

records from certain provisions of the Privacy Act. The system of records is identified as S100.10 GC, entitled Whistleblower Complaint and Investigation Files.

The exemption is intended to increase the value of the system of records for law enforcement purposes; to comply with prohibitions against the disclosure of certain kinds of information; and to protect the privacy of individuals identified in the system of records.

**EFFECTIVE DATE:** December 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Christensen, 703-617-7583.

**SUPPLEMENTARY INFORMATION:**

*Executive Order 12866*

The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute "significant regulatory action." Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the right and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

*Regulatory Flexibility Act of 1980*

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

*Paperwork Reduction Act*

The Director, Administration and Management, Office of the Secretary of Defense, certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This rule adds an exempt Privacy Act system of records to the DLA inventory of systems of records. DLA performs as one of its principal functions investigations into whistleblower

complaints arising from DLA employees and the employees of DLA contractors. The exempt system reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The authority for the exemption may be found in 5 U.S.C. 552a(k)(2). The system would thus be exempt from sections 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f). The Director adopts these exemptions. The proposed rule was published on October 13, 1994, at 59 FR 51911. No comments were received, therefore, the DLA is adopting the exemption rule.

**List of Subjects in 32 CFR Part 323**

Privacy.

Accordingly, the Defense Logistics Agency amends 32 CFR part 323 as follows:

1. The authority citation for 32 CFR part 323 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. 32 CFR part 323, Appendix H is amended by adding paragraph d.

**Appendix H to Part 323—DLA Exemption Rules**

\* \* \* \* \*

d. ID: S100.10 GC (Specific exemption).

1. *System name:* Whistleblower Complaint and Investigation Files.

2. *Exemption:* Portions of this system of records may be exempt under the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

3. *Authority:* 5 U.S.C. 552a(k)(2).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil investigation and the right to contest the contents of those

records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1), because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4)(G) and (e)(4)(H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system. However, DLA will continue to publish such a notice in broad generic terms as is its current practice.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: January 6, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95-843 Filed 1-12-95; 8:45 am]

BILLING CODE 5000-04-F

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 260**

[FRL-5125-7]

RIN 2050-AD06

**Hazardous Waste Management System; Testing and Monitoring Activities**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, for testing and monitoring activities. This amendment adds new and revised methods as Update II to the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. It also incorporates the SW-846 Third Edition, as amended by Updates I (promulgated August 31, 1993), II, and IIA (promulgated January 4, 1994 as part of the wood surface protection rule), into 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA. The intent of this amendment is to provide better and more complete analytical technologies for RCRA-related testing and thus promote cost effectiveness and flexibility in choosing analytical test methods.

**EFFECTIVE DATE:** January 13, 1995. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of January 13, 1995.

**ADDRESSES:** The official record for this rulemaking (Docket No. F-94-WT2F-FFFFF) is located at the U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (room M-2616), and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost \$0.15 per page.

Copies of the Third Edition of SW-846 as amended by Updates I, II, and IIA are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 783-3238.

The GPO document number is 955-001-00000-1. New subscriptions to SW-846 may be ordered from GPO at a cost of \$319.00 (subject to change). There is a 25% surcharge for foreign subscriptions and renewals.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or call (703) 920-9810; or, for hearing impaired, call TDD (800) 553-7672 or (703) 486-3323. For technical information, contact Kim Kirkland or Charles Sellers, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4761.

**SUPPLEMENTARY INFORMATION:****Preamble Outline**

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**I. Authority**

These regulations are being promulgated under the authority of sections 1006, 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended [42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

**II. Background Summary and Regulatory Framework**

EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended. Use of some of these methods is required by specific regulations, as discussed below. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

Several of the hazardous waste regulations under subtitle C of RCRA require that specific testing methods described in SW-846 be employed for certain applications. Any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. For the convenience of the reader, the Agency lists below a number of the sections found in 40 CFR parts 260 through 270 that require the use of a specific method for a particular application, or the use of appropriate SW-846 methods in general:

