
**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 372**

[TRI-2002-0003; FRL-7469-7]

RIN 2025-AA10

**Community Right-to-Know; Toxic
Chemical Release Reporting Using
North American Industry Classification
System (NAICS); Comment Request****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: On April 9, 1997, the Office
of Management and Budget (OMB)

published a **Federal Register** Notice of final decision to adopt the North American Industry Classification System (NAICS) for the United States. NAICS is a new industry classification system that will replace the Standard Industrial Classification (SIC) system that has traditionally been used by government agencies for collecting statistical data and for other administrative and regulatory purposes. 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), facilities that are classified in specified SIC codes are subject to Toxics Release Inventory (TRI) reporting. In this notice, EPA is proposing to include in the regulations the NAICS codes that correspond to the SIC codes that are currently subject to the TRI reporting requirements. EPA is also proposing that facilities that are subject to TRI reporting requirements report both SIC and NAICS codes on EPCRA section 313 reporting forms for the first full reporting period after the effective date of the final rule. Thereafter, facilities that are subject to TRI reporting requirements would be required to report their NAICS codes only. Finally, EPA is proposing to amend the regulations to extend the exemption provided therein to owners of covered facilities who lease, with no

other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI requirements. EPA is soliciting comments on these proposals and on a list of NAICS codes that will correspond to the SIC codes that are currently subject to TRI reporting requirements.

DATES: Written comments, identified by the docket control number *OEI-10017*, must be received by EPA on or before May 20, 2003.

ADDRESSES: Comments may be submitted by mail: Send three copies of your comments to: Document Control Office, Office of Environmental Information (OEI), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C and I.D. of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or (703) 412-9810, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/>. For specific information on this rulemaking contact: Judith Kendall, Toxics Releases Inventory Program Division (2844), OEI, Environmental

Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Telephone: 202-566-0750; Fax: 202-566-0741; email: kendall.judith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

Entities that may be affected by this action are those facilities that have 10 or more full time employees or the equivalent 20,000 hours per year, that manufacturer, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI), and which are 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 (PPA) to report annually to EPA and States their environmental releases and other waste management quantities of such chemicals. Under Executive Order 13148, revised April 26, 2000 (65 FR 24599), all of federal facilities are to comply with the provisions set forth in Section 313 of EPCRA and section 6607 of the PPA. Federal facilities are to comply with those provisions without regard to SIC or NAICS delineations.

Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 et. seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding likely to be affected by this action. Other types of entities are 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. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

1. *In person.* EPA has established an official public docket for this action under Docket ID No. TRI-2002-0003.

The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of this 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 OEI 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 Public Reading Room is (202) 566-1744,

and the telephone number for the OEI 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 submit or view public comments, access the index listing of the contents of the official public dockets, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket.

Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper

receipt by EPA, identify the appropriate docket identification number (*i.e.*, "TRI-2002-2003") in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. TRI-2003-0003. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comment may be sent by electronic mail (e-mail) to oei.docket@epa.gov. Attention Docket ID No. TRI-2002-0003. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail

comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. All comments and data in electronic form must be identified by the docket control number TRI-2002-0003. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

2. *By Mail.* Send three copies of your comments to: Document Control Office, Office of Environmental Information (OEI), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *By Hand Delivery or Courier.* Comments may be delivered in person or by courier to: EPA Docket Center (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, attention Docket ID No. TRI-2002-0003.

D. How Should I Handle CBI Information That I Want To Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR part 2, subpart B. If a confidentiality claim does not accompany the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the submitter.

II. What Is EPA's Statutory Authority for Taking This Action?

This proposed rule is being issued under sections 313(g)(1) and 328 of EPCRA, 42 U.S.C. 11023(g)(1) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499). In general, section 313 of EPCRA requires owners and operators of facilities in specified SIC codes that manufacture, process, or otherwise use a listed toxic chemical in amounts above specified threshold levels to report certain facility specific information about such chemicals, including the annual releases and other waste management quantities. Section 313(g)(1) of EPCRA requires EPA to publish a uniform toxic chemical release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. Section 313(g)(1)(A) requires owners and operators of facilities that are subject to section 313 requirements to report the principal business activities at the facilities. However, Congress provided no guidance as to how such activities should be described. In the past, EPA has required owners and operators of such facilities to identify their principal business activities by reporting, among other things, their primary, and any other applicable SIC codes for the facility. Congress also granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes the "Administrator [to] prescribe such regulations as may be necessary to carry out this chapter." 42 U.S.C. 11048.

