

Prisons, we propose to amend 28 CFR part 549 as follows.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

**PART 549—MEDICAL SERVICES**

1. Revise the authority citation for 28 CFR 549 to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4014, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Add a new Subpart F to read as follows:

**Subpart F—Fees for Health Care Services**

- Sec.
- 549.70 Purpose and scope.
- 549.71 Inmates affected.
- 549.72 Services provided without fees.
- 549.73 Appealing the fee.
- 549.74 Inmates without funds.

**§ 549.70 Purpose and scope.**

(a) The Bureau of Prisons (Bureau) may, under certain circumstances, charge you, an inmate under our care and custody, a fee for providing you with health care services.

(b) Generally, if you are an inmate as described in § 549.71, you must pay a fee for health care services of \$2.00 per health care visit if you:

- (1) Receive health care services in connection with a health care visit that you requested, (except for services described in § 549.72); or
- (2) Are found responsible through the Disciplinary Hearing Process to have injured an inmate who, as a result of the injury, requires a health care visit.

**§ 549.71 Inmates affected.**

This subpart applies to:

- (a) Any individual incarcerated in an institution under the Bureau’s jurisdiction; or
- (b) Any other individual, as designated by the Director, who has been charged with or convicted of an offense against the United States.

**§ 549.72 Services provided without fees.**

We will not charge a fee for:

- (a) Health care services based on staff referrals;
- (b) Staff-approved follow-up treatment for a chronic condition;
- (c) Preventive health care services;
- (d) Emergency services;
- (e) Prenatal care;
- (f) Diagnosis or treatment of chronic infectious diseases; (g) Mental health care; or
- (g) Mental health care; or

(h) Substance abuse treatment.

**§ 549.73 Appealing the fee.**

You may seek review through the Bureau’s Administrative Remedy Program (see 28 CFR part 542) if you disagree with either the fee charge or the amount.

**§ 549.74 Inmates without funds.**

You will not be charged a health care service fee if you are considered indigent and unable to pay the health care service fee. The Warden may establish rules and processes to prevent abuses of this provision.

[FR Doc. 02–25850 Filed 10–9–02; 8:45 am]

**BILLING CODE 4410–05–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

[OEI–2002–0010; FRL–6724–4]

**Overburden Exemption; Toxic Chemical Release Reporting; Community Right-to-Know; Administrative Procedure Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of petition.

**SUMMARY:** EPA is denying an Administrative Procedure Act (APA) petition to modify its definition of “overburden” to include both consolidated and unconsolidated material. Currently, unconsolidated material is eligible for the overburden exemption to reporting required under 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). Specifically, EPA is denying this petition because EPA’s review of the petition and available information resulted in the conclusion that consolidated rock includes materials that often contain toxic chemicals above negligible amounts, often in significant quantities.

**FOR FURTHER INFORMATION CONTACT:** Peter South, Petition Manager, U.S. Environmental Protection Agency, Mail Code 2844T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–0745, e-mail: *south.peter@epa.gov*. For specific information on this document, or for more information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, U.S. Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672. Information concerning this notice is also available on EPA’s Web site at *http://www.epa.gov/tri*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This notice does not make any changes to existing regulations. However, you may be affected by this notice if you are a metal mining facility, or a facility that carries out metal mining activities. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially interested entities
Industry .....	Metal mining facilities that remove and manage overburden and waste rock to access target ore; SIC major group codes 10 (except 1011, 1081, and 1094).
Federal Government.	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations (CFR). 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. OEI–2002–0010.

The public docket includes information considered by EPA in developing this action, including the documents listed below, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the person listed in the

preceding **FOR FURTHER INFORMATION CONTACT** section. 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 Overburden Exemption Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1742, and the telephone number for the Overburden Exemption Docket is (202) 566-1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select "search," then key in the appropriate docket identification number.

## II. Introduction

### A. What Is the Statutory Authority for This Action?

This action is taken under the Administrative Procedure Act (APA), 5 U.S.C. secs 551-559, 701-706.

### B. What Is the General Background for This Action?

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106.