- (1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (*i.e.*, delisting petitions);
- (2) Section 261.22(a) (1) and (2)—Evaluation of waste against the corrosivity characteristic;
- (3) Section 261.24(a)—Leaching procedure for evaluation of a waste against the toxicity characteristic;
- (4) Section 261.35(b)(2)(iii)(A)—Testing rinsates from wood preserving cleaning processes;
- (5) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of a waste to determine if free liquid is a component of the waste;
- (6) 264.1034(d)(1)(iii) and 265.1034(d)(1)(iii)—Testing total organic concentration of air emission standards for process vents;
- (7) 264.1063(d)(2) and 265.1063(d)(2)—Testing total organic concentration of air emission standards for equipment leaks;
- (8) Section 266.106(a)—Analysis in support of compliance with standards to control metals emissions from burning hazardous waste in boilers and industrial furnaces;
- (9) Section 266.112(b) (1) and (2)(i)—Certain analysis in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;

(10) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;

(11) Sections 268.40 (a), (b) and (f), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste extract to determine compliance with Land Disposal treatment standards;

(12) Section 268.7(a)—Leaching procedure for evaluation of a waste to determine if the waste is restricted from land disposal;

(13) Sections 270.19(c)(1) (iii) and (iv), and 270.62(b)(2)(i) (C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and

(14) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2) (i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantitation conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

In other situations, this EPA publication functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in satisfying RCRA-related sampling and analysis requirements.

SW-846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW-846 to support changes in the regulatory program and to improve method performance. Update II represents such an incorporation.

### III. Update IIA to SW-846, Third Edition

On January 4, 1994 (59 FR 458), the Agency issued a final hazardous waste listing determination for wastes generated from the use of chlorophenolic formulations in wood surface protection processes. This rule also finalized an April 27, 1993 (58 FR 25707) proposal to include Method 4010, "Screening for Pentachlorophenol by Immunoassay" in the Third Edition of SW-846. No comments were received on Method 4010 and it was incorporated by reference in 40 CFR 260.11(a) as Update IIA to the Third Edition of SW-846 in the January 4, 1994 Final Rule.

Update IIA (Method 4010) is being distributed to SW-846 subscribers as part of the Final Update II package.

### IV. Overview of August 31, 1993 NPRM and Summary of Responses to Public Comments

#### A. Overview of Proposal

On August 31, 1993 (58 FR 46052), the Agency proposed to amend its hazardous waste testing and monitoring regulations under subtitle C of RCRA by (1) adding revised methods and chapters and new methods as Update II to SW-846 and incorporating the Third Edition as amended by Updates I and II, in 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA; (2) deleting a statement in Chapter Seven that states that "Method 9095, Paint Filter Liquids Test, Chapter Six [may be used] to determine free liquid" for purposes of characteristic testing; and (3) clarifying the regulatory requirements as to the temperature for pH measurements of highly alkaline wastes during corrosivity characteristic testing.

The Agency solicited comments on each of these proposed changes. Items B through D of this section summarize the major comments that were received and the actions taken by the Agency in response to those comments.<sup>1</sup>

#### B. Responses to Comments Regarding the Addition of Update II Methods and Chapters to SW-846

The Agency proposed, as part of Update II to SW-846, to revise several methods and chapters already contained in the Third Edition of SW-846 and its Update I, as incorporated by reference into 40 CFR 260.11. The revisions were proposed to improve the methods and provide additional performance information for these methods. The proposed revisions more accurately reflect SW-846 method improvements. Finally, as part of Update II, the Agency also proposed to add 33 new methods to SW-846.

The Agency received very few negative comments on the proposal to add the methods and revise certain chapters of Update II to SW-846. However, based on public comment and other reasons explained below in sections IV.B.1 and IV.B.2 of this preamble, the Agency has decided not to promulgate proposed new Methods 5100 and 5110 and the proposed revised

Method 9200A in Final Update II. The Agency is promulgating all other Proposed Update II new and revised methods and chapters as Final Update II of SW-846.

