

grounds of clear and unmistakable error (CUE). In particular, because "it would be inappropriate for an inferior tribunal to review the actions of a superior," we proposed to codify at 38 CFR 20.1400(b) a provision stating: "A Board decision on an issue decided by a court of competent jurisdiction on appeal is not subject to revision on the grounds of [CUE]." 63 FR at 27536, 27539.

On January 13, 1999, we published the final rule, which became effective February 12, 1999 (64 FR 2134). Based on comments that § 20.1400(b) was unclear, we revised that provision with the intent that "our rule preclude[] a CUE challenge to a Board decision on an issue that has been subsequently decided by a court of competent jurisdiction, whether on direct appeal of that Board decision or on appeal of a subsequent Board decision on the same issue." 64 FR at 2136. However, the language of § 20.1400(b) stated: "All final Board decisions are subject to revision under this subpart except: (1) Those decisions which have been appealed to and decided by a court of competent jurisdiction; and (2) Decisions on issues which have subsequently been decided by a court of competent jurisdiction." *Id.* at 2139.

By inadvertently omitting the words "on issues" from § 20.1400(b)(1), we created an ambiguity in the case of a Board decision on more than one issue where fewer than all of the issues were appealed to and decided by a court. It was not clear whether § 20.1400(b)(1) insulated every issue in such a Board decision from CUE revision or whether it insulated only the issues appealed to and decided by the court. We intended, both in the proposed rule and in the final rule, that § 20.1400(b)(1) would insulate only the decision *on issues* appealed to and decided by a court. By reinserting the words "on issues" in § 20.1400(b)(1), we remove the ambiguity and clarify that, in the case of a Board decision on multiple issues, § 20.1400(b)(1) insulates from subsequent CUE revision only the Board's decision on issues appealed to and decided by a court, but not its decision on issues not appealed to the court. We are also removing the word "Those" to make paragraphs (1) and (2) of § 20.1400(b) parallel.

This document merely clarifies regulatory provisions. Therefore, in accordance with 5 U.S.C. 553, this final rule is exempt from prior notice-and-comment and delayed-effective-date provisions.

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as

they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### **List of Subjects in 38 CFR Part 20**

Administrative practice and procedure, Claims, Veterans.

Approved: November 18, 1999.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR Part 20 is amended as set forth below:

#### **PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE**

##### **Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error**

1. The authority citation for part 20 is revised to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

##### **§ 20.1400 [Amended]**

2. Section 20.1400(b)(1) is amended by removing "Those decisions" and adding, in its place, "Decisions on issues".

[FR Doc. 99–33995 Filed 12–29–99; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 136**

[FRL–6478–1]

RIN 2040–AC76

##### **Guidelines Establishing Test Procedures for the Analysis of Pollutants; Available Cyanide in Water**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" under section 304(h) of the Clean Water Act by adding Method OIA–1677: Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry (hereafter Method OIA–1677). Method OIA–1677 employs flow injection analysis (FIA) to measure "available cyanide." Method OIA–1677 is an additional test procedure for measuring the same cyanide species as are measured by currently approved

methods for cyanide amenable to chlorination (CATC). In some matrices, CATC methods are subject to test interferences. EPA is approving Method OIA–1677 because it is more specific for available cyanide, is more rapid, measures cyanide at lower concentrations, offers improved safety, reduces laboratory waste, and is more precise and accurate than currently approved CATC methods.

**EFFECTIVE DATE:** This regulation is effective on January 31, 2000. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Standard Time on January 13, 2000 in accordance with 40 CFR 23.2.

The incorporation by reference of Method OIA–1677 listed in the rule is approved by the Director of the Federal Register January 31, 2000.

**ADDRESSES:** Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this document) are available for review at the U.S. Environmental Protection Agency, Water Docket, 401 M Street SW., Washington, DC 20460. For access to docket materials, call 202–260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment.

Copies of Method OIA–1677 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or from ALPKEM, Box 9010, College Station, TX 77842–9010. The NTIS publication number is PB99–132011.

An electronic version of Method OIA–1677 is also available via the Internet at <http://www.epa.gov/OST/Methods>.

**FOR FURTHER INFORMATION CONTACT:** For information regarding Method OIA–1677, contact Maria Gomez-Taylor, Ph.D., Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, SW., Washington, DC 20460, or call (202) 260–1639.

#### **SUPPLEMENTARY INFORMATION:**

##### **Potentially Regulated Entities**

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authority, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection

of pollutants to be measured and, in many cases, limited in permits. If EPA has "approved" (i.e., promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permit must specify one of the approved testing procedures or an approved alternate test procedure. Permitting authorities may, at their discretion, require the use of any method approved at 40 CFR part 136 in the permits they issue. Therefore, dischargers with NPDES permits could be affected by the standardization of testing procedures in this rulemaking because NPDES permits may incorporate the testing procedures in today's rulemaking. In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the standardized testing procedures. Categories and entities that may ultimately be affected include:

Category	Examples of potentially regulated entities
Regional, State and Territorial Governments and Indian Tribes.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; Governmental NPDES permittees.
Industry .....	Industrial NPDES permittees.
Municipalities	Publicly-owned treatment works with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## Outline of Preamble

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  - D. Paperwork Reduction Act
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  - F. National Technology Transfer and Advancement Act
  - G. Executive Order 13045
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## I. Authority

EPA promulgates today's regulation pursuant to the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA) or the "Act," 33 U.S.C. 1314(h), 1317, and 1361(a). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his (her) function under this Act." EPA publishes CWA analytical methods regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, sections 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, sections 403.10 and 402.12).