On May 1, 1997, EPA added metal mining and six other industry groups to the list of facilities subject to the

reporting requirements of section 313 of EPCRA. 62 FR 23833. EPA added these groups in order to enhance the public's knowledge about the use and disposition of toxic chemicals in their communities.

EPA defines "overburden" as "the unconsolidated material that overlies a deposit of useful materials or ores." 40 CFR 372.3. Due to the Agency's understanding that overburden contained EPCRA section 313 chemicals in negligible amounts and that reporting was unlikely to provide the public with information valuable enough to warrant reporting, EPA exempted EPCRA section 313 chemicals in overburden from EPCRA section 313 and PPA section 6607 reporting requirements. EPA does not require compliance determinations or reporting of releases or other waste management information for listed chemicals which exist in overburden removed prior to removal of waste rock or extraction of the target ore. The Agency's rationale in providing the overburden exemption, as defined above, was dependent on EPA's understanding that overburden contained toxic chemicals only in negligible amounts, and therefore was unlikely to generate any reporting. 62 FR 23859. The same, however, could not be determined for consolidated rock, and therefore EPA did not extend the exemption to this material. Id.

### III. What Does This Petition Request of the Agency?

EPA received a petition from the National Mining Association (NMA) on December 22, 1998, and additional information in a letter on May 7, 1999. NMA petitioned the Agency to modify the EPCRA section 313 definition of "overburden" to include both consolidated and unconsolidated material. Refs. 1 and 2. Currently, only unconsolidated material is considered as overburden under the Toxics Release Inventory (TRI) program, and therefore only unconsolidated material is eligible for the overburden exemption under EPCRA section 313.

NMA asserts that the EPCRA section 313 definition of overburden is inconsistent with that of the mining industry, the body of technical evidence, leading technical authorities, and other federal regulatory definitions. Refs. 1 and 2. NMA considers overburden to include both the consolidated and unconsolidated material that overlies an ore deposit. NMA petitioned EPA to include consolidated material in addition to unconsolidated material in the definition of overburden under EPCRA section 313 and thus make consolidated

material eligible for the overburden exemption.

NMA cites two technical references: the American Geological Institute (AGI) Dictionary of Mining, Mineral, and Related Terms, Ref. 3, and the Glossary of Selected Geologic Terms with Special Reference to Their Use in Engineering, Ref. 4. The AGI defines overburden as: overburden (a) Designates material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials, ores, or coal—esp. those deposits that are mined from the surface by open cuts. (Stokes, 1955) (b) Loose soil, sand, gravel, etc. that lies above the bedrock. Also called burden, capping cover, drift, mantle, surface. See also: baring; burden; top. (Stokes, 1955). Ref. 3.

The Glossary of Selected Geologic Terms with Special Reference to Their Use in Engineering, by W. L. Stokes and D. J. Varnes, defines overburden as: overburden, n. A term used by geologists and engineers in several different senses. By some it is used to designate material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials, ores, or coal, especially those deposits that are mined from the surface by open cuts. As employed by others overburden designates only loose soil, sand, gravel, etc., that lies above the bedrock. The term should not be used without specific definition. Ref. 4.

In addition, NMA cites two EPA definitions and four other federal regulatory definitions that define overburden to include both consolidated and unconsolidated material. The EPA's National Pollutant Discharge Elimination System (NPDES) (40 CFR 122.26(b)(10)) defines overburden as: Overburden means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations. Ref. 2.

EPA's Office of Solid Waste (OSW) 1985 Report to Congress: Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale defines overburden as: "consolidated or unconsolidated material overlying the mined area." Ref. 5.

The other federal agency definitions include: the Mine Safety and Health Administration (MSHA), the Office of Surface Mining (OSM), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA). Ref. 2.

#### IV. What Is the Regulatory Status of the Overburden Exemption?

The regulatory definition of overburden under EPCRA section 313 is the unconsolidated material that overlies a deposit of useful materials or ores. 40 CFR 372.3. In most cases, overburden contains EPCRA section 313 chemicals in negligible amounts and reporting is unlikely to provide the public with sufficient valuable information to justify reporting.

