automatic word counting capabilities, retaining page limitations for only those parties who do not have such systems. In addition, the commenter expressed the hope that the Commission would provide ample warning before striking briefs for excessive footnotes.

The Commission declines further modification of the formatting requirements which were proposed in § 2700.5(f). Although a word processing system may automatically size footnote print smaller than the text of the body, most systems may be adjusted to conform the footnote size with the text of the body. If a party's word processing system is incapable of using the same size type for footnotes and the body of a document, that information may be provided to the Commission if the Commission were to reject a brief on that basis. The Commission believes that the proposed rule is clearer and more easily enforced than a rule which sets forth two standards of formatting requirements. Finally, the Commission anticipates that it will provide ample notice before rejecting a brief for noncompliance with formatting requirements.

Section 2700.7 Service

Proposed revisions to § 2700.7(c) referred to the circumstances in which requests for extensions of time (§ 2700.9) and pleadings in temporary reinstatement proceedings (§ 2700.45(f)) may be served by facsimile transmission. In addition, proposed paragraph (c) clarified that service by mail is effective upon mailing for all types of mail, including first class, express, registered or certified mail, return receipt requested. Proposed paragraph (c) also added the requirement that when filing is by facsimile transmission, the filing party must also serve by facsimile transmission or by a means as expeditious as facsimile.

The Commission received no comments to the proposed rule's reference to the circumstances under which requests for extensions of time and petitions for review of temporary reinstatement orders may be served by facsimile transmission, or to the clarification that service by mail is effective upon mailing for all types of

mail service. Consistent with revisions to § 2700.5(d), the Commission has conformed the requirements for serving requests for extensions of page limit with the requirements for serving requests for extensions of time. Therefore, the Commission has referred to the circumstances in which requests for extensions of page limits may be served by facsimile transmission. In addition, the Commission has revised § 2700.7(c) to specify that express mail includes delivery by third-party commercial carrier. Therefore, when a document is served by third-party commercial carrier, service is effective upon delivery to the third-party carrier.

The Commission received opposition to the requirement that when a document is filed by facsimile transmission, service must be by facsimile or an equally expeditious means. The commenter submitted that a significant percentage of parties participating in Commission proceedings do not have fax machines, and that the only means of providing equally expeditious service would be by hand delivery, which can only be accomplished in a small number of cases.

After further consideration, the Commission has revised proposed § 2700.7(c) to provide that when filing is by facsimile transmission, the filing party must also serve by facsimile transmission or, if serving by facsimile transmission is impossible, the filing party must serve by third-party commercial overnight delivery service or by personal delivery. Although a party receiving service by overnight delivery will receive a document after the document has been filed by facsimile, the Commission believes that such a delay is not prejudicial. Under current § 2700.8, which has not been revised, when service of a document is by mail, 5 days are added to the time allowed for filing a response. See 29 CFR 2700.8. Because delivery by third-party commercial carrier is a form of express mail, the party who is served a document by third-party commercial carrier receives an additional 5 days to respond. Moreover, the time for filing a response to documents that may be filed by facsimile begins to run upon service, rather than upon filing. See proposed §§ 2700.10(d), 2700.45(f).

Proposed paragraph (d) provided that service is required on an attorney or other authorized representative only after that attorney or representative has formally entered an appearance on behalf of the party in the manner prescribed in proposed § 2700.3(c). The Commission received no objections to

the revision and adopts paragraph (d) as proposed.

The Commission published proposed paragraph (d) in the supplemental notice of proposed rulemaking based on proceedings before the Commission which revealed that its current procedural rules should be revised to clarify when service on an attorney or other authorized representative is required, particularly in circumstances in which a person or operator has retained counsel prior to issuance of the initial document in a proceeding. See *Roger Richardson*, 20 FMSHRC 1259 (Nov. 1998) (involving proceeding under 30 U.S.C. 820(c), in which proposed penalty assessment was mailed to individual's former residence rather than to counsel who was retained prior to issuance of proposed penalty assessment).

Currently, § 2700.7(d) provides that "[w]henever a party is represented by an attorney or other authorized representative, subsequent service shall be made upon the attorney or other authorized representative." 29 CFR 2700.7(d). The current rule is somewhat ambiguous regarding whether service is required after a representative has entered an appearance on behalf of the party, or whether service is required after a party has retained that representative. Under revised § 2700.7(d), it is clear that, even if an operator or individual retains counsel prior to the initiation of a proceeding under the Mine Act, that counsel need not be served until after he or she makes a formal entry of appearance pursuant to § 2700.3(c).