Consistent with these authorities, EPA is proposing to amend 40 CFR part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to section 313 of EPCRA and section 6607 of the PPA. EPA is further proposing that owners and operators of facilities that are subject to section 313 identify their principal business activities by both SIC and NAICS codes for the first full reporting year after the effective date of the final rule, and thereafter by NAICS code only. Finally, EPA is proposing to amend 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI requirements.

III. Overview of Proposed Rule

In this notice, EPA is proposing to include in 40 CFR part 372 the NAICS codes that correspond to the SIC codes that are currently subject to TRI reporting requirements. The purpose of this proposal would be to facilitate the transition from reporting of SIC codes on TRI reporting forms to reporting of NAICS codes. This proposed rule would not affect the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA because EPA is not proposing to add or delete industry groups from the list of industries that are currently subject to section 313 reporting requirements. EPA would simply be assigning NAICS codes to the SIC codes that are currently subject to TRI reporting requirements. Accordingly, consistent with the language of section 313(a)(1)(A), SIC codes would still remain in the proposed regulatory text as the basis for identifying the industries that are subject to TRI requirements.

EPA is also proposing amendments to 40 CFR 372.38(g) and (h), and 40 CFR 372.45 to include the NAICS codes that will be subject to the exemption and notification requirements of those sections. Finally, EPA is proposing to amend 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI reporting requirements.

IV. Background

A. What Is TRI and Which Facilities Are Currently Required To Report to TRI?

Section 313 of EPCRA and section 6607 of the PPA require owners and operators of certain facilities called "covered facilities" to annually report to EPA and State governments their releases and other waste management quantities of listed toxic chemicals. 42 U.S.C. 11023, 13106. In general, a covered facility is one that: (1) Manufactures, processes, or otherwise uses one or more listed toxic chemicals in excess of specified threshold quantities; (2) has 10 or more full time employees or the equivalent 20,000 hours per year, and; (3) is classified in an applicable Standard Industrial Classification (SIC) code. 42 U.S.C. 11023(b)(1)(A); 40 CFR 372.22. Information collected pursuant to section 313 of EPCRA and section 6607 of PPA is organized into a national data base called the Toxics Release Inventory (TRI) which is readily accessible to the

public, researchers, industry, government agencies, and other interested parties.

When Congress enacted EPCRA, it specifically identified the manufacturing sector, which included facilities in SIC major group codes 20 through 39, as being subject to the reporting requirements of section 313. See Section 313(a)(1)(A) which states:

The requirements of this section shall apply to owners and operators of facilities that have 10 or more full time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

In addition, pursuant to section 313(b)(1)(B), EPA added seven industry groups to the list of industries required to report to TRI. See 62 FR 23833, May 1, 1997 (hereinafter referred to as the Industry Expansion Rule). These industries included metal mining, coal mining, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce, certain facilities regulated under the Resource Conservation and Recovery Act (RCRA) subtitle C, chemical wholesalers, petroleum terminals and bulk stations and solvent recovery services. As a result, those facilities with the following SIC code designations (that meet all other applicable threshold criteria for TRI reporting) must report toxic chemical releases and other waste management quantities of toxic chemicals each year: SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis). See 40 CFR 372.22.

B. What Action Is EPA Proposing in This Notice?

On April 9, 1997, the Office of Management and Budget (OMB) published a **Federal Register** Notice of final decision (62 FR 17288) to adopt the North American Industrial Classification System (NAICS) for the United States, a new economic classification system that replaces the

SIC system which has traditionally been used by the federal government for collecting and organizing industry-related statistics. OMB's Economic Classification Policy Committee (ECPC) developed NAICS in cooperating with the Instituto Nacional de Estadística, Geografía e Informática (INEGI) of Mexico and Statistics Canada, in order to standardize the industrial statistics produced by the three countries. It was felt that the SIC system was inadequate for this purpose, in part because it classified industries on the basis of several different economic concepts. NAICS, on the other hand, classifies establishments according to similarities in the processes used to produce goods and services. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification.