In contrast, waste rock (including consolidated rock) may be acid-generating and may contain toxic metals above negligible amounts that after release can be mobilized and be transported through the environment. EPA considers waste rock (including consolidated rock) as distinct from overburden for purposes of reporting under EPCRA section 313. 62 FR 23859. In fact, EPA's definition of overburden specifically excludes waste rock: "It [overburden] does not include any portion of the ore or waste rock." 40 CFR 372.3. Waste rock (including consolidated rock) is generally considered that portion of the ore body that is barren or submarginal rock or ore which has been mined but under normal conditions is not considered of sufficient value to warrant treatment. Waste rock is part of the ore body and may, depending upon economic conditions, become a valuable source of metal. Waste rock (including consolidated rock) may also be further distributed in commerce for other uses such as road construction. Although waste rock (including consolidated rock) may typically contain lower concentrations of metals and other constituents than the target ore, it often contains toxic chemicals above negligible amounts.

#### V. What Is EPA's Rationale for Denial?

In adding metal mining to the list of facilities subject to the reporting requirements of EPCRA section 313 (62 FR 23833), EPA provided the overburden exemption due to the Agency's understanding that overburden contained EPCRA section 313 chemicals in negligible amounts and that reporting was unlikely to provide the public with sufficient valuable information to justify reporting. EPA was not able to make the same determination for the consolidated rock that surrounds the ore body or the ore body itself. Therefore, the Agency specifically defined overburden to only include "unconsolidated material that overlies a deposit of useful materials or ores." 40 CFR 372.3.

The Agency specifically did not exempt consolidated mining material (*i.e.*, waste rock, including consolidated rock) due to EPA's understanding that consolidated rock and/or waste rock often contains toxic chemicals above negligible amounts. Neither the petition submitted by NMA nor the documents which define overburden in a broader manner than the TRI program contain information that would allow EPA to change its conclusion. Without that type of information, EPA is unwilling to extend an exemption to materials which contain toxic chemicals above negligible amounts and for which reporting is likely to provide the public with valuable information. EPA's determination relies on the legal doctrine of the *de minimis non curat lex*: "the law does not concern itself with trifling matters." *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979). The *de minimis* principle recognizes that most regulatory statutes permit the "implication" that an agency has the authority to craft exemptions "when the burdens of regulation yield a gain of trivial or no value." *Alabama Power*, 636 F.2d at 360-61. EPA has found no information to conclude that consolidated mining material contains EPCRA section 313 chemicals in only negligible amounts. As such, EPA limited this particular exemption to include overburden as defined under EPCRA section 313 (*i.e.*, unconsolidated material) and did not extend it to consolidated material (*i.e.*, waste rock including consolidated rock) which often contains EPCRA section 313 toxic chemicals above negligible amounts.

Furthermore, after they are released, the metals that are contained in waste rock and consolidated rock can be mobilized and transported through the environment. Significant human health and environmental damages are caused by the management of mining wastes (*i.e.*, extraction and beneficiation). Refs. 6, 7, and 8. Therefore, reporting on these materials will be valuable to the public.

In addition, NMA's proposed basis for expansion of the TRI definition of overburden—that EPA's definition is inconsistent with that of the industry—is not persuasive. Both the AGI definition and the Stokes and Varnes definition provide similar two-part sub-definitions that are significantly different. Although the first sub-definition provided by AGI is consistent with NMA's assertion that overburden can contain both consolidated and unconsolidated material, the second sub-definition clearly supports EPA's understanding that overburden is also defined to include only loose material (*e.g.*, "Loose soil, sand, gravel, etc. that

lies above the bedrock."). Stokes and Varnes provide a similar two-part definition by recognizing two equally acceptable definitions of the term overburden. Stokes and Varnes define overburden as (a) "\* \* \* material of any nature, consolidated or unconsolidated \* \* \*" and (b) "only loose soil, sand, gravel, etc., that lies above bedrock." In addition, Stokes and Varnes highlight the fact that the term overburden should not be used without "specific definition," which EPA provided in the initial rule. Although the term overburden is used by certain government and industry groups to include both consolidated and unconsolidated material, EPA's current definition for the TRI program that overburden includes only unconsolidated material is clearly consistent with the leading technical industry references. As was noted by Stokes and Varnes, the term overburden can accurately be defined to include only unconsolidated material. It is critical, however, when using the term to provide specific definition.

