

60 days after it is published in the **Federal Register**. These final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). These amendments will be effective on September 24, 2002."

We are taking this action to correct the erroneous effective date in the September 24, 2002 notice in part because the rule as it existed prior to the amendments might have been construed to impose certain compliance obligations on affected sources prior to November 25, 2002. Since one of the stated purposes of the amendments was to eliminate confusion concerning these same compliance obligations, failure to correct the erroneous effective date would frustrate this purpose. We do not believe that any affected source will be adversely impacted by correction of the effective date.

Administrative Requirements

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards 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 entitlement, 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this correction notice does not constitute a "significant regulatory action" because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: November 4, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02-28501 Filed 11-7-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-7406-1]

Withdrawal of Federal Human Health and Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Federal regulations to withdraw water quality criteria applicable to Michigan. In 1992, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for 12 States and two territories, including Michigan, that had not fully complied with Clean Water Act (CWA); these regulations are known as the "National Toxics Rule" or "NTR". Thereafter, EPA published regulations pursuant to section 118 of the CWA to establish consistent enforceable protections for the Great Lakes system (Water Quality Guidance for the Great Lakes System). In compliance with the Water Quality Guidance for the Great Lakes System, Michigan adopted water quality standards on July 29, 1997, which included numeric water quality criteria and methodologies for deriving numeric criteria for the same priority toxic pollutants included in the NTR. EPA approved these standards on August 4, 2000. Since Michigan now has criteria, effective under the CWA, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally promulgated criteria are no longer needed. In this direct final rule, EPA is withdrawing Michigan from the NTR without prior proposal because EPA views this action as noncontroversial and does not anticipate adverse comment.

DATES: This rule is effective on February 6, 2003 without further notice, unless EPA receives adverse comment by December 9, 2002. If EPA receives such comment, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect.

Comments postmarked after this date may not be considered.

ADDRESSES: Please send an original and three copies of comments and enclosures (including references) to W-01-15, WQCR Comment Clerk; Water Docket, U.S. EPA, 1200 Pennsylvania Ave NW, MC-4101T, Washington, DC 20460. Alternatively, comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats avoiding the use of special characters and any form of encryption to *OW-Docket@epa.gov*. Identify electronic comments by the docket number W-01-15. Submit hand delivered comments to W-01-15, EPA's Water Docket, U.S. EPA, EPA West, 1301 Constitution Ave NW, Room B135, Washington DC 20460. No facsimiles (faxes) will be accepted. Comments will be available at the Water Docket, 202-566-2426, Monday through Friday, excluding legal holidays, during normal business hours of 8:30 a.m. to 4:30 p.m.

The supporting record for this rulemaking may be inspected at EPA Region 5, Office of Water, 77 West Jackson Boulevard, 16th Floor, Chicago, IL 60604-3507, Monday through Friday, excluding legal holidays, during normal business hours of 9 a.m. to 5 p.m.. Please contact Dave Pfeifer, as listed in the **FOR FURTHER INFORMATION CONTACT** section, before arriving.

A copy of Michigan's water quality standards may be obtained electronically from EPA's Water Quality Standards Repository, at <http://www.epa.gov/waterscience/standards/wqslibrary/mi/mi.html>.

FOR FURTHER INFORMATION CONTACT:

Manjali Gupta Vlcan at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave NW., Washington, DC., 20460 (tel: 202-566-0373, fax 202-566-0409) or email at vlcan.manjali@epa.gov, or Dave Pfeifer in EPA's Region 5 at 312-353-9024 or e-mail at pfeifer.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

No one is regulated by this rule. This rule merely withdraws Federal water quality criteria applicable to Michigan.

Background

In 1992, EPA promulgated a final rule known as the "National Toxics Rule," or "NTR," to establish numeric water quality criteria for 12 States and two Territories, including Michigan, (hereafter "States") that had not complied fully with section 303(c)(2)(B) of the CWA (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in

those 14 States for all purposes and programs under the CWA effective February 5, 1993.

As described in the preamble to the final NTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of section 303(c)(2)(B) of the CWA, EPA will issue a rule amending the NTR to withdraw the Federal criteria for that State. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment on the criteria is unnecessary (*see* 65 FR 19659). However, if a State adopts criteria that are less stringent than the federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the federally promulgated criteria. (*See* 57 FR 60860, December 22, 1992) Michigan adopted water quality standards, effective July 29, 1997, pursuant to the requirements of 40 CFR part 132, Water Quality Guidance for the Great Lakes System (60 FR 15366), hereafter referred to as the "GLI." These standards include numeric criteria for the protection of aquatic life for 15 toxic pollutants and numeric criteria for the protection of human health for 18 toxic pollutants. Michigan also adopted a methodology to derive numeric criteria and values as needed to implement the State's narrative criteria of "no toxic in toxic amounts". EPA approved these water quality standards on August 4, 2000 (65 FR 47864–47874). All waters in the State of Michigan are within the Great Lakes drainage basin. Therefore, the standards that were adopted and approved to comply with 40 CFR part 132 (which applies to all waters in the Great Lakes basin) apply statewide.

