

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks which have a disproportionate effect on children. As such, the final rule is not subject to the requirements of Executive Order 13045.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards that are covered by voluntary consensus standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

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

Authority: This document 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: August 25, 1998.
John P. DeVillars,
Regional Administrator, Region I.
 [FR Doc. 98-25887 Filed 9-29-98; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS-400133; FRL-6033-5]
 RIN 2070-AC71

Clarification of Combustion for Energy Recovery; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).
ACTION: Clarification of final rule.

SUMMARY: EPA is providing clarification regarding the combustion for energy recovery of chemicals covered by section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA).
FOR FURTHER INFORMATION CONTACT: Sara Hisel McCoy, 202-260-7937 or e-mail: hisel-mccoy.sara@epamail.epa.gov, for specific information regarding this document or for further information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877, or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Document Apply To Me?

You may be potentially affected by this document if you combust EPCRA section 313 toxic chemicals in waste for energy recovery on-site or transfer these toxic chemicals off-site for this purpose. Potentially affected categories and entities may include, but are not limited to the following:

| Category | Examples of Potentially Interested Entities |
|--|---|
| Industry; facilities that manufacture, process, or otherwise use certain chemicals | Manufacturing, Metal mining, Coal mining, Electric utilities, Commercial hazardous waste treatment, Chemicals and allied products-wholesale, Petroleum bulk terminals and plants wholesale, and Solvent Recovery services |

| Category | Examples of Potentially Interested Entities |
|---|---|
| Facilities with hazardous waste boilers and industrial furnaces | Cement kilns |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this document. Other types of entities not listed in this table may also be interested in this document. Additional businesses that may be interested in this document are those covered under 40 CFR part 372, subpart B. If you have any questions regarding whether a particular entity is covered by this section of the CFR, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents". You can also go directly to the "Federal Register" listings at <http://www.epa.gov/homepage/fedrgstr/>. You may also obtain electronic copies of related documents at <http://www.epa.gov/opptintr/tri/industry.htm>.

2. *In person or by phone.* If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this document, including the public version, has been established under docket control number OPPTS-400133. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC. The TSCA Nonconfidential Information Center telephone number is 202-260-7099.

II. Background

In the **Federal Register** of May 1, 1997 (62 FR 23834) (FRL-5578-3), EPA issued a final rule entitled "Addition of

Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right-to-Know" (hereinafter referred to as the "industry expansion rule"). That rule added seven industry groups to the list of facilities subject to the reporting requirements of EPCRA section 313, 42 U.S.C. 11023 and section 6607 of the Pollution Prevention Act (PPA) 42 U.S.C. 13106(a). In addition, this rule which promulgated definitions at 40 CFR 372.3 for several terms relevant to the rulemaking, defined "treatment for destruction" to mean:

[T]he destruction of a toxic chemical in waste such that the substance is no longer the toxic chemical subject to reporting under EPCRA section 313. Treatment for destruction does not include the destruction of a toxic chemical in waste where the toxic chemical has a heat value greater than 5,000 British thermal units and is combusted in any device that is an industrial furnace or boiler.

With this notice, EPA is clarifying this definition, preamble language to the facility expansion rule, and other related documents. This document supersedes any inconsistent information and specifically the interpretation of "combustion for energy recovery" as it is expressed in section 2 of the EPA document entitled "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for RCRA Subtitle C TSD Facilities and Solvent Recovery Facilities" (EPA 745-B-97-015).

III. Description of Clarification

This document clarifies that EPA's references to 5,000 British Thermal Units per chemical per pound (Btu/chemical/lb) in the definition of "treatment for destruction" in 40 CFR 372.3 and in the preamble to the facility expansion rule and other documents in explaining "combustion for energy recovery" is not intended to function as a regulatory floor at this time for determining the heating value at which energy may be recovered. EPA referenced 5,000 Btu/chemical/lb in the definition of "treatment for destruction" to clarify its definition of that term. The reference to 5,000 Btu/chemical/lb in the definition of "treatment for destruction" is intended to identify a ceiling for determining whether "treatment for destruction" has occurred. Thus, EPA did not intend to issue a final statement on whether "combustion for energy recovery" may occur if a toxic chemical that has less than 5,000 Btu value is combusted in an energy recovery device. However, a toxic chemical that is a metal or a metal compound is never combusted for

energy recovery. Therefore, in preparing a Form R pursuant to EPCRA section 313, a facility may not report metals or metal compounds as being combusted for energy recovery. EPA recognizes that for purposes of the Resource Conservation and Recovery Act (RCRA), there may be some circumstances when energy recovery may be obtained for a waste stream with a Btu value of less than 5,000. EPA will formally address this issue in a rulemaking to implement section 6607 of the Pollution Prevention Act.