In addition, NMA asserts that the EPCRA section 313 definition of overburden is inconsistent with EPA's Office of Solid Waste (OSW) 1985 Report to Congress, *Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale*. The 1985 Report to Congress defines overburden as the "consolidated or unconsolidated material overlying the mined area." Ref. 5. From a regulatory standpoint under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6992k), all overburden which is not returned to the pit is a component of the term mine waste. The 1985 Report to Congress defines mine waste as "the soil or rock that mining operations generate during the process of gaining access to an ore or mineral body, and includes the overburden (consolidated or unconsolidated material overlying the mined area) from surface mines, underground mine development rock (rock removed while sinking shafts, accessing, or exploiting the ore body), and other waste rock, including the rock interbedded with the ore or mineral body." Ref. 5. Mine waste is a RCRA solid waste, but is exempt from regulation as a hazardous waste. 40 CFR 261.4(b)(7).

The 1985 Report to Congress reflects the understanding the Agency had at the time on the nature and types of mining wastes. The 1985 Report to Congress did, however, clearly point out the Agency's concerns that overburden and other types of mine wastes had caused

significant environmental damages. Since then, as a result of the Bevill rulemakings (54 FR 36592 September 1, 1989; 55 FR 2322, January 23, 1990; 56 FR 27300, June 13, 1991) and the Land Disposal Restrictions Phase IV rulemaking (63 FR 28556, May 26, 1998), the Agency has significantly improved its understanding of the nature and types of mining wastes. The Bevill rulemakings were promulgated to establish a regulatory approach to identify the differences between extraction/beneficiation wastes from mineral processing wastes. The Agency's most recent assessment of the environmental risks posed by mining waste confirms the Agency's 1985 concerns and indicates that mine waste continues to cause environmental damage throughout the U.S. Refs. 7 and 8.

NMA also asserts that the EPCRA section 313 definition of overburden is inconsistent with EPA's National Pollutant Discharge Elimination System (NPDES) (CFR 122.26(b)(10)) and other federal agency definitions, including: the Mine Safety and Health Administration (MSHA), the Office of Surface Mining (OSM), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA). Ref. 2.

Because the statutes governing these programs and the purposes of these programs are different from those for the TRI program, it is reasonable for the TRI program to define overburden differently than other programs. Clearly, the purpose of each of these programs (direct regulation) is quite different from the purposes related to the reporting of releases and other waste management under EPCRA section 313 (information collection and dissemination). The TRI program was established by Congress under EPCRA section 313 in response to public demand for information on toxic chemicals being released in their communities. For example, in a study of 306 of the approximately 1,000 operating hard rock mines in the U.S., EPA found that approximately 228,145 people (including 55,374 children under the age of four) and 89,335 households live within 1 mile of one of the 306 active mine sites. Ref. 9. The entire concept of the TRI program is founded on the belief that the public has the right to know about chemical usage and release in the areas in which they live, as well as the hazards that may be associated with these chemicals. As such, it is reasonable that the EPCRA section 313 program defines overburden differently than other federal regulatory programs.

In the TRI Program's final facility expansion rulemaking (62 FR 23833),

EPA determined that it was important for the communities that surrounded mining facilities to have information on the releases and other waste management activities that are associated with those facilities. A broader interpretation of the EPCRA section 313 definition of overburden would result in significantly less information being transmitted to these communities. Recognizing that the purpose of EPCRA section 313 is to provide information to the public, it is reasonable for the TRI program to have more narrowly defined the term overburden—and therefore the scope of the overburden exemption—in order to accomplish the goals of the facility expansion rulemaking, the TRI program, and the statute.

In conclusion, NMA makes the argument that the EPCRA section 313 definition of overburden is inconsistent with that of the mining industry, the body of technical evidence, leading technical authorities, and other federal regulatory definitions. As stated above, NMA's argument is not persuasive because the EPCRA definition of overburden is actually consistent with leading technical industry references. Neither the petition submitted by NMA nor the documents which define overburden in a broader manner than the TRI program contain information that would allow EPA to change its conclusion that consolidated rock and/or waste rock often contain toxic chemicals above negligible amounts. Without that type of information, EPA is unwilling to extend an exemption to materials which contain toxic chemicals above negligible amounts and for which reporting is likely to provide the public with valuable information. Therefore, EPA is denying this petition.