In 1988, EPA published guidance to States on how to adopt water quality standards to comply with CWA section 303(c)(2)(B) (*see* Rebecca W. Hanmer memo, December 12, 1988, "Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)" at www.epa.gov/waterscience/library/wqstandards/finalguidance.pdf). This guidance was reflected in the preamble to the National Toxics Rule (57 FR 60853, December 22, 1992). EPA described three options for satisfying the requirements of CWA section 303(c)(2)(B). These options are:

Option 1: Adopt statewide numeric criteria in State water quality standards for all section 307(a) toxic pollutants for which EPA has published criteria guidance.

Option 2: Adopt specific numeric criteria in State standards for section 307(a) toxic

pollutants, as necessary, to protect the designated uses.

Option 3: Adopt a procedure to derive a numeric criterion, as necessary, from a narrative water quality standard provision that prohibits toxicity in receiving waters.

As described earlier, Michigan's water quality standards include a procedure to derive a numeric criterion from a narrative water quality criterion that prohibits toxicity in receiving waters. EPA's guidance describes numerous conditions that EPA indicated, if satisfied, would ensure acceptable scientific quality and full involvement of the public and EPA and therefore allow the State to use Option 3 to satisfy the requirements of section 303(c)(2)(B). Michigan has satisfied these conditions:

(1) Michigan adopted a procedure to calculate numeric criteria and values for the protection of designated uses.

(2) Michigan adopted the procedure identified in 40 CFR part 132. Therefore, EPA determines that Michigan's procedure results in numeric criteria that are sufficiently protective to meet the goals of the Act.

(3) Michigan provided full opportunity for public participation during the adoption of the procedure.

(4) The procedure was formally adopted as a State rule and is mandatory in application.

(5) The procedure was submitted to EPA for review and approval as part of the State's water quality standards regulation.

By adopting numeric criteria for some priority toxic pollutants and a methodology to translate the narrative criterion into numeric values for the remaining priority toxic pollutants, Michigan has complied with the requirements of section 303(c)(2)(B) of the CWA to have numeric criteria for priority toxic pollutants. As mentioned earlier, EPA approved these water quality standards on August 4, 2000 (65 FR 47864–47874). Since Michigan now has criteria, effective under the Clean Water Act, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally-promulgated criteria are no longer needed.

While EPA has determined that Michigan has fully complied with the requirements of CWA section 303(c)(2)(B), EPA recognizes that Michigan's standards differ from NTR criteria in certain respects because Michigan's standards reflect EPA's most recent guidance as published by EPA in the GLI. Under the procedures set out in the NTR, EPA would normally take comment prior to withdrawal from the NTR. However, as required by the GLI, EPA took comment on its decision to approve the portion of Michigan's standards relevant to today's action in a notice published in the **Federal Register** on September 14, 1999 (64 FR 49803).

Because the public had the opportunity to comment both on the State's adoption of criteria and EPA's approval of the State's criteria, EPA does not anticipate any adverse comments on withdrawal of Michigan from the NTR. For this reason, EPA is taking this action in a direct final rule. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to withdraw Federal water quality criteria for toxic pollutants applicable to Michigan if adverse comments are filed. This rule will be effective on February 6, 2003 without further notice unless EPA receives adverse comment by December 9, 2002. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review

This action withdraws Federal requirements applicable to Michigan and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 because it is administratively withdrawing Federal requirements that no longer need to apply to Michigan.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is 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 significant

economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

Executive Order 13132—Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000).

Executive Order 13045—Protection of Children from Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

Congressional Review Act

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 action is not a "major rule" as defined by 5 U.S.C. 804(2) and will be effective on February 6, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—land, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 1, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36 is amended by removing and reserving paragraph (d)(7).

[FR Doc. 02-28497 Filed 11-7-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 244

[FRA Docket No. 1999-4985, Notice No. 5]

RIN 2130-AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On March 15, 2002, the Federal Railroad Administration ("FRA") and the Surface Transportation Board ("STB" or "Board") published joint final rules on regulations on safety integration plans ("SIPs" or "plans") governing railroad mergers, consolidations, and acquisitions of control, and procedures governing the STB's consideration of SIPs in cases involving these type of transactions. Two interested parties filed petitions for reconsideration of FRA's final rule, addressing certain issues and concerns relating to the agency's rule text or regulatory impact statement. (The Board received no petitions for reconsideration of its final rule.) In this document, FRA responds to the petitions and clarifies and amends discrete provisions of the final rule, where appropriate.

DATES: *Effective Date:* The amendments to the final rule are effective November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493-6053 and E-mail: jonathan.kaplan@fra.dot.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2002, FRA and the STB published joint final rules in the