## II. Summary of the Final Rule

### A. Introduction

Today's action makes available at 40 CFR part 136 an additional test procedure for measurement of available cyanide. Currently approved methods

for measurement of available cyanide are based on sample chlorination. Method OIA-1677 uses a flow injection/ligand exchange technique to measure available cyanide. Although Method OIA-1677 and chlorination methods both measure available cyanide, it is possible that the results produced by the two techniques will vary slightly, as detailed in the proposed rule (63 FR 36809, July 7, 1998). EPA offers Method OIA-1677 as another testing procedure for several purposes, including permit applications and compliance monitoring under the NPDES program under CWA section 402; ambient water quality monitoring; CWA section 401 certifications; development of new effluent limitations guidelines, pretreatment standards, and new source performance standards; and for general laboratory use.

This rulemaking does not repeal any of the currently approved methods that test for available cyanide. For an NPDES permit, the permitting authority can decide which method is appropriate for the specific NPDES permit based on the circumstances of the particular effluent measured. If the permitting authority does not specify the method to be used for the determination of available cyanide, a discharger would be able to use Method OIA-1677 or any of the presently approved cyanide amenable to chlorination (CATC) methods.

### B. Summary of Method OIA-1677

Method OIA-1677 is divided into two parts: sample pretreatment and cyanide quantification via amperometric detection. In the sample pretreatment step, ligand-exchange reagents are added to a 100-mL sample. The ligand-exchange reagents displace cyanide ions (CN<sup>-</sup>) from weak and intermediate strength metallo-cyanide complexes.

In the flow-injection analysis system, a 200-μL aliquot of the pretreated sample is injected into the flow injection manifold. The addition of hydrochloric acid converts cyanide ion to hydrogen cyanide (HCN). The hydrogen cyanide diffuses through a membrane into an alkaline receiving solution where it is converted back to cyanide ion (CN<sup>-</sup>). The amount of cyanide ion in the alkaline receiving solution is measured amperometrically with a silver working electrode, silver/silver chloride reference electrode, and platinum counter electrode at an applied potential of zero volt. The current generated in the cell is proportional to the concentration of cyanide in the original sample, as determined by calibration.

### *C. Comparison of Method OIA-1677 to Current Methods*

Methods currently approved for determination of available cyanide all test for CATC. Although they represent the best methods available to date, these methods are prone to matrix interference problems. EPA considers Method OIA-1677 to be a significant addition to the suite of analytical testing procedures for available cyanide because it (1) has greater specificity for cyanide in matrices where interferences have been encountered using currently approved methods; (2) has improved precision and accuracy compared to currently approved CATC cyanide methods; (3) measures available cyanide at lower concentrations; (4) offers improved analyst safety; (5) shortens sample analysis time; and (6) reduces laboratory waste.

Method OIA-1677 is not subject to known interferences from organic species. The flow-injection technique of Method OIA-1677 excludes known interferences, except sulfide. Sulfide is eliminated by treating the sample with lead carbonate and removing the insoluble lead sulfide by filtration prior to introduction of the sample to the amperometric cell used for cyanide detection.

Method OIA-1677 was tested against and compared to two existing cyanide methods: EPA Method 335.1, an EPA-approved CATC method, and Standard Method (SM) 4500 CN-1, a weak-acid dissociable (WAD) cyanide method. Comparative recovery and precision data were generated from simple metallo-cyanide species in reagent water. Recovery and precision of each method was comparable for the easily dissociable cyanide species. Results of these tests were included in the docket at proposal (63 FR 36809, July 7, 1998). Method OIA-1677 showed superior precision and recoveries of mercury cyanide complexes.

While EPA Method 335.1 does not specify a method detection limit, colorimetric detection is "sensitive" to approximately 5 µg/L. The method detection limit (MDL), as determined in a multi-laboratory study using the procedures described at 40 CFR part 136, appendix B, is 0.5 µg/L for Method OIA-1677.

Method OIA-1677 offers improved analyst safety for two reasons. The first reason is the reduced generation of hydrogen cyanide gas, a highly toxic compound. Although the proposed flow-injection analysis (FIA) method and currently approved CATC methods all generate HCN, the currently approved methods generate a larger

quantity of gas during distillation in an open distillation system. As such, extra care is necessary to prevent accidental release of HCN into the laboratory atmosphere. Method OIA-1677 possesses an advantage because it tests a much smaller sample and, therefore, generates significantly less HCN than currently approved methods. In addition, the gas is contained in a closed system with little possibility for release. The second safety improvement is the reduced use of hazardous substances. Currently approved CATC methods require use of hazardous substances in the distillation and color developing processes. These hazardous substances include hydrochloric acid, pyridine, barbituric acid, chloramine-T, and pyrazolone. Method OIA-1677 requires only hydrochloric acid and at a much lower concentration than used in CATC procedures.

Method OIA-1677 offers a reduced analysis time, which should increase sample throughput in the laboratory. Method OIA-1677 uses automated mixing of the sample with hydrochloric acid and exposure to the gas diffusion membrane to determine the sample concentration. This process takes approximately two minutes per sample. As a comparison, EPA Method 335.1 requires a one-hour distillation procedure plus the time necessary to add and develop the sample color to determine the presence of cyanide.

Less laboratory waste is generated in Method 1667 because it requires a much smaller sample size for testing. EPA Method 335.1 requires handling a sample size of 500 mL for distillation. Method OIA-1677 requires the addition of the ligand exchange reagents to 100 mL of sample, from which 40 to 250 µL are used for analysis. This reduces the amount of both hazardous sample and toxic reagents that must be handled and subsequently disposed.