Section 2700.9 Extensions of Time

Paragraph (a) of the proposed rule instituted the requirements that a motion for extension of time shall be filed no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and that the motion for an extension of time must conform with proposed § 2700.10. Proposed § 2700.9(a) also provided that the motion and any opposition to the motion may be filed and served by facsimile transmission, and that service must be by an equally expeditious means as filing. Paragraph (b) of proposed § 2700.9 added a provision allowing the Commission to grant a motion for an extension of time in exigent circumstances, even though the request was filed late. The proposed rule was designed to alleviate the situation that arises under current § 2700.9, in which the Commission receives a request for an extension of time on or shortly before the expiration of the due date for filing or serving of

the document, requiring disposal of the motion prior to the expiration of the time for a response. See 29 CFR 2700.9 ("A request for an extension of time shall be filed before the expiration of the time allowed for the filing or serving of the document.").

The Commission received no comments to proposed § 2700.9(a) and adopts it as proposed with a minor modification. Consistent with revisions to proposed § 2700.7(c), the Commission inserted the qualification in paragraph (a) that, if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

Section 2700.10 Motions

The proposed rule added the requirement that, prior to filing a procedural motion, a moving party must confer or make reasonable efforts to confer with the other parties and to state in the motion if any party opposes or does not oppose the motion. In addition, proposed § 2700.10 added the provision that, where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response, and that a party adversely affected by the ruling may seek reconsideration.

Under current practice, before the Commission disposes of a procedural motion, it must wait for the expiration for the period of the time for filing a statement in opposition. See 29 CFR 2700.10(c). For some motions requiring prompt or immediate disposition, the Commission must contact other parties or, if such parties are unavailable, dispose of the motion without a response. The proposed revisions were designed to more efficiently and fairly dispose of such motions.

The Commission received opposition to the revision which would permit a motion to be ruled upon prior to the expiration of the time for response. The commenter suggested that if it is necessary to rule on a motion before the response time has expired, the Commission or judge should give adequate warning of the shortened time so that any opposition may be filed prior to disposition of the motion.

The Commission has determined that no further modification is warranted and adopts the proposed rule. In motion practice before the Commission, there is usually insufficient time to give advance warning that the Commission must rule upon a motion prior to the expiration of the time for a response, particularly with requests for extensions of time or extensions of page limits. Even if the Commission were to dispose of a motion before expiration of the time for a

response, under revised § 2700.10(c), in most circumstances, the Commission will be informed by the motion whether opposition exists. Moreover, under these final rules, an opposing party has more opportunities for filing an opposition by facsimile transmission. See §§ 2700.9(a) (statements in opposition to requests for extension of time); 2700.45(f) (responses to petitions for review of temporary reinstatement orders); 2700.70(f) and 2700.75(f) (statements in opposition to motions for extension of page limit). In any event, the Commission has provided an avenue of relief to a party deprived of the opportunity to file an opposition by providing in paragraph (d) that any party adversely affected by the ruling may seek reconsideration.

Subpart E—Complaints of Discharge, Discrimination, or Interference

Section 2700.45 Temporary Reinstatement Proceedings

Paragraph (f) retains the proposed language to: (1) allow any pleadings in a temporary reinstatement proceeding to be filed and served by facsimile transmission (see also paragraph (a)); (2) provide that the filing of a petition for review of a temporary reinstatement order is effective upon receipt; (3) require that any response to a petition must be filed within 5 days following service of the petition, rather than 5 days following receipt of the petition, as the rule currently provides (see 29 CFR 2700.45(f)); and (4) clarify that the Commission's ruling on a petition shall be based on the petition and any response, and that any further briefing will be entertained only at the express direction of the Commission. The Commission also adopts the language proposed in paragraph (f), which codifies the holding in *Secretary of Labor on behalf of Bowling v. Perry Transport, Inc.*, 15 FMSHRC 196 (Feb. 1993), by explicitly providing that the Commission will grant a motion to stay the effect of a temporary reinstatement order only under extraordinary circumstances.

Although the Commission received no comments to the proposed rule, the comment received regarding facsimile transmission in proposed § 2700.7(c) is indirectly applicable to proposed § 2700.45(f), and prompted the Commission to revise the final rule. As with proposed § 2700.9(a), the Commission qualified the requirement that a pleading under the rule must include proof of service on all parties by a means of delivery no less expeditious than that used for filing with the proviso that if service by facsimile transmission

is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. In addition, consistent with this revision, the Commission specified in paragraph (a) that a document filed with the Commission in a temporary reinstatement proceeding may be served by express mail, as well as by personal delivery, including courier service, by certified or registered mail, return receipt requested, or, as specified in paragraph (f), by facsimile transmission.