Notwithstanding its primary function as a tool to aid in the collection and organization of industrial statistical information, OMB recognized that NAICS, like its predecessor, SIC, may also be effectively used for nonstatistical purposes including administrative, tax and regulatory programs. However, in its notice of final decision adopting NAICS for the United States, OMB instructed the heads of government agencies to determine that NAICS industry definitions are appropriate for the implementation of such programs before agencies use NAICS codes in them. See 62 FR 17288, 17294. For the reasons discussed in Unit IV.D. below, EPA's Administrator has determined that NAICS industry definitions will be appropriate for implementing section 313 of EPCRA and section 6607 of the PPA. EPA is therefore proposing to amend 40 CFR part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to the reporting requirements of section 313 of EPCRA and section 6607 of the PPA. In addition, EPA is proposing to amend 40 CFR 372.85(b)(5) and 372.95(b)(10) such that covered facilities would report their appropriate NAICS codes on the TRI reporting form, Form R, and in Alternate Threshold Certification Statements, Form A, where applicable. Covered facilities would be required to report both their appropriate SIC and NAICS codes on Form R and on the Alternate Threshold Certification Statements for the first full reporting year after the effective date of the final rule, and thereafter their NAICS codes only. EPA is also proposing amendments to 40 CFR 372.38(g) and

(h), and 40 CFR 372.45 to include the NAICS codes that will be subject to the exemption and notification requirements of those sections.

Finally, EPA is proposing to amend 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishment that are classified in any SIC code or NAICS code that is subject to TRI reporting requirements. EPA solicits your comments on these proposals and welcomes your suggestions for facilitating the transition of TRI reporting from SIC codes to NAICS codes.

C. Will This Proposed Rule Affect the Universe of Facilities That Are Currently Required To Report to TRI?

This proposed rule would not affect the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA because EPA is not proposing to add or delete industry groups from the list of industries that are currently subject to section 313 reporting requirements. EPA is simply assigning NAICS codes to those SIC codes that are already subject to section 313 reporting requirements, and requiring covered facilities in those industries to report the NAICS code that corresponds to the covered SIC code.

For purposes of TRI reporting, section 313 defines covered facilities in terms of SIC codes. Facilities in the affected SIC codes are required to report, regardless of how those facilities are designated in other nomenclature systems. Because inclusion in a specific SIC code is what triggers the reporting obligation, to use NAICS codes, EPA must be able to "cross-walk" reliably between SIC codes and NAICS codes. However, SIC codes and NAICS codes do not always correspond directly; certain industries that are classified in the "manufacturing" sector in SIC (*i.e.*, SIC codes 20 through 39), and therefore are subject to section 313 of EPCRA and section 6607 of the PPA, are not classified in the "manufacturing" sector in NAICS (*i.e.*, NAICS codes 31 through 33). For example, Lumber and Wood Products (SIC 24) corresponds to Logging (NAICS 11331), which is a non-manufacturing industry in NAICS. EPA has identified 18 SIC manufacturing industries that are currently subject to section 313 of EPCRA and section 6607 of the PPA that are not classified as NAICS manufacturing industries. Owners and operators of such facilities would continue to report under the appropriate NAICS designations (provided they meet all other applicable

TRI reporting criteria), despite the fact that the facilities are not classified in a manufacturing industry in NAICS. Conversely, EPA has identified 26 SIC industries that are not currently subject to section 313 of EPCRA and section 6607 of the PPA, but which are classified as NAICS manufacturing industries. For example, retail bakeries are classified in the retail sector in SIC (SIC 5461), but are classified in the manufacturing sector in NAICS (NAICS 311811). As explained above, because this current action is not intended to add to or delete from the list of industry groups that is currently subject to TRI, the individual facilities not included in the SIC manufacturing codes will not be required to report simply because NAICS places the industry in the manufacturing sector.

D. Why Is EPA Proposing To Use NAICS in Addition to SIC for Section 313 and Section 6607 Reporting Purposes?

EPA believes it is appropriate to amend 40 CFR part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to TRI reporting requirements for several reasons. First, the SIC manual has not been updated since 1987 despite significant changes in the national economy, and limitations in the structure of the SIC system have led to difficulties in classifying new and emerging industries. (North American Industry Classification System manual, 1997, p.21). As a result, the existing SIC systems does not reflect many of the important changes that have occurred within the national economy over the last decade or so. More importantly, it will not be updated in the future because of OMB's adoption of NAICS as the United States' new industry classification system. Accordingly, facilities that come into existence in the future will not have experience using SIC codes and may have difficulty determining whether or not they are subject to TRI requirements. Moreover, as OMB has recognized, the SIC system is somewhat cumbersome and inflexible to use because it classifies industries on the basis of several economic principles rather than a single, consistent principle (North American Industry Classification System manual, 1997, p.21). NAICS, on the other hand, represents a more targeted approach to industry classification, focusing primarily on production processes. Finally, the conversion to NAICS is part of EPA's data standards program, which helps promote efficient data exchange and integration through consistently defined and formatted data. Using NAICS for TRI reporting purposes will enable more

efficient database integration and will promote public access to commonly defined data from disparate sources.