### *D. Quality Control*

The quality control (QC) in Method OIA-1677 is more extensive than the QC in currently approved methods for CATC. Method OIA-1677 contains all of the standardized QC tests proposed in EPA's streamlining initiative (62 FR 14976, March 28, 1997) and used in the 40 CFR part 136, appendix A methods. An initial demonstration of laboratory capability is required and consists of (1) an MDL study to demonstrate that the laboratory is able to achieve the MDL and minimum level of quantification (ML) specified in Method OIA-1677; and (2) an initial precision and recovery (IPR) test, consisting of the analysis of four reagent water samples spiked with the reference standard, to demonstrate

the laboratory's ability to generate acceptable precision and recovery. An important component of these and other QC tests required in Method OIA-1677 is the use of mercuric cyanide ( $\text{Hg}(\text{CN})_2$ ) as the reference standard for spiking. Mercuric cyanide was chosen because it is fully recovered in Method OIA-1677 and weak-acid dissociable (WAD) methods, whereas mercuric cyanide is only partially recovered in the CATC method. Therefore, mercuric cyanide demonstrates the ability of the ligand-exchange reagents to liberate cyanide from moderately strong metal-cyano complexes. Method OIA-1677 requires the use of standards of known composition and purity, which facilitates more accurate determination of recovery and precision and minimizes variability that may be introduced from spiking substances of unknown or indeterminate purity.

Ongoing QC consists of the following tests that would need to accompany each analytical batch, i.e., a set of 10 samples or less pretreated at the same time:

- Verification of calibration of the flow injection analysis/amperometric detection system, to verify that instrument response has not deviated significantly from that obtained during calibration.
- Analysis of a matrix spike (MS) and matrix spike duplicate (MSD) to demonstrate method accuracy and precision and to monitor matrix interferences.  $\text{Hg}(\text{CN})_2$  is the reference standard used for spiking.
- Analysis of a laboratory blank to demonstrate freedom from contamination.
- Analysis of a laboratory control sample to demonstrate that the method remains under control.

Method OIA-1677 contains QC acceptance criteria for all QC tests. Compliance with these criteria allows a data user to evaluate the quality of the results. This increases the reliability of results and provides a means for laboratories and data users to monitor analytical performance, thereby providing a basis for sound, defensible data.

### *E. Performance-Based Measurement System*

On March 28, 1997, EPA proposed a rule (62 FR 14976) to streamline approval procedures and use of analytic methods in water programs through a performance-based approach to environmental measurements. On October 7, 1997, EPA published a Notice of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all

media programs to the extent feasible (62 FR 52098). EPA's water program offices are developing plans to implement PBMS. Although EPA has not yet promulgated a final rule to implement PBMS in water programs, Method OIA-1677 incorporates the QA and QC acceptance criteria to be used as a basis for assessment of method performance. When PBMS is in place, Method OIA-1677 could serve as a reference method for demonstrating equivalency for subsequent modifications to the method.

The analyst has flexibility to modify the Method provided all performance criteria are met. Demonstrating equivalency involves two sets of tests, one set with reference standards and the other with the sample matrix. In addition, if the detection limit would be affected by the modification, performance of an MDL study would be required to demonstrate that the modified procedure could achieve an MDL less than or equal to the MDL in Method OIA-1677 or, for those instances in which the regulatory compliance limit is greater than the ML in the method, one-third the regulatory compliance limit. (For a discussion of these levels, see the streamlining proposal (62 FR 14976, March 28, 1997).)

### III. Improvements and Changes to Method OIA-1677 Since Proposal

EPA has revised Method OIA-1677 based on comments received on the proposal (63 FR 36809, July 7, 1998). Minor changes were made to correct typographical errors and for clarification:

- Section 4.5 was reworded to clarify how to mitigate sulfide ion interference.
- Potassium nickel (II) cyanide, a quality control reagent was added as section 7.5.
- Mercury (II) cyanide stock solution (section 7.12.1) mixing directions were rewritten to better explain the steps.
- Section 8.2.1 was revised to require that samples that contain particulate matter be filtered prior to sulfide removal and that the particulate matter be recombined with the treated filtrate prior to shipment to the laboratory. This procedure is necessary to assure that cyanide associated with particulate matter will be included in the measurement.
- Laboratory control sample (LCS) of the mercury (II) cyanide stock solution was described more concisely.
- A note was added to section 11 to explain ligand-exchange reagents and their use.
- Reference materials were updated in section 15.

- In Table 2, units were corrected from mg/L to  $\mu\text{g/mL}$  CN<sup>-</sup>.
- A definition for "discharge" was added under section 18.2.
- The sections on Pollution Prevention and Waste Management were separated and expanded.
- Section 12.2 was reworded to clarify the reporting of analytical results.

### IV. Public Participation and Response to Comments

EPA proposed Method OIA-1677 for use on July 7, 1998 (63 FR 36809). The public comment period closed on September 8, 1998. Significant comments are summarized below, along with EPA's responses. To the extent practicable, the comments have been categorized by subject. Detailed comments and their accompanying responses are included in the Docket for today's final rule.

EPA thanks commenters for constructive suggestions. EPA believes that the version of Method OIA-1677 promulgated today will provide reliable data for compliance monitoring.