IV. Example of Clarification

Subsequent to publishing the facility expansion rule, EPA published six documents for the seven industries newly added to the EPCRA section 313 reporting requirements. These documents include: "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for RCRA Subtitle C TSD Facilities and Solvent Recovery Facilities" (EPA 745-B-97-015), "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Metal Mining Facilities" (EPA 745-B-97-011), "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Chemical Distribution Facilities" (EPA 745-B-97-013), "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Coal Mining Facilities" (EPA 745-B-97-012), "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Petroleum Bulk Facilities" (EPA 745-B-97-014), and "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document Electricity Generating Facilities" (EPA 745-B-97-016). EPA is amending section 2 of these documents to reflect the Agency's clarification concerning EPCRA section 313 toxic chemicals burned for energy recovery. An example of this clarification is provided as follows:

Combustion for energy recovery is interpreted by EPA to include the combustion of a section 313 chemical that is (1) (a) a RCRA hazardous waste or waste fuel, (b) a constituent of a RCRA hazardous waste or waste fuel, or (c) a spent or contaminated "otherwise used" material; and that (2) has a significant heating value and is combusted in an energy or materials recovery device. Energy or materials recovery devices are boilers and industrial furnaces as defined in 40 CFR 372.3 (see 62 FR 23891, May 1, 1997). If a reported toxic chemical is incinerated but does not contribute energy to the process (e.g., metal, metal compounds, and chlorofluorocarbons), it must be considered treatment for destruction. In determining

whether an EPCRA section 313 listed chemical is combusted for energy recovery, the facility should consider the heating value of the section 313 chemical and not of the chemical stream.

EPA is committed to amending the six documents referenced to remedy these inconsistencies by the end of the calendar year 1998.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This clarification does not impose any requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's clarification does not create an unfunded Federal mandate on State, local, or tribal governments. The clarification does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this clarification.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's clarification does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this clarification.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: September 23, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98-26166 Filed 9-29-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2780

[WO-340-1220-00-24 1A]

RIN 1004-AC53

Special Areas: State Irrigation Districts

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is removing 43 CFR part 2780, regulations concerning the establishment and operation of state irrigation districts, from the Code of Federal Regulations. BLM believes these regulations are obsolete because there is only one record in BLM of their use in the last 40 years. As a result, removing these items will have no impact on BLM customers or the public at large.

DATES: Effective October 1, 1998.

ADDRESS: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Bureau of Land Management, Lands and Realty Group, 1849 C Street, N.W., Washington, DC 20240; Telephone: 202-452-7779.

SUPPLEMENTARY INFORMATION:

- I. Background and Discussion of Final Rule as Adopted
- II. Responses to Comments
- III. Procedural Matters

I. Background and Discussion of Final Rule as Adopted

This final rule removes 43 CFR part 2780, Special Areas: State Irrigation Districts, from the Code of Federal Regulations. The regulations in part 2780 implement the Act of August 11, 1916, entitled "An Act to Promote the Reclamation of Arid Lands," 43 U.S.C. 621 *et seq.* Part 2780 was originally issued as Circular Number 592 on March 6, 1918, and has existed in similar form since modified in 1922 to accommodate amendments to the Act. These regulations describe the procedures a state irrigation district uses to apply for secretarial approval of an irrigation plan. If an application is

approved, all unentered public lands within the state irrigation district, and entered lands for which no certificate has been issued, are subject to the same provisions of State law relating to the reclamation of arid lands for agricultural purposes as those which apply to private lands within the district. Such lands are subject to a lien for all taxes and assessments lawfully levied by the district on unpatented land. The district also has the right to sell land that was entered at the time of a tax levy for nonpayment of tax.

We have only one record at BLM of any activity in this program during the last 40 years, occurring in 1971. We accessed our online case recordation system and found no other record of any recent case activity. We also searched a legal data base and found that the last time the statute or implementing regulation was cited in a reported civil case was in 1948. The program's inactivity and absence of civil case citations indicate that this regulation may be obsolete. Furthermore, we believe that the regulations are impractical to administer due to the scarcity of water in public land states for agricultural purposes. For these reasons, we believe that continued publication of 43 CFR part 2780 is unnecessary and contrary to the public interest.

The final rule published today is a stage of a rulemaking process that culminates in the removal of 43 CFR part 2780. This rule was preceded by a proposed rule which introduced this action and BLM's purpose and need. The proposed rule was published in the **Federal Register** on September 13, 1996 (61 FR 48454). This proposed rule was intended to give anyone who would be adversely affected by this action an opportunity to call their concerns to our attention. The BLM invited public comments for 30 days, and received only one comment.

II. Responses to Comments

BLM received one comment from a citizen in Arizona, asking that BLM extend the comment period for 90 days and send the rule and any related information to a wide variety of people, organizations and government entities, so as to solicit the highest level of input. BLM declines to act on this suggestion. The commenter raises a valid point, which is that BLM should try to solicit the most thorough level of public comment for each rulemaking effort. However, in situations such as this where regulations are being removed because they are obsolete, BLM feels, based on our experience, that additional outreach will not generate any