

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-7529-7]

RIN 2040-AD71

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Ambient Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** By today's action, EPA approves test methods for the analysis of *Escherichia coli* (*E. coli*), enterococci, *Cryptosporidium* and *Giardia* in fresh ambient water matrices. In addition, EPA approves test methods for the analysis of enterococci in marine ambient water matrices. The test methods approved in today's rule have been published by the following organizations: EPA, American Public Health Association, American Water Works Association, Water Environment Federation, Association of Official Analytical Chemists International, and American Society for Testing and Materials, or commercial vendors. EPA's approval of these methods will help States, Tribes, communities, and environmental laboratories better assess public health risks from microbiological pollutants.

**DATES:** This regulation is effective August 20, 2003. The incorporation by reference of these methods is approved by the Director of the Federal Register

on August 20, 2003. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on August 4, 2003 as provided at 40 CFR 23.2.

**FOR FURTHER INFORMATION CONTACT:** Robin K. Oshiro, Engineering and Analysis Division (4303T), Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call (202) 566-1075 or E-mail at [oshiro.robin@epa.gov](mailto:oshiro.robin@epa.gov).

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

EPA Regions, as well as States, Tribes, and Territories authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits to implement the technology-based and water quality-based requirements of the Clean Water Act (CWA). Forty five States and one Territory are currently authorized to issue NPDES permits. EPA retains permit issuance authority in non-authorized jurisdictions. NPDES permitting authorities 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 permitting authority must specify one of the approved testing procedures or an approved alternate test procedure for the measurements required under the permit. Although

EPA is including test methods for four biological pollutants in 40 CFR 136.3, it recommends their use for ambient water quality monitoring only. EPA is not approving these test methods for effluent matrices. Therefore, EPA expects entities operating under an NPDES permit would be affected by the promulgation of these ambient methods only where their permit specifies ambient monitoring requirements for the specified parameters.

EPA developed and recommended ambient recreational water quality criteria for *E. coli* and enterococci bacteria and is considering criteria for *Cryptosporidium* and *Giardia*. The States, Territories, and Tribes may adopt these criteria into their water quality standards and may issue water quality-based permits that require monitoring for these pollutants in ambient waters. If the NPDES permitting authority requires ambient water monitoring in the permit for the specified parameters, dischargers could be affected by the standardization of testing procedures in this rulemaking. Generally, the permitting authority requires the use of methods approved at 40 CFR part 136 for compliance with such monitoring requirements. If no approved methods are available at 40 CFR part 136, then the permitting authority has discretion to specify the use of suitable methods.

In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under the CWA section 401, approved testing procedures generally must be used where applicable. Categories and entities that may be regulated include:

Category	Examples of potentially regulated entities
State, Territorial and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program.
Municipalities .....	Publicly-owned treatment works with ambient monitoring requirements for the specified parameters in their NPDES permits.
Industry .....	Industrial facilities with ambient monitoring requirements for the specified parameters in their NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or organization is regulated by this action, you should carefully examine the applicability criteria in parts 122 and 136 of title 40 of the Code of Federal Regulations. 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.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2002-0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the

official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is