#### A. Definition of Cyanide

*Comment:* The endorsement by EPA of yet another operational method, in this case what its developers term "available cyanide," does not resolve the confusion that exists regarding the appropriateness of the various cyanide measurements for discharge permits and water quality assessments.

*Response:* EPA explained use of the term "available cyanide" in the preamble to the proposal of Method OIA-1677. The term "available cyanide" reflects that it is the cyanide species available for dissociation that is measured by Method OIA-1677. The same cyanide species are measured by the CATC and WAD methods. In today's document, EPA further clarifies that "available" cyanide includes "cyanide amenable to chlorination" and "weak-acid dissociable" cyanides. EPA continues to use the term "total cyanide" for cyanides determined after total distillation. The reason that a change to "available" cyanide was necessary is that the chlorination reaction used in methods for "cyanide amenable to chlorination" is not used in Method OIA-1677. The term "weak-acid dissociable" (WAD) cyanide was considered but not used in anticipation that future methods could use technologies other than weak-acid dissociation.

#### B. Method Detection Limit

*Comment:* If EPA wishes to expand the use of the method detection limit

(MDL) approach for the new purpose of deriving a detection level for Method OIA-1677, the Administrative Procedure Act (APA) demands that it provide the public an opportunity to review and comment on the justification for that decision.

*Response:* EPA has used the MDL procedure, as described at 40 CFR part 136, appendix B, for the purpose of deriving detection limits in analytical methods for the past 20 years. Use of the MDL procedure for this purpose is therefore not new. By proposing Method OIA-1677 and including the MDL therein, EPA provided the public the opportunity for review and comment on the MDL in Method OIA-1677 and the data that support this MDL estimate.

EPA has used the MDL successfully for estimating the lowest level at which a substance can be detected since the peer-reviewed article on the MDL was published in 1980 (Environmental Science and Technology 15 1426-1435). The MDL procedure is subjected to public comment with every MDL that EPA publishes in nearly every method proposed in the **Federal Register** for use in EPA's various programs. The MDL procedure is referenced in those methods. The MDL procedure has widespread acceptance and use throughout the analytical community. No other detection or quantitation limit procedure or concept has achieved this level of acceptance and use.

*Comment:* Effluent limitations should never be imposed in an enforceable manner below concentrations at which accurate and consistent measurement is possible. EPA must adequately justify the manner in which it proposes to derive detection and quantification levels. EPA has failed to justify its proposal and to allow for public comment.

*Response:* EPA proposed to approve Method OIA-1677 as an additional test procedure for use in its water programs. This new analytical method is more sensitive than currently approved methods for the determination of available cyanide and, therefore, EPA believes that this method is suitable for accurate and consistent measurements. The performance of this method was demonstrated through an inter-laboratory validation study. The manner in which EPA derives detection and quantitation levels is through use of the MDL procedure published at 40 CFR part 136, appendix B. EPA has used the minimum level of quantitation (ML) in previous rulemakings. The ML is consistent with the limit of quantitation (LOQ) developed by the American Chemical Society. EPA allows comment on the derivation of detection and

quantification levels through the public comment process every time it proposes a new method. EPA is currently evaluating different approaches to detection and quantification, and may propose one or more alternate approaches in a future rulemaking.

### *C. Regulatory Compliance Implications of Method OIA-1677*

*Comment:* EPA should clarify that Method OIA-1677 does not indicate that the species measured represent an environmental risk, and that the method should not be used by regulators for measuring the risk associated with particular cyanide species.

*Response:* Today's action approves Method OIA-1677 for use in CWA programs because EPA believes that Method OIA-1677 can be used for reliable determination of available cyanide. Analytical methods measure the presence and concentration of pollutants, not risk. In this case, Method OIA-1677 measures dissociable cyanide species.

*Comment:* A better measurement of toxicological significance is needed. A regulatory view based on the presence or absence of "available cyanide" would not be reflective of environmental conditions that may affect biological organisms. Cyanide species-specific methods, such as ion chromatography and the ASTM diffusible cyanide method, provide more scientifically defensible data. EPA and/or instrument manufacturers should pursue development of such techniques as EPA approved methods. For acute toxicity determination, the "free cyanide" method by microdiffusion may well be the best approach since it measures HCN and CN species.

*Response:* Measurements of toxicological significance and improved tests for toxicological significance are beyond the scope of Method OIA-1677. Method OIA-1677 was developed as an alternative to currently approved methods that measure dissociable cyanide species.

Regarding cyanide-specific methods such as ion chromatography and diffusible cyanide, EPA believes that these methods may have utility in toxicological testing. However, for testing of wastewaters, methods such as Method OIA-1677 and the total cyanide methods have the advantage that they capture multiple cyanides in a single measurement. These methods are generally less expensive to practice than those methods that resolve the various cyanide forms and species. However, if an instrument manufacturer, discharger, or other interested entity desires to pursue approval of one or more of the

cyanide-specific methods, the entity may submit the method under EPA's alternate test procedure program described at 40 CFR part 136.

*Comment:* The proposed rule section on regulatory effects is erroneous. Method OIA-1677 will likely produce a result higher than the result produced by a CATC method if a cyanide of nickel, mercury, or silver is present at a high enough concentration. In this instance a permit limit for cyanide would probably be violated.

EPA must provide specific regulatory language regarding comparison of inconsistent results which impact compliance. EPA recognizes that the new method and the CATC method can produce different results. For example, if a discharger uses the CATC method which shows compliance, while a regulator uses the new method which indicates a violation, EPA suggests that the discharger refer to the preamble language of the proposed rule to convince the regulator that no violation has occurred. As EPA is aware, preamble language is not binding authority as is the actual regulatory language.