The comments received by the Agency on the addition of new methods and the revision of existing methods and chapters were technical in nature. Details on these comments and the Agency's responses may be found in the background document to this rulemaking. The Agency has incorporated several of the suggested changes into the Update II package, as described in the background document. Sections IV.B.1 through IV.B.8 of this preamble summarize the major comments and responses which the Agency believes may be of particular interest to the regulated community.

#### 1. Non-Promulgation of Methods 5100 and 5110 in Update II

The Agency wishes to eliminate the promulgation of redundant, cross-program methods, where possible. Therefore, the Agency is not promulgating Method 5100 and 5110 in Final Update II because they are redundant and obsolete versions of the Office of Air Quality, Planning and Standards (OAQPS) Methods 25D and 25E, issued in support of analyses conducted under the Clean Air Act. There are currently no RCRA applications for which Method 5100 or 5110 are applicable. Based on the Agency's current policy of not proliferating redundant methods when appropriate methods are available from other Program Offices, and that there are no planned RCRA applications for these methods in the near future, the Agency believes that there is no need to promulgate Method 5100 or 5110 at this time. For informational purposes, Method 25D can be found in Appendix A of 40 CFR part 60; and Method 25E is currently available from the Office of Air Quality Planning and Standards (OAQPS), Mailcode MD-14, Technical Support Division, Research Triangle Park, NC 27711, (919) 541-5536.

#### 2. Non-Promulgation of Method 9200A in Update II

The analytical procedure found in SW-846 Method 9200 (Nitrate) was recently demonstrated to be unreliable by both the Agency's Environmental Monitoring Support Laboratory in Cincinnati (EMSL-Ci) and the American Water Works Association (AWWA). The unstable nature of the analytical reagents and excessively tight temperature control requirements were contributing factors to the method's unreliability. In fact, on December 15,

<sup>1</sup> Other comments, together with the Agency's response thereto, have been placed in the official record for this rulemaking, "Response to Public Comments Background Document, Promulgation of the Second Update to SW-846, Third Edition". (Docket No. F-94-WT2F-FFFFF)

1993 (58 FR 65622), the Agency proposed to remove Method 353.1, which contains a brucine-sulfanilic acid procedure similar to Method 9200, as approved for the determination of nitrate under 40 CFR 141.23 of the National Primary Drinking Water Regulations. The AWWA also removed the brucine-sulfanilic acid (Method 419 D) method from its publication "Standard Methods for the Examination of Water and Wastewater". To be consistent with this and any other related Agency actions, the Agency is not including Method 9200A, a modified version of Method 9200, in Final Update II, and plans to propose the removal of Method 9200 from SW-846 at a later date. (Method 9200A reversed the order of brucine-sulfanilic acid and sulfuric acid reagents from that described in Method 9200 in an unsuccessful attempt to improve reliability.) In the rare cases where nitrate is a target analyte for RCRA-related analyses, the regulated community may use Method 9056—The Determination of Inorganic Anions by Ion Chromatography which is included in this Final Rule, or an appropriate method approved and issued by other Agency programs, such as Method 353.2—Nitrogen, Nitrate-Nitrite, found in the methods manual "Methods for Chemical Analysis of Water and Wastes". (Although Method 353.2 provides combined nitrate-nitrite results, separate values can be obtained according to Sec. 2.1 of the method.)

### 3. Flexibility Allowance in SW-846

Many public comments requested the use of alternative equipment, materials, and procedures during the application of the Update II SW-846 methods. Although the Agency agrees with most of the alternatives suggested by these comments, the Agency did not change the content of any method in response to the comments because the necessary flexibility in equipment, materials, or method application is already allowed by the SW-846 Disclaimer, presented at the beginning of the document, and Sections 2.1.1 and 2.1.2 of Chapter Two. Based on the large number of comments requesting the inclusion of alternatives in SW-846 methods, the Agency believes that this inherent flexibility and performance-based approach allowed by SW-846 is not sufficiently understood by the regulated community. The Agency, therefore, wishes to stress that flexibility in the use of equipment, glassware, and procedures is allowed pursuant to the SW-846 Disclaimer and Secs. 2.1.1 and 2.1.2 of Chapter Two.