Subpart H—Review by the Commission

Section 2700.70 Petitions for Discretionary Review

Proposed § 2700.70(a) added the clarification that procedures governing petitions for review of temporary reinstatement orders may be found in § 2700.45(f). The Commission received no comments to the proposed revision and adopts it as proposed.

Proposed § 2700.70(d) added a 35-page limit for petitions for discretionary review to promote concision. In addition, consistent with proposed changes to § 2700.75, proposed § 2700.70(d) instituted a 10-day deadline for filing a motion requesting an extension of page limit.

The Commission received no objection to the 35-page limit and adopts it as proposed. However, the Commission received an objection to the proposed requirement that a motion for an extension of page limit for a petition for discretionary review be filed no less than 10 days prior to the date the petition is due to be filed. The commenter stated that in many cases, a party does not know 10 days before its petition is due whether the petition will exceed the page limit. The commenter suggested that the proposed revision may result in an increase in the filing of protective motions.

The Commission reconsidered the proposed paragraph, deleted the reference to the 10-day deadline in paragraph (d) and added a new paragraph (f), setting forth the requirements for motions to exceed page limit. In new paragraph (f), the Commission revised the deadline for filing requests for extensions of page limits to not less than 3 days prior to the date the petition is due to be filed. In order to permit the Commission to dispose of the motion within sufficient time to afford the petitioner time to submit a conforming petition, the Commission has added a receipt requirement, so that the motion must be received by the Commission by the deadline. Therefore, as with requests for extensions of time (see proposed

§ 2700.9(a)), the filing of requests for extensions of page limit are effective upon receipt, and the filing and serving of the motion and any opposition to the motion may be accomplished by facsimile transmission. Although a 3-day time limit may not allow sufficient time for the filing of an opposition, the Commission likely will be informed in the request for extension of page limit, in accordance with § 2700.10(c), whether the opposing party opposes or does not oppose the request. In addition, under § 2700.10(d), the Commission may rule upon the motion prior to the expiration of the time for a response, and any party adversely affected by the Commission's ruling may seek reconsideration. Consistent with revisions to other procedural rules (see §§ 2700.7(c), 2700.9(a), 2700.45(f), 2700.75(f)), the Commission added the provision that the motion to exceed page limit and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party must serve by third-party commercial overnight delivery, or by personal delivery.

Section 2700.74 Procedure for Participation as Amicus Curiae

Under current § 2700.74, a motion to participate as amicus curiae may be filed after the Commission has directed a case for review (see 29 CFR 2700.74(a)), and the brief of an amicus curiae "should normally be filed within the briefing period allotted to the party whose position the amicus curiae supports." 29 CFR 2700.74(b). In recent proceedings before the Commission, the Commission received a motion to participate as amicus curiae in support of the petitioner's position during the period allotted to the petitioner for filing a reply brief. It is somewhat unclear under the present rule whether a motion for participation as amicus curiae may be filed during the period allotted for the filing of a reply brief.

The Commission revised paragraph (b) of existing § 2700.74 to clarify that the brief of an amicus curiae must be filed during the initial briefing period allotted to the party whose position the amicus curiae supports. In addition, the Commission set off a portion of paragraph (b) as a new paragraph (c) and clarified in new paragraph (c) that the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a)(1), as long as the amicus curiae's motion for participation is filed within the initial briefing period

allotted to the party whose position the amicus curiae supports. The Commission has retained the provisions of paragraph (a) so that a motion for participation as amicus curiae may be filed after the Commission has directed a case for review. Reading all paragraphs of revised § 2700.74 together, therefore, a motion to participate as an amicus curiae must be filed after the Commission has directed a case for review and before expiration of the initial briefing period allotted to the party whose position the amicus curiae supports. The Commission was unable to invite comments on the revisions to § 2700.74 because the proceedings that brought to light the need for such clarification arose after the supplemental proposed rules had been published in the **Federal Register**. See also 5 U.S.C. 553(b)(3)(A) (providing that notice-and-comment publication is not required under the Administrative Procedure Act for rules of agency procedure).