*Response:* In the proposed rule, EPA stated that interferences in the CATC methods can produce an inflated result for cyanide and that Method OIA-1677 is nearly immune to the interferences that inflate results from CATC methods. Therefore, the result of an analysis using Method OIA-1677 will nearly always be lower, and therefore closer to the true value for cyanide than a result from an analysis using a CATC method. EPA detailed the only exception to this situation as an analysis in which interferences are not present but certain cyanides of nickel, mercury, or silver are present at concentrations greater than 2 mg/L. At these concentrations, Method OIA-1677 recovers these cyanides at near 100 percent whereas the CATC methods recover them at 55–85 percent, resulting in concentrations that could be 15–45% greater with Method OIA-1677. The scenario described at proposal is very unlikely because the difference in recoveries are not that significant at permit quantities.

Therefore, in order for a violation to occur, a cyanide of nickel, mercury, or silver would need to be present at greater than 2 mg/L, there would need to be no interferences present, and the permit limit would need to be 2 mg/L or greater. EPA believes that this situation is highly unlikely and believes that, if it ever should occur, it can be handled on a case-by-case basis. Regarding differential use of methods by the permittee and the regulatory authority, EPA notes that permits often

specify a particular test method to measure compliance. Compliance with a permit constitutes compliance with the CWA. Dischargers will be held accountable for results from the methods specified in their permits.

### *D. Proprietary Reagents*

*Comment:* The use of a proprietary reagent as a chelating agent in a significant step in the procedure is an unfortunate precedent in what is supposed to be a scientific process.

*Response:* While Method OIA-1677 employs proprietary reagents, the method clearly states that changes to the method (including use of alternative reagents) can be made provided that the analyst demonstrates that the performance achieved is equivalent or superior to the performance of the unmodified method. The process for demonstrating acceptable performance is specified in section 9 of the Method.

*Comment:* As presented at the 19th U.S. EPA Conference on Analysis of Pollutants in the Environment (J.R. Sebroski, Bayer Corporation), the proprietary ligand exchange reagents used in the proposed method can suffer from false positive results if the sample is not injected into the flow injection system immediately. For example, after 12 hours residence time in reagent water, the combination of Ligand Exchange Reagent A and B showed an average of 7.57 µg/L cyanide.

*Response:* The ligand exchange reagents should be tested in NaOH solution, similar to the testing of cyanide samples (pH 12). The method developer has shown that signals due to the reagents are less than the minimum level (ML) of Method OIA-1677 provided the samples are analyzed within 2 hours of reagent addition. Method OIA-1677 has been modified to include statements that specify that the reagents have an approximate lifetime of 6 months after opening, that the reagents should be stored in a refrigerator at 0–4 °C, and that samples should be analyzed within 2 hours of adding the ligand-exchange reagents. This is sufficient time for sample preparation even if an auto-sampling system is utilized. Supporting data are included in the docket for the final rule.

*Comment:* In order to evaluate the efficiency of a front-end method change or the use of "equivalent" ligand exchange reagents, mercury (II) cyanide alone would not be sufficient to demonstrate method equivalency, since this only verifies ligand exchange reagent B and not ligand exchange reagent A which specifically displaces the cyanide species containing nickel. In order to alleviate the problem, several

ligand exchange reagents from the literature were evaluated for their effectiveness to displace nickel and mercury cyanide species with Method OIA-1677 because the composition of the proprietary reagents is unknown. Our research revealed that tetraethylenepentamine (TEP) and dithizone (diphenylthiocarbazone) were effective at displacing the cyanide species containing nickel and mercury, respectively, up to 400 µg/L as CN<sup>-</sup>. The TEP and dithizone combination of ligand exchange reagents did not suffer from any interferences or false positive results, and the reagents have a shelf-life of approximately 6 months.

*Response:* EPA agrees and has revised Method OIA-1677 to state that a modification to the method must be demonstrated on the cyanide species to which the modification will be applied.

#### E. Cyanide Species Measured

*Comment:* While Method OIA-1677 demonstrates some performance characteristics superior to currently available methods (notably the speed of the procedure), cyanide chemistry is too complex to generalize that the proposed method measures the "same cyanide species" as the CATC method or that the species measured under either test reflect actual environmental risk.

*Response:* Based on the information presented in section II C of the preamble at proposal (63 FR 36810) and data presented in the literature (Environmental Science and Technology, 1995, Vol. 29, 426-430) and at technical conferences (Goldberg, *et al.*; Goldberg and Clayton), and with the exceptions noted in the preamble at proposal and detailed in a response to Comment IV C above, Method OIA-1677 and the CATC and WAD methods measure the same cyanide species.

*Comment:* A fundamental difficulty with the determination of various forms of cyanide is that the analytical methods in use are not defined in terms of specific cyanide species being measured, but rather in terms of whatever the analytical method reports.

*Response:* EPA agrees. Method OIA-1677 is actually the first method available that can be defined in terms of the cyanide species being measured because it recovers cyanide completely throughout the analytical range of the Method (2 µg/L to 5000 µg/L) from the following cyano-species: HCN, CN<sup>-</sup>, [Zn(CN)<sub>4</sub>]<sup>2-</sup>, [Cd(CN)<sub>4</sub>]<sup>2-</sup>, [Cu(CN)<sub>4</sub>]<sup>3-</sup>, [Ag(CN)<sub>2</sub>]<sup>-</sup>, [Ni(CN)<sub>4</sub>]<sup>2-</sup>, [Hg(CN)<sub>4</sub>]<sup>2-</sup> and Hg(CN)<sub>2</sub>. In addition, the recoveries are concentration independent, which is not the case with either the CATC or WAD procedures.