Specifically, as stated in the SW-846 Disclaimer, SW-846 methods are designed to be used with equipment from any manufacturer that results in suitable method performance. In general, the equipment specifications and settings given in the SW-846 methods represent the particular instruments used during method development, or subsequently approved for use in the method. However, these specifications need not be explicitly followed. Other equipment may be used as long as the laboratory achieves equivalent or superior method performance appropriate for the particular application.

In addition, many types and sizes of glassware and supplies are commercially available and it is possible to prepare reagents and standards in many different ways. Therefore, as stated in both the SW-846 Disclaimer and Sec. 2.1.2 of Chapter Two, those specified in the methods may be replaced by any similar type as long as the substitution does not affect the overall quality of the analyses. Finally, Sec. 2.1.1 of Chapter Two observes that SW-846 methods were designed through sample sizing and concentration procedures to address trace analyses (<1000 ppm); however, the methods can be made applicable to other analyses through the use of appropriate sample preparation techniques.

### 4. Consolidation of GFAA Methods

One commenter suggested that the Agency consolidate the separate graphite furnace atomic absorption (GFAA) methods in the 7000 Series into a single method. The commenter found the present approach of separate methods for individual elements to be cumbersome and redundant. The Agency appreciates this point, and is considering both Flame and GFAA method consolidation as a future option for SW-846, provided that analytical flexibility can be retained during analysis of the individual elements. However, it is not possible to combine individual GFAA methods as part of this Final Rule without further study by the Agency and without providing an opportunity for public comment on any new, consolidated method. The Agency believes that adding the individual GFAA methods to SW-846 at this time is more beneficial to the analytical community.

### 5. SPE as a Preparative Method to Method 8081A

One commenter requested that the Agency add solid phase extraction (SPE) as a preparative method in water

matrices for determination by Method 8081A—Organochlorine Pesticides by Gas Chromatography: Capillary Column Technique. The Agency agrees that such a method would be useful, but it cannot be added at this time as part of Final Update II. The addition of this method requires submission of performance data for review by the SW-846 Technical Workgroup, proposal in the **Federal Register** and an opportunity for public comment. SPE is a preparative technique for separating extractable organic analytes from water matrices for determination by gas chromatography or other appropriate technique, and will be considered for inclusion in SW-846 as a 3500 Series method. The Agency is working on the development of a general SPE method which will be included in a future update of SW-846.

### 6. Deletion of Ultrasonic Extraction (Method 3550) as a Preparative Method for Method 8141A and the Re-Inclusion of Tables 5, 6 and 7 to Method 8141A

One commenter observed that when Method 3550—Ultrasonic Extraction is used as a preparative method for Method 8141A, several analytes of interest are lost. The Agency agrees; a published study has demonstrated that decomposition of compounds of interest during sample preparation by ultrasonic extraction is indeed a problem.<sup>2</sup> Therefore, the Agency has deleted all references to Method 3550 in Method 8141A and has added a section which clearly states that Method 3550 is not an appropriate sample preparation method for Method 8141A because of the potential for target analyte destruction during the ultrasonic extraction process. For consistency with this information, references to Method 8141 were also removed from Table 2 of Method 3550A which delineates specific extraction conditions for various determinative methods.

In addition, the Agency has re-included three organophosphorus compound performance data tables in the final version of Method 8141A which were inadvertently deleted from the proposed version of the method. Specifically, the Agency is re-including Table 5, which provides recovery data from separatory funnel extraction; Table 6, which provides recovery data from continuous liquid-liquid extraction; and Table 7, which provides recovery data from Soxhlet extraction. These tables are unchanged from the original versions which were included in Method 8141 as Tables 4, 5 and 6, respectively.

<sup>2</sup> Kotronarou, et al., Environ. Sci. Technol., 1992, 26, pp. 1460-1462.