V. How Did EPA Develop This Proposal and What Are the Issues on Which EPA Is Interested in Receiving Comment?

A. The Manufacturing Sector: SIC Codes 20 Through 39

This proposal to include the NAICS codes in 40 CFR part 372 that correspond to the SIC codes that are currently subject to the TRI requirements is being undertaken with the goal of maintaining coverage of all facilities that are currently required to report releases and waste management quantities of listed toxic chemicals. As noted above in Unit IV.C., if the TRI Program were to adopt a straight 1:1 identification of NAICS facilities to be covered (e.g., SIC Manufacturing facilities (20–39) → NAICS Manufacturing facilities (31–33)), many currently covered facilities would no longer be covered and other facilities that are not covered now would be added to the list of covered facilities. This would not be consistent with the statutory requirements. Therefore, to avoid this problem, the TRI Program developed an extensive SIC → NAICS → SIC crosswalk document based on U.S. Census Bureau SIC → NAICS and NAICS → SIC conversion tables in order to identify the universe of NAICS codes that correspond to covered SIC codes. [Table 1—1997 NAICS United States Matched to 1987 U.S. SIC and Table 2—1987 U.S. SIC Matched in 1997 NAICS United States at <http://www.census.gov/epcd/www/naicstab.htm>] From the crosswalk document, EPA is developing a web-based crosswalk tool for users that links all 4-digit SIC codes that are subject to TRI requirements to 6-digit NAICS codes that would also be subject to such requirements.

EPA developed its crosswalk document and is developing the crosswalk tool by carefully mapping each SIC code to its corresponding NAICS code or codes, and the mapping each of the resulting NAICS codes back to SIC. More specifically, for each 3-digit industry subsector in the NAICS manufacturing sector (i.e., NAICS 311 through 339), EPA checked the Census Bureau's NAICS to SIC crosswalk table at <http://www.census.gov/> to find industries that are not in the SIC manufacturing sector (SIC codes 20 through 39), but which have been classified as manufacturing industries under NAICS. Similarly, EPA checked the Census Bureau's SIC to NAICS crosswalk table to find SIC manufacturing industries that are not

classified in the NAICS manufacturing sector. By conducting this mapping, EPA was able to develop a list of NAICS codes that corresponds to the list of manufacturing sector SIC codes that are subject to TRI requirements. A hard copy of the Census Bureau's SIC/NAICS crosswalk document is included in the docket for this proposed rule.

It is possible that new NAICS codes will be created in the future. In the event that the Census Bureau does not update its crosswalk to provide corresponding SIC codes when newly-created NAICS codes are published, EPA would formally request such a determination from the Census Bureau. Should the Census Bureau decline the request, EPA would rely on information such as the definition of the newly-created NAICS codes and how closely that definition tracks the definitions of covered SIC codes, the types of activities that are undertaken by facilities that are classified in the new NAICS code, whether the facilities that are classified in the new NAICS code were previously classified in a covered SIC or NAICS code, and other relevant information.

In general, NAICS manufacturing industries that would be subject to TRI reporting requirements would be identified by their 3-digit subsector codes (e.g., NAICS 311, 324, 339). In some cases, all of the six digit NAICS industries that are included within the 3-digit NAICS industry subsector would be subject to TRI requirements (i.e., all 6 digit NAICS industries within that subsector correspond to industries with SIC codes that are currently subject to TRI requirements). The following NAICS manufacturing subsectors contain NAICS industries, all of which would be subject to TRI requirements: NAICS 316, Leather and Allied Product Manufacturing; NAICS 321, Wood Product Manufacturing; NAICS 322, Paper Manufacturing; NAICS 324, Petroleum and Coal Products Manufacturing; NAICS 327, Nonmetallic Mineral Product Manufacturing; NAICS 331, Primary Metal Manufacturing; NAICS 332, Fabricated Metal Product Manufacturing; NAICS 333, Machinery Manufacturing; and NAICS 336, Transportation Equipment Manufacturing.