Section 2700.75 Briefs

Proposed paragraph (c) was revised in response to a comment that the page limit for response briefs should be increased from 25 to 35 pages. The Commission agrees that revising the page limit for response briefs to correspond with the page limit for opening briefs is appropriate given the similar substantive requirements for opening and response briefs. In addition, it agrees that such a revision is particularly appropriate in view of the opportunity for a petitioner to file an additional 15 pages in the form of a reply brief. Therefore, the Commission adopts paragraph (c) as proposed.

Proposed § 2700.75(d) added the requirement that a motion for extension of time must comply with the requirements of proposed § 2700.9. The Commission received no comments to paragraph (d) and adopts it as proposed.

Proposed § 2700.75(f) added requirements for filing a motion to exceed page limit that conformed to the requirements for filing a motion to exceed page limit for a petition for discretionary review (see proposed § 2700.70(d) (63 FR 25187)). Consistent with comments received to proposed § 2700.70, the Commission received an objection to the 10-day deadline. The Commission deleted the reference to a 10-day deadline in proposed § 2700.75(f), and added the same requirements for a motion to exceed page limits as that set forth in § 2700.70(f).

Section 2700.76 Interlocutory Review

Proposed § 2700.76(a) added the clarification that procedures governing petitions for review of temporary reinstatement orders may be found in proposed § 2700.45(f). The Commission received no comments to the addition and adopts the rule as proposed.

Miscellaneous

The Commission declines to adopt the suggestion that subpart H be revised to include a requirement that all documents filed in review proceedings before the Commission in which MSHA is a party, be served on Counsel for Appellate Litigation in the Mine Safety and Health Division of the Office of the Solicitor. The Commission believes that less formal means exist to address any misdirection of pleadings to MSHA's counsel, and intends to explore such means.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601-612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Ex parte communications, Lawyers, Penalties.

For the reasons stated in the preamble, the Commission amends 29 CFR Part 2700 as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820 and 823.

2. Section 2700.3 is amended by revising paragraph (c) to read as follows:

§ 2700.3 Who may practice

* * * * *

(c) *Entry of appearance.* A representative of a party shall enter an appearance in a proceeding under the Act or these procedural rules by signing the first document filed on behalf of the

party with the Commission or Judge; filing a written entry of appearance with the Commission or Judge; or, if the Commission or Judge permits, by orally entering an appearance in open hearing.

* * * * *

3. Section 2700.5 is amended by revising paragraphs (c), (d) and (f) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of any change in address or telephone number shall be given promptly to the Commission or the Judge and all other parties.

(d) *Manner and date of filing.* A notice of contest of a citation or order, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be filed by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent documents that are filed with a Judge or the Commission may be filed by first class mail, express mail, or personal delivery. Express mail includes delivery by a third-party commercial carrier. When filing is by personal delivery, filing is effective upon receipt. When filing is by mail, filing is effective upon mailing, except that the filing of a petition for discretionary review, a petition for review of a temporary reinstatement order, a motion for extension of time, and a motion to exceed page limit is effective upon receipt. See §§ 2700.9, 2700.45(f), 2700.70(a), (f), and 2700.75(f). Filing by facsimile transmission is permissible only when specifically permitted by these rules (see §§ 2700.9, 2700.45(f), 2700.52, 2700.70(a), (f), and 2700.75(f)), or when otherwise allowed by a Judge or the Commission. Filing by facsimile transmission is effective upon receipt.

* * * * *

(f) *Form of pleadings.* All printed material shall appear in at least 12 point type on paper 8½ by 11 inches in size, with margins of at least one inch on all four sides. Text and footnotes shall appear in the same size type. Text shall be double spaced. Headings and footnotes may be single spaced.

Quotations of 50 words or more may be single spaced and indented left and right. Excessive footnotes are prohibited. The failure to comply with the requirements of this paragraph or the use of compacted or otherwise compressed printing features will be grounds for rejection of a brief.

* * * * *

4. Section 2700.7 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2700.7 Service.

* * * * *

(c) *Methods of service.* A notice of contest of a citation or order, a proposed penalty assessment, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be served by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent papers may be served by first class mail, express mail, or personal delivery, except as specified in §§ 2700.9, 2700.45, 2700.70(f), and 2700.75(f) (extensions of time, temporary reinstatement proceedings, and extensions of page limit). Express mail includes delivery by a third-party commercial carrier. Service by mail, including first class, express, or registered or certified mail, return receipt requested, is effective upon mailing. Service by personal delivery is effective upon receipt. When filing by facsimile transmission (see § 2700.5(d)), the filing party must also serve by facsimile transmission or, if serving by facsimile transmission is impossible, the filing party must serve by a third-party commercial overnight delivery service or by personal delivery. Service by facsimile transmission is effective upon receipt.