#### 7. Consistent Use of "RF" as Terminology for "Relative Response Factor" in GC Methods

A few commenters noted an inconsistent use of the terminology "RF" versus "RRF" in the 8000 Series gas chromatography (GC) methods. In response to these comments, the Agency has replaced all uses of the term "RRF" with the term "RF" to consistently represent "relative response factor" in all GC methods. This is an editorial change to eliminate confusion caused by two terms having the same definition.

#### 8. Additional Ion Trap Data Guidance in Method 8260A

The Agency received several comments requesting additional guidance regarding how to use ion trap mass spectrometers in Method 8260A—Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry: Capillary Column Technique. In response to these comments, the Agency has added several new sections to the method, specifically Sec. 4.4.2.4, which identifies use of a fourth capillary column and Sec. 7.2.7 which provides guidance regarding the direct split interface of the column. In addition, the Agency added guidance to Sec. 4.4.3.1 regarding the selection of the proper quantitation ion in the event of ion-molecule reactions with water and methanol which may produce interferences that coelute with chloromethane and chloroethane. The Agency also added optional quantitation ions to Table 5 for chloromethane and chloroethane for use in the event that the ion-molecule reactions with water and methanol are observed.

#### C. Free Liquids and Characteristic Tests

In section III.C of the August 31, 1993 proposed rule, the Agency proposed to delete a statement in Chapter Seven of SW-846 which stated "Method 9095, Paint Filter Liquids Test, Chapter Six [may be used] to determine free liquid" for purposes of testing for the hazardous waste characteristics. In the proposed Chapter Seven, the Agency replaced that statement with "Use the pressure filtration technique specified in Method 1311 (TCLP) to determine free liquid". The Agency has decided not to include the proposed revision to Chapter Seven at this time because, based on public comment, the Agency was not sufficiently clear regarding its intent, as some commenters suggested, and the appropriate application of the revised guidance. It was not the Agency's intent to discourage the use of Method 9095 in demonstrating the "positive", i.e., that a liquid exists for the purpose of testing

for the corrosivity and ignitability characteristics. The Agency instead intended to propose, as guidance, that Method 9095 (or any other common laboratory separation technique) is not adequate to demonstrate the "negative", i.e., that a waste *does not* contain a liquid for the purpose of characteristic testing. Consistent with that intent, a proper statement of the use of Method 9095 to determine a free liquid for the purpose of testing for hazardous waste characteristics is as follows:

"The definitive procedure for determining if a waste contains a liquid for the purposes of the ignitability and corrosivity characteristics is the pressure filtration technique specified in Method 1311. However, if one obtains a free liquid phase using Method 9095, then that liquid may instead be used for purposes of determining ignitability and corrosivity. However, wastes that do not yield a free liquid phase using Method 9095 should then be assessed for the presence of an ignitable or corrosive liquid using the pressure filtration technique specified in Method 1311."

Since this language was not explicitly proposed for inclusion in Chapter Seven, or otherwise provided for public comment, and since the Agency received numerous negative public comments regarding the content of section III.C of the proposed rule, the Agency will not at this time revise Chapter Seven by removing the statement on the use of Method 9095 from Sec. 7.2.1 of the Chapter. The Agency, nonetheless, stands behind the position described in the language above and may, therefore, repropose this revision to Chapter Seven in the future with better clarification regarding its intent.

In response to public comment, the Agency also notes that Chapter Seven is RCRA guidance, and that the Agency did not propose to add an analytical requirement regarding liquid determinations to any part of the RCRA regulations.