In other cases, some, but not all, of the 6 digit NAICS industries contained within a 3-digit NAICS subsector would be subject to TRI requirements. Exceptions from the reporting requirements are provided for industries that were previously classified outside of the SIC manufacturing sector (SIC codes 20 through 39) but are not

classified within the NAICS manufacturing sector (NAICS codes 31 through 33). NAICS industry exceptions are identified by their 6-digit NAICS code and NAICS industry description, and also by their corresponding SIC code and SIC industry description. For purposes of this preamble and the proposed rule, EPA has defined "previously classified" to mean a facility that was properly classified, according to 40 CFR 372.22(b), under a given Standard Industrial Classification code, as identified in the Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget. See section 372.3 of the proposed regulatory text; see generally, Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual, 1987*. Accordingly, owners or operators of facilities that are properly classified in the excepted industries because they were properly classified in a SIC industry that is not currently subject to TRI requirements would not report to TRI under this proposal. Conversely, owners or operators of manufacturing facilities that are, or have been, improperly classifying their facilities in SIC codes that are not currently subject to TRI would report to TRI under this proposal.

Industry exceptions are limited to specific types of industries when it is necessary to do so to ensure that the covered facilities under NAICS are identical to those under SIC. For example, under NAICS 311 (Food Manufacturing), NAICS 311612 (defined as "Meat Processed from Carcasses"), is listed as an industry exception. However, NAICS 311612 includes industries that were classified in SIC 2013, "Sausages and Other Prepared Meat Products," and in SIC 5147, "Meats and Meat Products." Facilities that were previously classified in the former industry are currently subject to TRI requirements whereas those that were previously classified in the latter industry are not. Accordingly, the exception for NAICS 311612 applies only to those facilities that were previously classified in SIC 5147. All other facilities included in NAICS 311612 would report if they satisfy the applicable reporting criteria.

Similarly, under NAICS 325 (Chemical Manufacturing), there is an exception for certain facilities classified in NAICS 325998 (Miscellaneous Chemical Product and Preparation Manufacturing). This exception is limited to facilities primarily engaged in filling pressure containers (i.e., aerosol containers) on a job order or contract

basis that were previously classified under SIC 7389 (Business Services, Not Elsewhere Classified). However, those facilities that fill pressure containers on a job order or contract basis that were previously classified in the manufacturing sector under the SIC system because they are primarily engaged in activities, such as blending of chemicals, that are considered under the SIC to be manufacturing activities, would continue to report to TRI.

One of the industry exceptions in NAICS 311, under 311119, Food Manufacturing, includes facilities that are primarily engaged in Custom Grain Grinding for Animal Feed. Facilities that conduct custom milling of animal feed and those that provide mobile feed milling services that were previously classified under SIC 2048, Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats, are not included in this exception.

At the end of the list of 3-digit NAICS manufacturing subsector codes and exceptions that appears in this preamble in Unit V.D.1., there is a list of additional 6-digit NAICS industries. Some of these industries are the NAICS equivalents of the SIC industries that were added to TRI in the Industry Expansion Rule. See Unit V.B. below. Others were considered manufacturing industries under SIC, but are not considered manufacturing industries under NAICS. For example, whereas SIC treats establishments that produce maple syrup from maple sap as manufacturing establishments classified in SIC 2099 (Food Preparations, NEC, Reducing Maple Sap to Maple Syrup), NAICS treats establishments engaged in maple syrup production as an agricultural activity and classifies such establishments in NAICS 111998 (All Other Miscellaneous Crop Farming). Despite the NAICS classification, establishments that reduce maple sap to maple syrup are still subject to TRI requirements. See Unit IV.C. above. Another notable example of a SIC manufacturing industry which is no longer classified as such in NAICS is SIC 3295 (Minerals and Earths, Ground or Otherwise Treated). This SIC industry is composed of establishments operating without a mine or quarry and that are primarily engaged in crushing, grinding, pulverizing, or otherwise preparing clay, ceramic, and refractory minerals; barite; and miscellaneous nonmetallic minerals, except fuels (Standard Industrial Classification Manual, 1987, p. 170). Such establishments are now classified within various industries in the mining sector in NAICS (NAICS code 21), but

they are still subject to TRI reporting requirements.