*Comment:* We believe that the characterization of WAD and CATC analytical methods as deficient is inappropriate because the methods themselves provide operational definitions of cyanide species that comprise weak-acid dissociable cyanide. As such, the fact that the EPA Method OIA-1677 recovers additional metal cyanide complexes does not qualify it as better or more appropriate.

*Response:* The WAD and CATC methods are not deficient because they provide an operational definition of cyanide species that comprise weak-acid dissociable cyanide. Rather, the CATC and WAD methods are merely more susceptible to known interferences. The discussion in the preamble of the proposed rule illustrated the problems with the methods that utilize distillation to separate the analyte from potential interferences. Also, Method OIA-1677 does not recover cyanide from additional metal complexes when compared to the WAD and CATC procedures. Rather, it recovers the same metal cyano complexes completely (100%) throughout the analytical range of the method whereas the WAD and CATC procedures recover these species only partially at high concentrations.

#### F. Sample Pretreatment Issues

*Comment:* The method currently does not supply any information on the amount of lead carbonate to be used to eliminate sulfide interference.

*Response:* The amount of lead carbonate needed depends on the amount of the sulfide interference in each sample. Because the concentration of the sulfide interference is not known in advance, the amount of lead carbonate needed must be determined by the analyst or sampler.

*Comment:* Please clarify what preservation must be performed in the field and what preservation can take place back in the laboratory. For example, must the lead acetate paper test, lead carbonate treatment, and filtration for sulfide be performed in the field?

*Response:* All preservation must be performed at the time of sampling due to rapid degradation of cyanide in unpreserved samples. If the sample can be transported to a laboratory or other facility within 15 minutes of sampling, preservation may be performed in the laboratory or other facility. See footnote 4 to Table II in 40 CFR 136.3 (e) for information on preservation.

*Comment:* The procedure for sulfide containing samples is confusing. Is there a concentration below which suspected sulfide ion is not a problem? The

method indicates that two samples "should" be collected and that both samples "must" be analyzed. Is collecting two samples optional or required? When two samples are collected and analyzed, which result should be reported? Or, should both results be reported? If the samples are tested within 24 hours, is one sample sufficient?

*Response:* EPA does not know the concentration below which sulfide is not a problem. Collection of two samples is required if sulfide ion is not detected by the lead acetate paper test (See section 8.2.1 of the method). If sulfide ion is detected and removed with lead carbonate, the collection and analysis of a second sample is not required. The result that must be reported is the lower of the two results because the presence of sulfide ion will inflate a result. One sample is sufficient if tested within 24 hours, per footnote 6 of Table II at 40 CFR 136.3(e).

*Comment:* Paragraph II F is totally misleading when it states that "Method OIA-1677 takes approximately two minutes to perform," as this time does not include pretreatment (e.g., filtering to eliminate interference from sulfide).

*Response:* Pretreatment to remove sulfide interferences is performed at the time of sampling (usually in the field) and the time to perform this pretreatment is not included in analysis time for Method OIA-1677. Analysis of the sample using Method OIA-1677 is performed in the laboratory.

#### G. Interferences

*Comment:* The preamble at proposal of Method OIA-1677 states that the Method is not subject to interferences from organic species. While we suspect that the interference that we have encountered may be due to a release of a sulfur-containing or other inorganic gas through the membrane from the acidic flow stream, we cannot be sure that it is not caused by a volatile organic compound.

*Response:* EPA does not know if the interference that the commenter is experiencing is a volatile organic compound or a sulfur-containing or other inorganic gas. To date, EPA has not had any reports of interference from organic species. However, one of the developers of Method OIA-1677 speculates that if the electrochemistry at the silver working electrode and the volatility of certain organic species are examined, some interferences from organic species could be encountered. For examples, acetonitrile (CH<sub>3</sub>CN) could possibly pass through the membrane and would almost certainly aid the oxidation of silver at the

working potential, producing an analytical signal; low molecular weight aliphatic mercaptans might also pass through the membrane and be active at the working electrode. As a result of these possibilities, EPA believes that it is appropriate to modify its previous statement to state that interference from organic compounds may be possible but that EPA does not have evidence of such organic interferences to date.

*Comment:* Use of Method OIA-1677 in the precious metal ore process offers significant improvements over CATC methods with respect to interferences from thiocyanate, sulfide, carbonates, formaldehyde, and metals. While CATC might result in lower cyanide concentrations due to lower metal recoveries, the advantages of Method OIA-1677 with respect to the above interferences should be clarified in the preamble. Mines should be given every opportunity to use the method that provides the best defensible analytical results for those cyanide complexes present in precious metal ore process solutions.

*Response:* EPA recognizes the significant advantages of Method OIA-1677 over existing methods with respect to interferences. Section IIB-D of the preamble at proposal discussed the interference problems with current methods and the advantage of Method OIA-1677 (63 FR 36811-36812). In section IIE of that preamble, EPA stated that use of Method OIA-1677 will likely produce a lower result than the CATC methods because it is nearly interference free. EPA's approval of Method OIA-1677 includes its use for the precious metal ore processing industry and for other industries.