#### D. pH Testing

The Agency requested comment on whether to add a temperature requirement for the purposes of corrosivity testing by proposed Method 9040A (pH Electrometric Measurement) and Method 9045B (Soil and Waste pH). The Agency is still responding to public comments regarding this proposed temperature requirement. The Agency did not want to delay the promulgation of Update II as a result of its ongoing deliberations on this limited aspect of the proposal. Therefore, Methods 9040A and 9045B of Update II do not at this time include any changes regarding a temperature requirement during the

measurement of pH for determination of the characteristic of corrosivity. Final action regarding whether or not to add a temperature requirement will be deferred until the Agency has fully responded to all relevant comments. If the Agency decides at that time to add a temperature requirement to Method 9040A or 9045B as a result of public comment, the methods will be revised and added to SW-846 as part of a separate rulemaking. Responses to comments regarding the pH temperature clarification will also be included in a separate background document specifically prepared to support such a future action.

#### V. Overview of the Final Rule

This rule makes final the Agency's proposal to add revised methods and chapters and new methods as Update II to SW-846 and incorporate the Third Edition as amended by Updates I, II, and IIA, in 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA.

Table 1 lists all of the revised methods and chapters and new methods that are approved by the Agency for inclusion in Final Update II to SW-846. The table lists the chapters and methods of Update II in the order of their relative location in SW-846. The vertical "\*" notation indicates portions of SW-846, Third Edition (as amended by Updates I and IIA), which are unchanged by Final Update II.

TABLE 1.—FINAL UPDATE II OF SW-846, THIRD EDITION<sup>1</sup>

| Method No. | Title  |
|------------|--|
| .          | .  |
| .          | .  |
| .          | Abstract   |
| .          | Table of Contents  |
| .          | .  |
| .          | .  |
| .          | Chapter Two—Choosing the Correct Procedure                               |
| .          | Chapter Three—Metallic Analytes  |
| .          | 3.1 Sampling Considerations  |
| .          | 3.2 Sample Preparation Methods   |
| .          | .  |
| .          | .  |
| 3015       | Microwave Assisted Acid Digestion of Aqueous Samples and Extracts        |
| 3051       | Microwave Assisted Acid Digestion of Sediments, Sludges, Soils, and Oils |
| .          | 3.3 Methods for Determination of Metals                                  |
| .          | .  |
| .          | .  |

TABLE 1.—FINAL UPDATE II OF SW-846, THIRD EDITION<sup>1</sup>—Continued

| Method No. | Title   |
|------------|---|
| 6020       | Inductively Coupled Plasma—Mass Spectrometry  |
| 7060A      | Arsenic (Atomic Absorption, Furnace Technique)  |
| 7062       | Antimony and Arsenic (Atomic Absorption, Borohydride Reduction)   |
| 7080A      | Barium (Atomic Absorption, Direct Aspiration)   |
| 7131A      | Cadmium (Atomic Absorption, Furnace Technique)  |
| 7470A      | Mercury in Liquid Waste (Manual Cold-Vapor Technique)   |
| 7471A      | Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique)   |
| 7741A      | Selenium (Atomic Absorption, Gaseous Hydride)   |
| 7742       | Selenium (Atomic Absorption, Borohydride Reduction)   |
|            | Chapter Four—Organic Analytes   |
|            | 4.1 General Considerations  |
|            | 4.2 Sample Preparation Methods  |
|            | 4.2.1 Extractions and Preparations  |
| 3510B      | Separatory Funnel Liquid-Liquid Extraction  |
| 3520B      | Continuous Liquid-Liquid Extraction   |
| 3540B      | Soxhlet Extraction  |
| 3541       | Automated Soxhlet Extraction  |
| 3550A      | Ultrasonic Extraction   |
| 5040A      | Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): GC/MS Technique                                   |
| 5041       | Protocol for Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): Wide-bore Capillary Column Technique |
| 3600B      | 4.2.2 Cleanup   |
|            | Cleanup   |
| 3630B      | Silica Gel Cleanup  |
| 3640A      | Gel-Permeation Cleanup  |

