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.

The Office of Management and Budget (OMB) has exempted EPA action on State Section 404 programs from OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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.

EPA's approval of any revisions to Michigan's Section 404 program resulting from the Executive Order contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination merely recognizes an internal reorganization of an existing approved Section 404 State program; and this determination does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this determination is not subject to the requirements of section 202 of the UMRA.

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 the 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. Because EPA's determination to approve of any revisions to Michigan's Section 404 program resulting from the Executive Order merely recognizes an internal reorganization of an existing assumed State Section 404 program, EPA's determination contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's Section 404 program resulting from the Executive Order will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval simply results in an administrative change in the structure of the assumed Section 404 program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. This approval will not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the Section 404 program modification will not impose any new burdens on small entities.

D. Paperwork Reduction Act

This approval contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IV. EPA's Final Determination

EPA, after review and consideration of all the information submitted by Michigan and the comments received, has determined that the revisions to Michigan's Section 404 program resulting from the Executive Order should be approved. Moreover, EPA has determined that the revisions are not substantial.

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29623 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5918–8]

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 Michigan Executive Order 1995–18.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy O'Malley, U.S. EPA, State Programs and Authorization Section, Waste Pesticides and Toxics Division, 77 W. Jackson Blvd. (DR–7J), Chicago, Illinois 60604, or telephone (312) 886–6085.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in this **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

A. Background

On March 28, 1997, 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); November 30, 1993 (58 FR 51244, October 1, 1993); January 13, 1995 (60 FR 3095, January 13, 1995); and April 8, 1996 (61 FR 4742, February 8, 1996). Michigan's Program Description dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; August 10, 1992; August 18, 1994; and September 6, 1995, which were a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description also indicated that the Site Review Board (SRB) had authority to approve or deny construction permit applications. The SRB was subsequently made a consultative body and the SRB's powers were transferred to the Director of the MDNR by Executive Order 1991–31, which took effect on September 2, 1993.

On July 31, 1995, the Governor of Michigan issued Executive Order 1995–18 (EO 1995–18), which became effective on October 1, 1995. On January 19, 1996, Michigan submitted materials for EPA to determine the impact of EO 1995–18 upon the authorized State hazardous waste management program. The materials consisted of a letter from the Michigan Attorney General's office setting forth the State of Michigan's analysis as to why the establishment of the new Michigan DEQ does not represent a transfer to a ''new agency'' pursuant to 40 CFR 271.21(c), a copy of EO 1995–18, updated letters of delegation and procedures regarding avoidance of conflict of interest in contested case proceedings. On June 13, 1996, Michigan submitted a supplemental statement of the Michigan Attorney General regarding the appraisal of the Attorney General of the impact of EO 1995–18 on Michigan's delegated environmental programs. In the supplemental statement, the Attorney General explained that the effect of EO 1995–18 was to elevate the former Environmental Protection Bureau of the Department of Natural Resources to full independent departmental status as the Department of Environmental Quality (DEQ). According to the Michigan Attorney General, ''the DEQ retained all of its environmental responsibilities and virtually all of the personnel formerly assigned to it as a bureau of the DNR.'' The Attorney General further stated that ''E.O. 1995–18 did not substantively change the State's statutes or rules relating to the administration of Federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to Federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its Federally delegated programs.''

Based on the information available, EPA determined that the reorganization of the State's hazardous waste management program resulting from EO 1995–18 constitutes a program revision requiring appropriate EPA review and approval under RCRA. EPA also determined that the EO 1995–18 did not result in significant modification of Michigan's hazardous waste program, nor did the Order transfer any part of the program from the approved State agency to any other State agency. Therefore, EPA does not view the reorganization as a transfer within the purview of 40 CFR 271.21(c).

Based upon review of the documents submitted by Michigan, EPA made a preliminary determination to approve Michigan's hazardous waste management program, as revised, pursuant to 40 CFR 271.21(b). On March 28, 1997, EPA published a notice in the **Federal Register** announcing EPA's proposed decision. The notice also stated that the proposed decision would be subject to public review and comment, and announced the availability of Michigan's application for public inspection at three locations in Michigan as well as the EPA regional office in Chicago.

As was noted in the March 28, 1997, **Federal Register** notice, the EPA has pending before it a request, submitted in a letter dated June 14, 1996, by the Michigan Environmental Council (MEC), to revoke Michigan's National Pollution discharge Elimination System (NPDES) and Prevention of Significant Deterioration (PSD) program approvals, not grant additional program delegations and not grant program approval for Boiler and Industrial Furnace revisions under RCRA. This request is based upon Michigan's recent enactment of Public Act 132 of 1996, which establishes certain environmental audit privilege and immunity provisions in the State's natural resources and environmental protection code. EO 1995–18 predated passage of Act 132. EPA's March 28, 1997, proposed action only addressed and sought comment on the impact of EO 1995–18 noted above on Michigan's RCRA program. Accordingly, today's decision to preliminarily approve of revisions to Michigan's RCRA program arising out of EO 1995–18 does not express any viewpoint on the question of whether there are legal deficiencies in Michigan's RCRA program resulting from Public Act 132 of 1996, which was enacted after this Executive Order was issued. EPA is addressing the issues raised by MEC regarding Public Act 132 of 1996 separately.

B. Comments

No adverse comments were received by EPA during the public comment period.

C. Decision

I conclude that Michigan's application for final authorization of revisions resulting from EO 1995–18 meets the necessary requirements under RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste program as revised by EO 1995–18. Michigan has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

D. Incorporation by Reference

EPA incorporates by reference authorized State programs in 40 CFR part 272 to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of these revisions to the Michigan program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, the 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 the 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 the 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 the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the 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 the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''Federal intergovernmental mandate'' affects an annual Federal entitlement program of $500 million or more that are not applicable here. The Michigan request for approval of revisions to its authorized hazardous waste program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of the EPA, thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to the EPA. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of the Michigan hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. The EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once the EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270, this authorization does not impose any additional burdens on these small entities. This is because the EPA's authorization would result in an administrative change (i.e., whether the EPA or the State administers the RCRA Subtitle C program in that State), rather than result in a change in the substantive requirements imposed on small entities. Once the EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program. Moreover, this authorization, in approving a State program to operate in lieu of the Federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular State.

Therefore, the EPA provides the following certification under the regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Michigan program to operate in lieu of the Federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

The proposal contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29624 Filed 11–13–97; 8:45 am]

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