#### H. Alternative Methods

*Comment:* Any effort funded by EPA and its contractors should result in the technology and methodology that is freely available and fully described via publications of voluntary consensus standards bodies or via scientific literature. Method OIA-1677 is neither of these things. The ASTM method is, by the Rule's own admission, required to take precedence over any method developed by a single vendor by the requirement of the National Technology Transfer and Advancement Act (NTTAA) of 1995.

*Response:* EPA did not fund the development of Method OIA-1677. Other than identifying test samples and offering assistance to the method developer on the requirements for validation described in EPA's streamlining proposal (62 FR 13976, March 28, 1997), EPA did not participate in the development of

Method OIA-1677. Details of the technology in Method OIA-1677 were published in the scientific literature (Environmental Science and Technology, 1995, 29, 426-430). The NTTAA requires EPA to consider methods from voluntary consensus standard bodies, and to provide a justification if an available method is not selected.

To date, ASTM has not approved a flow-injection, ligand-exchange method for available cyanide. If ASTM or any other voluntary consensus standard body (VCSB) approves such a method and the quality control and other features of the method meet EPA's requirements, EPA may propose the VCSB method in a future rulemaking.

#### I. Data Quality

*Comment:* In 6 of 9 samples in Table 3 on page 36823, the added CN concentrations are 30 times higher than the background concentrations of cyanide in the sample. This ratio seems excessive for calculating spike recoveries.

*Response:* Because all samples tested, except the mining tailings pond effluent, had low or undetectable concentrations of cyanide, EPA recommended to the method developer that the range of concentrations tested in the round-robin should encompass the dynamic range of the method (2 to 5000 µg/L) so that the efficacy of the ligand-exchange reagents in high concentration samples could be evaluated and so that spike recoveries could be determined reliably. Therefore, some samples were spiked at concentrations considerably above the background concentration of cyanide.

*Comment:* Method OIA-1677 will not improve data quality.

*Response:* Method OIA-1677 is less susceptible to interferences than other methods for available cyanide, including CATC and WAD methods. Therefore, Method OIA-1677 will not subject dischargers to violations for those instances in which an interference with a CATC or WAD method would inflate a cyanide concentration above a permit limit. EPA believes that any method that is less susceptible to interferences and thereby comes closer to determining the true value of a pollutant will improve the quality of analytical data.

#### J. Laboratory Safety

*Comment:* EPA promotes the use of mercury cyanide for spiking without any discourse on laboratory safety or disposal problems. Current methods use potassium cyanide for spiking whereby cyanide is the only hazardous

substance. However, with mercuric cyanide, there is not only cyanide to consider, but now also mercury. Does it make sense to replace a "singly" hazardous compound with a "doubly" hazardous compound?

*Response:* Mercuric cyanide was chosen because the CATC and WAD methods do not completely recover cyanide from these species, whereas Method OIA-1677 does, and because mercuric cyanide exercises the ligand-exchange reagents used in Method OIA-1677. All methods for determination of cyanide generate cyanide waste and the metal in these wastes is not identified in cyanide determination. Therefore the wastes from all methods must be treated as hazardous unless it is shown that cyanide is not present above disposable levels. Section 14.0 of Method OIA-1677 requires proper handling and disposal of these wastes.

#### K. Miscellaneous

*Comment:* To date, there have not been contract laboratories set up to run proposed Method OIA-1677 and there are no commercial laboratories in the U.S. set up to run the new test method.

*Response:* There are numerous laboratories in the U.S. that have the instrumentation and can run Method OIA-1677 as written. Nine of these laboratories participated in the round-robin study. Generally, laboratory capacity expands after a method is approved for use in EPA's programs. EPA is not requiring use of Method OIA-1677 in any rules or withdrawing approval for use of any of the methods presently approved. EPA is simply approving another method for use at 40 CFR part 136.

*Comment:* The text clearly states that samples with cyanide concentrations higher than 2 mg/L will be reported with a high bias whenever Method OIA-1677 is used. For samples with cyanide concentrations less than 0.2 mg/L, the CATC and Method OIA-1677 methods report approximately the same values. Because most environmental samples have cyanide concentrations less than 0.2 mg/L, e.g., the Safe Drinking Water Act (SDWA) maximum contaminant level (MCL), what is the advantage of Method OIA-1677?

*Response:* The bias that occurs with high concentrations of certain cyanides was addressed above in section IV C. Regarding the advantage of Method OIA-1677 over other approved methods for cyanides, EPA has documented through the round-robin validation study that Method OIA-1677 offers significant advantages over existing distillation-based methods, including speed, freedom from interferences that



may occur in highly complex wastewater matrices, and complete recovery of metal cyano complexes.

*Comment:* What is the validity of the section III C item 5 of the preamble: "EPA considers Method OIA-1677 to be a significant addition to the suite of analytical testing procedures for available cyanide because it \* \* \* (5) shortens sample analysis time" because of the 120 second analysis time of Method OIA-1677 versus the 90 second analysis time of another cyanide analysis method (Alpken's Colorimetric RFA)?

*Response:* Method OIA-1677 has the shortest analysis time of any method approved for determination of available cyanide. Alpken's Colorimetric RFA method, cited in the comment, is not approved for use at 40 CFR part 136.

## V. References

1. Solujic, Lj.; Milosavljevic, E.B.; Hendrix, J.L.; Straka, M.R.; Gallagher, N.P.; "Cyanide Determination Methods: Distillation vs. Flow Injection Analysis," Randol Gold Forum '96, Squaw Creek, CA, April, 1996, 167-173.