TABLE 1.—FINAL UPDATE II OF SW-846, THIRD EDITION<sup>1</sup>—Continued

| Method No. | Title   |
|------------|---|
| 3665       | Sulfuric Acid/Permanganate Clean-up   |
|            | 4.3 Determination of Organic Analytes   |
|            | 4.3.1 Gas Chromatographic Methods   |
| 8010B      | Halogenated Volatile Organics by Gas Chromatography   |
| 8020A      | Aromatic Volatile Organics by Gas Chromatography  |
| 8021A      | Halogenated Volatiles by Gas Chromatography Using Photoionization and Electrolytic Conductivity Detectors in Series: Capillary Column Technique |
| 8031       | Acrylonitrile by Gas Chromatography   |
| 8032       | Acrylamide by Gas Chromatography  |
| 8061       | Phthalate Esters by Capillary Gas Chromatography with Electron Capture Detection (GC/ECD)   |
| 8080A      | Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography   |
| 8081       | Organochlorine Pesticides and PCBs as Aroclors by Gas Chromatography: Capillary Column Technique  |
| 8120A      | Chlorinated Hydrocarbons by Gas Chromatography  |
| 8121       | Chlorinated Hydrocarbons by Gas Chromatography: Capillary Column Technique  |
| 8141A      | Organophosphorus Compounds by Gas Chromatography: Capillary Column Technique  |
| 8150B      | Chlorinated Herbicides by Gas Chromatography  |
| 8151       | Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzoylation   |
|            | Derivatization: Capillary Column Technique  |
|            | 4.3.2 Gas Chromatographic/Mass Spectroscopic Methods  |

TABLE 1.—FINAL UPDATE II OF SW-846, THIRD EDITION<sup>1</sup>—Continued

| Method No.        | Title   |
|-------------------|---|
| 8240B             | Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)  |
| 8250A             | Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)  |
| 8260A             | Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique  |
| 8270B             | Semivolatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS): Capillary Column Technique   |
| 8290              | Polychlorinated Dibenzodioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High-Resolution Gas Chromatography/ High-Resolution Mass Spectrometry (HRGC/HRMS) |
| 4.3.3             | High Performance Liquid Chromatographic Methods   |
| 8315              | Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC)  |
| 8316              | Acrylamide, Acrylonitrile and Acrolein by High Performance Liquid Chromatography (HPLC)   |
| 8318              | N-Methylcarbamates by High Performance Liquid Chromatography (HPLC)   |
| 8321              | Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography/Thermospray/Mass Spectrometry (HPLC/TSP/MS) or Ultraviolet (UV) Detection        |
| 8330              | Nitroaromatics and Nitramines by High Performance Liquid Chromatography (HPLC)  |
| 8331              | Tetrazene by Reverse Phase High Performance Liquid Chromatography (HPLC)  |
| 8410              | 4.3.4 Fourier Transform Infrared Methods  |
|                   | Gas Chromatography/Fourier Transform Infrared (GC/FT-IR) Spectrometry for Semivolatile Organics: Capillary Column   |
|                   | 4.4 Miscellaneous Screening Methods   |
| 4010 <sup>2</sup> | Screening for Pentachlorophenol by Immunoassay  |
| 8275              | Thermal Chromatography/Mass Spectrometry (TC/MS) for Screening Semivolatile Organic Compounds   |
|                   | Chapter Five—Miscellaneous Test Methods   |

TABLE 1.—FINAL UPDATE II OF SW-846, THIRD EDITION<sup>1</sup>—Continued

| Method No. | Title   |
|------------|---|
| 5050       | Bomb Preparation Method for Solid Wastes  |
| 9020B      | Total Organic Halides (TOX)   |
| 9056       | Determination of Inorganic Anions by Ion Chromatography   |
| 9071A      | Oil and Grease Extraction Method for Sludge and Sediment Samples  |
| 9075       | Test Method for Total Chlorine in New and Used Petroleum Products by X-Ray Fluorescence Spectrometry (XRF)    |
| 9076       | Test Method for Total Chlorine in New and Used Petroleum Products by Oxidative Combustion and Microcoulometry |
| 9077       | Test Methods for Total Chlorine in New and Used Petroleum Products (Field Test Kit Methods)                   |
| 9252A      | Chloride (Titrimetric, Mercuric Nitrate)  |
| 9253       | Chloride (Titrimetric, Silver Nitrate)  |
| 1312       | Chapter Six—Properties Synthetic Precipitation Leaching Procedure   |
| 9040A      | ph Electrometric Measurement  |
| 9045B      | Soil and Waste pH   |
| 9096       | Liquid Release Test (LRT) Procedure   |
|            | Chapter Seven—Introduction & Regulatory Definitions   |