#### VI. What Are the References Cited in This Notice?

1. National Mining Association. Letter entitled: EPA Response to NMA Queries. December 22, 1998.
2. National Mining Association. Letter entitled: December 22, 1998, NMA Petition on TRI Regulatory Definition of "Overburden." May 7, 1999.
3. American Geological Institute. Dictionary of Mining, Mineral, and Related Terms, 2nd Edition, American Geological Institute (1997).
4. Stokes, W. L. and Varnes, D.J. Glossary of Selected Geologic Terms With Special Reference to Their Use in Engineering, Colorado Scientific Society Proceedings, Vol. 16, (1955).
5. U.S. EPA. Report to Congress, Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden

from Uranium Mining, and Oil Shale, U.S. Environmental Protection Agency, EPA 530-SW-85-033 (December 31, 1985).

6. U.S. EPA/Region 10. EPA and Hard Rock Mining: A Source Book for Industry in the Northwest and Alaska (Draft), U.S. Environmental Protection Agency, EPA 910-R-99-016 (November 1999).

7. U.S. EPA/Office of Solid Waste. Human Health and Environmental Damages from Mining and Mineral Processing Wastes, U.S. Environmental Protection Agency, Technical Background Document Supporting the Final Rule: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, RCRA Docket No. F-98-2P4F-FFFFF (April 1998).

8. U.S. EPA/Office of Solid Waste. Damage Cases and Environmental Releases from Mines and Mineral Processing Sites, U.S. Environmental Protection Agency, Technical Background Document Supporting the Final Rule: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, RCRA Docket No. F-98-2P4F-FFFFF (April 1998).

9. U.S. EPA/Office of Solid Waste. Population Studies of Mines and Mineral Processing Sites, U.S. Environmental Protection Agency, Technical Background Document Supporting the Final Rule: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, RCRA Docket No. F-98-2P4F-FFFFF (April 1998).

#### VII. What Are the Regulatory Assessment Requirements for This Action?

##### A. Executive Order 12866

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),

because denial of an APA rulemaking petition is not a "significant regulatory action" subject to review by OMB under E.O. 12866.

#### *B. Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this denial will not have a significant impact on a substantial number of small entities. This determination is based on the fact that this denial will not result in any adverse economic impacts on the facilities subject to reporting under EPCRA section 313, regardless of the size of the facility.

#### *C. Paperwork Reduction Act*

This petition denial will not reduce or increase the overall reporting and record keeping burden estimate provided for the TRI program, and does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* As such, it is not necessary for EPA to determine the total TRI burden associated with this action.

The reporting and record keeping burdens associated with TRI are approved by OMB under OMB No. 2070-0093 (Form R, EPA ICR No. 1363) and under OMB No. 2070-0145 (Form A, EPA ICR No. 1704). The current public reporting burden for TRI is estimated to average 52.1 hours for a Form R submitter and 34.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control number for EPA's regulations, after initial display in the final rule, are displayed on the collection instruments and are also listed in 40 CFR part 9.

#### *D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132*

Since this action involves the denial of an APA rulemaking petition, it does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, it is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive

Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999).

#### *E. Executive Order 12898*

Pursuant to Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. The Agency has determined that this action will not result in environmental justice related issues.

#### *F. Executive Order 13045*

Pursuant to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children. Since this action is not economically significant under Executive Order 12866, this action is not subject to Executive Order 13045.

#### *G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) 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, nor did EPA consider the use

of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

#### **List of Subjects in 40 CFR Part 372**

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

Dated: September 19, 2002.

**Kimberly T. Nelson,**

*Assistant Administrator, Office of Environmental Information.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH94

#### **Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; public hearing announcement.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designation for Blackburn's sphinx moth (*Manduca blackburni*). The public hearing on the island of Hawaii and extension of the comment period will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.