2. Beck, M.T.; "Critical Survey of Stability Constants of Cyano Complexes," Pure & Appl. Chem. 1987, 59, 1703-1720.

3. Milosavljevic, E.B.; Solujic, Lj.; Hendrix, J.L.; "Rapid Distillationless 'Free Cyanide' Determination by a Flow Injection Ligand Exchange Method," Environ. Sci. & Technol. 1995, 29, 426-430.

4. J.C. Wilmot, *et al.*; "Formation of Thiocyanate During Removal of Sulfide as Lead Sulfide Prior to Cyanide Determination," Analyst, 1996, 121, 799-801.

5. Goldberg, M.M.; Clayton, C.A.; Potter, B.B.; "The Effect of Multiple Interferences on the Determination of Total Cyanide in Simulated Electroplating Waste by EPA Method 335.4," Proceedings of The Seventeenth Annual EPA Conference On Analysis Of Pollutants in the Environment, Norfolk, VA, 1994, pp. 395-427.

6. Goldberg, M.M. and Clayton, C.A.; "Effects of Metals, Ligands, and Oxidants on Cyanide Analysis: Gold Mining Waste Case Study," Proceedings of The Eighteenth Annual EPA Conference On Analysis Of Pollutants in the Environment, Norfolk, VA, 1995, pp. 87-126.

## VI. Regulatory Requirements

### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or Tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule would impose no enforceable duty on any State, local or Tribal governments or the private sector, nor would it significantly or uniquely affect them. This rule makes available an additional analytical test procedure which would merely augment the testing options and standardize the procedures when testing is otherwise required by a regulatory agency. Therefore, today's rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

### C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, we defined: (1) Small businesses according to SBA size standards; (2) small governmental jurisdictions as governments of a city, county, town, school district or special district with a population less than 50,000; and (3) small organizations as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This final rule approves an additional testing procedure for the measurement of available cyanide in wastewater. However, this regulation does not require its use. Rather, the final rule merely provides another option because any of the testing procedures currently approved at 40 CFR part 136 can be used if monitoring is otherwise required for this pollutant under the CWA.



*D. Paperwork Reduction Act*

This rule contains no information collection requirements. Therefore, no information collection request has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

*E. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on January 31, 2000.

*F. National Technology Transfer and Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards for measuring "available cyanide," and none were brought to our attention in comments. Therefore, EPA has decided to use Method OIA-1677.

The American Society of Testing and Materials (ASTM) is in the balloting

process for approval of a voluntary consensus standard method for "available cyanide." The ASTM method may differ slightly from Method OIA-1677. If ASTM or another voluntary consensus standard body approves such a method and EPA determines that the method is suitable for compliance monitoring and other purposes, EPA would promulgate the method in a subsequent rulemaking.

*G. Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866.

*H. Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the

process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule merely approves an additional testing procedure for the measurement of available cyanide in wastewater. Today's action does not, however, require use of the alternative method. The rule provides laboratory analysts with another option to the list of currently approved testing procedures 40 CFR part 136, which can be used if monitoring is otherwise required for this pollutant under the CWA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*I. Executive Order 13084*

Under Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives

of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Further, this rule does not impose substantial direct compliance costs on Tribal governments. This rule makes available an additional testing procedure which would be used when testing is

otherwise required by a regulatory agency to demonstrate compliance with permit limits for cyanide. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### List of Subjects in 40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 20, 1999.

**Carol M. Browner,**  
Administrator.

In consideration of the preceding, EPA amends 40 CFR part 136 as follows:

#### PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation of 40 CFR part 136 continues to read as follows:

**Authority:** Secs. 301, 304(h), 307, and 501(a) Pub. L. 95-217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended in paragraph (a), Table IB.—List of Approved Inorganic Test Procedures, by revising entry 24 and adding a new footnote 44 and by adding a new paragraph (b)(43) to read as follows:

#### § 136.3 Identification of test procedures.

(a) \* \* \*

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA <sup>1 35</sup>	STD methods 18th ed.	ASTM	USGS <sup>2</sup>	Other
* * *					
24. Available Cyanide, mg/L Cyanide amenable to chlorination (CATC), Manual distillation with MgCl <sub>2</sub> followed by titrimetry or spectrophotometry. Flow injection and ligand exchange, followed by amperometry.	335.1	4500-CN G .....	D2036-91(B).		<sup>44</sup> OIA-1677
* * *					

<sup>1</sup> "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL-CI), EPA-600/4-79-020, Revised March 1983 and 1979 where applicable.

<sup>2</sup> Fishman, M.J., *et al.*, "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

<sup>35</sup> Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals."

<sup>44</sup> Available Cyanide, Method OIA-1677 (Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry), ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842-9010.

(b) \* \* \*

(43) Method OIA-1677, Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry. August 1999. ALPKEM, OI Analytical, Box 648, Wilsonville, Oregon 97070 (EPA-821-R-99-013). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB99-132011. Cost: \$22.50. Table IB, Note 44.

[FR Doc. 99-33627 Filed 12-29-99; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-6516-1]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA), Region 8, announces the deletion of the Monticello Radioactive Contaminated Properties Site (Site), located in Monticello, Utah, from the National Priorities List (NPL). The NPL is the National Oil and Hazardous

Substances Pollution and Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). EPA, with the preliminary concurrence of the State of Utah Department of Environmental Quality (UDEQ), has determined that responsible parties have implemented all appropriate response actions required and that no further response at the Site is appropriate.

**DATES:** This direct final rule will be effective February 28, 2000, unless EPA receives significant adverse or critical comments by January 31, 2000. If significant adverse or critical comments are received, EPA will publish a timely withdrawal of the direct final rule in the