**VI. State Authority**

*A. Applicability in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

*B. Effect on State Authorization*

Today's rule promulgates standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. Therefore, this rule is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's proposed rule is determined

based on the date of final rule promulgation in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in fulfillment of the final rule until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official applications for final authorization within 12 months after the effective date of today's rule are not required to include in their applications requirements equivalent to the requirements in today's rule. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective date of today's rule must include requirements at least as stringent as the requirements in the final rule in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

**VII. Effective Date**

Section 3010 of RCRA provides that regulations promulgated pursuant to subtitle C of RCRA shall take effect six months after the date of promulgation. However, HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when, among other things, the Agency finds that the regulated community does not need six months to come into compliance. Since today's rule provides greater flexibility to the regulated community in testing and monitoring solid waste, the Agency believes the regulated community does not need six months to come into compliance. For that same reason, the Agency believes that good cause exists under the Administrative Procedures Act, 5 U.S.C. section 553(d), for not delaying the effective date of this rule. Therefore, this rule is effective January 13, 1995.

<sup>1</sup> The vertical "\*" indicates unchanged portions of SW-846.

<sup>2</sup> Method 4010 is Update IIA.

## VIII. Regulatory Analyses

### A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], EPA 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 and the requirements of the Executive Order.

### B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. section 601-612, Pub. L. 96-354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility to all of the regulated community by providing an increased choice of appropriate analytical methods for RCRA applications, including small entities. Therefore, in accordance with 5 U.S.C. section 605(b), I hereby certify that this rule will not have a significant economic impact on

a substantial number of small entities. Thus, the regulation does not require an RFA.

### C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

### List of Subjects in 40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

Dated: December 13, 1994.

#### Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

### PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

#### Subpart B—Definitions

2. Section 260.11 (a) is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference to read as follows:

#### § 260.11 References.

(a) \* \* \*

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 [Third Edition (November, 1986), as amended by Updates I (July, 1992), II (September, 1994), and IIA (August, 1993)]. The Third Edition of SW-846 and Updates I, II, and IIA (document number 955-001-00000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

\* \* \* \* \*

[FR Doc. 95-821 Filed 1-12-95; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 271

[FRL-5138-9]

### Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination on application of Michigan for final authorization.

**SUMMARY:** Notice is hereby given that the United States Environmental Protection Agency (U.S. EPA) approves the revisions to the State of Michigan's authorized hazardous waste management program resulting from the reorganization of the Michigan Department of Natural Resources (MDNR) by Executive Order 1991-31.

**EFFECTIVE DATE:** January 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Feigler, RCRA Regulatory Development Section, U.S. EPA, Region 5, 77 W. Jackson (HRM-7J), Chicago, Illinois 60604, or telephone (312) 886-4179.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On October 21, 1994, EPA published in the **Federal Register** a notice announcing the preliminary determination to approve the State of Michigan's hazardous waste management program, as revised, pursuant to Section 3006(b) of the Resource Conservation and Recovery Act (RCRA) and 40 CFR 271.21(b)(4).

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6929(b) have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. When either EPA's or a State program's controlling statutory or regulatory authority is modified or supplemented, or when certain other changes occur, revisions to State hazardous waste management programs may be necessary. The procedures that States and EPA must follow for revision of State programs are found at 40 CFR 271.21(b).

The State of Michigan initially received final authorization for its hazardous waste management program effective on October 30, 1986 (51 FR 36804-36805, October 16, 1986). Subsequently, Michigan received authorization for revisions to its program, effective on January 23, 1990 (54 FR 225, November 24, 1989); June 24, 1991 (56 FR 18517, April 23, 1991);