(d) *Service upon representative.* Whenever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party pursuant to § 2700.3(c), service thereafter shall be made upon the attorney or other authorized representative.

* * * * *

5. Section 2700.9 is revised to read as follows:

§ 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time, including a facsimile transmission, is

effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. A motion requesting an extension of time and a statement in opposition to such a motion may be filed and served by facsimile. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

6. Section 2700.10 is amended by redesignating paragraph (c) as (d), revising newly redesignated paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 2700.10 Motions.

* * * * *

(c) Prior to filing a procedural motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(d) A statement in opposition to a written motion may be filed by any party within 10 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard. Where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may seek reconsideration.

7. Section 2700.45 is amended by revising paragraphs (a) and (f) to read as follows:

§ 2700.45 Temporary reinstatement proceedings.

(a) *Service of pleadings.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties by personal delivery, including courier service, by certified or registered mail, return receipt requested, express mail or, as

specified in paragraph (f) of this section, by facsimile transmission.

* * * * *

(f) *Review of order.* Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 days following receipt of the Judge's written order. The filing of any such petition is effective upon receipt. The filing and service of any pleadings under this rule may be made by facsimile transmission. The filing of a petition shall not stay the effect of the Judge's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 days following service of a petition. Pleadings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

* * * * *

8. Section 2700.70 is amended by revising paragraphs (a), (d) and (e), by redesignating paragraphs (f) as (g) and (g) as (h), and by adding a new paragraph (f) to read as follows:

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by a Judge's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review, including a facsimile transmission, is effective upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

* * * * *

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except by permission of the Commission and for good cause shown, petitions for discretionary review shall not exceed 35 pages. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition to petition.* A statement in opposition to a petition for discretionary review may be filed, but the opportunity for such filing shall not require the Commission to delay its action on the petition.

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit shall be received not less than 3 days prior to the date the petition for discretionary review is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. A motion requesting an extension of page limit and a statement in opposition to such a motion may be filed and served by facsimile. Filing of a motion requesting an extension of page limit, including a facsimile transmission, is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

* * * * *

9. Section 2700.74 is amended by revising paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 2700.74 Procedure for participation as amicus curiae.

* * * * *

(b) The brief of an amicus curiae shall be filed within the initial briefing period (see § 2700.75(a)(1)) allotted to the party whose position the amicus curiae supports.

(c) In the interest of avoiding duplication of argument, however, the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a)(1), provided that the amicus curiae's motion for participation as an amicus curiae is filed within the initial briefing period (see § 2700.75(a)(1)) allotted to the party whose position the amicus curiae

supports. If the Commission grants any such motion, the Commission's order shall specify the time within which a response or reply may be made to the amicus curiae brief.

10. Section 2700.75 is amended by revising paragraphs (c) and (d), by redesignating paragraph (f) as (g), and by adding a new paragraph (f) to read as follows:

§ 2700.75 Briefs.

* * * * *

(c) *Length of brief.* Except by permission of the Commission and for good cause shown, opening and response briefs shall not exceed 35 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

(d) *Motion for extension of time.* A motion for an extension of time to file a brief shall comply with § 2700.9. The Commission may decline to accept a brief that is not timely filed.

* * * * *

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit for a brief shall be received not less than 3 days prior to the date the brief is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. A motion requesting an extension of page limit and a statement in opposition to such a motion may be filed and served by facsimile. Filing of a motion requesting an extension of page limit, including a facsimile transmission, is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

* * * * *

11. Section 2700.76 is amended by revising paragraph (a) to read as follows:

§ 2700.76 Interlocutory review.

(a) *Procedure.* Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Procedures governing petitions for review of temporary

reinstatement orders are found at § 2700.45(f).

* * * * *

Mary Lu Jordan,
Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 99-23244 Filed 9-7-99; 8:45 am]
BILLING CODE 6735-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD-091-3041a; FRL-6433-7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the municipal solid waste (MSW) landfill 111(d) plan submitted by the Air and Radiation Management Administration, Maryland Department of the Environment (MDE), on March 23, 1999. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The Maryland plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective November 8, 1999 unless within October 8, 1999 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Walter Wilkie, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania; and the Air Radiation Management Administration, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epa.gov.