B. Industries Added to TRI in the Industry Expansion Rule

For the mining industry and for most of the other industries that were added to the list of industries that are required to report under the Industry Expansion Rule (62 FR 23833), the crosswalk from SIC to NAICS based on the Census Bureau's crosswalk tables was more straightforward. The metal mining industry, SIC major group 10 (except 1011, 1081, and 1094), converted to NAICS 212221 (Gold Ore Mining), 212222 (Silver Ore Mining), 212231 (Lead Ore and Zinc Mining), 212234 (Copper Ore and Mickle Ore Mining), and 212299 (All Other Metal Ore Mining). The coal mining industry, SIC major group 12 (except 1241), consists of three 4-digit SIC codes that convert to three 6-digit NAICS codes: 212111 (Bituminous Coal and Lignite Surface Mining), 212112 (Bituminous Coal Underground Mining), and 212113 (Anthracite Mining).

For electric utilities subject to TRI requirements, three 4-digit SIC codes-4911, 4931, and 4939-convert to six 6-digit NAICS codes, all within NAICS 221, the Utilities subsector of the Utilities sector: 221111 (Hydroelectric Power Generation), 221112 (Fossil Fuel Electric Power Generation), 221113 (Nuclear Electric Power Generation), 221119 (All Other Electric Power Generation), 221121 (Electric Power Bulk Transmission and Control), and 221122 (Electric Power Distribution).

SIC 4953, Refuse Systems, for which TRI reporting is limited to facilities regulated under RCRA Subtitle C, converts to five 6-digit NAICS codes, all within NAICS 562, the Waste Management and Remediation Services subsector of the Administrator and Support and Waste Management and Remediation Services sector: 562920 (Materials Recovery Facilities), 562211 (Hazardous Waste Treatment and Disposal), 562212 (Solid Waste Landfill), 562213 (Solid Waste Combustors and Incinerators), and 562219 (Other Nonhazardous Waste Treatment and Disposal).

SIC 5169, Chemicals and Allied Products-Wholesale, converts to only one 6-digit NAICS code: 422690 (Other Chemical and Allied Products Wholesalers). In the Census Bureau SIC and NAICS crosswalk tables, SIC 5171, Petroleum Bulk Stations and Terminals, is represented by one NAICS wholesale code (4117, Petroleum Bulk Stations and Terminals) and two NAICS retail codes (454311, Heating Oil Dealers and 454312, Liquefied Petroleum Gas

(Bottled Gas Dealers), even though SIC 5171 includes only establishments primarily engaged in the wholesale distribution of crude petroleum and petroleum products from bulk liquid storage facilities. Only facilities that are primarily engaged in the wholesale distribution of crude petroleum and petroleum products from bulk liquid storage facilities are required to report waste management quantities and toxic chemical releases to the TRI. Accordingly, facilities in NAICS 42271 (Petroleum Bulk Stations and Terminals) are subjects to TRI requirements and those in 454311 and 454312 are not. Retail facilities were never covered under EPCRA 313, nor do they meet the definition of SIC 5171 which includes establishments that are primarily engaged in the wholesale distribution of crude petroleum and petroleum products.

Finally, the crosswalk documents developed by the Census Bureau do not identify a NAICS code or codes that correspond to SIC 7389, Solvent Recovery Services (on a contract or fee basis). However, with guidance from representatives of the Census Bureau, EPA has concluded that NAICS 562112, Collection of Hazardous Waste, is one of two correct conversions for SIC 7389, Solvent Recovery Services (on a contract or fee basis). [U.S. Census Bureau letter from Mark E. Wallace to Maria J. Doa, U.S. EPA]. Establishments with a primary SIC code of 4212, Local Trucking Without Storage (hazardous waste collection without disposal), are also included in NAICS 562112. However, because facilities having a primary SIC code of 4212 are not currently subject to TRI requirements, they would not report. Solvent recovery services (on a contract or fee basis) that purify, recycle or otherwise treat solvents collected are also classified in manufacturing according to the material(s) purified, recycled, or otherwise treated. [U.S. Census Bureau letter from Mark E. Wallace to Maria J. Doa, U.S. EPA]. For toxic solvents, these facilities will fall under NAICS subsector 325, Chemical Manufacturing.

C. Auxiliary Facilities

Auxiliary facilities that are classified in covered SIC codes are subject to EPCRA section 313 reporting requirements. Today's proposal does not affect the status of auxiliary facilities for purposes of reporting under section 313 of EPCRA and section 6607 of the PPA. However, during the transition year,

when covered facilities would report both SIC and NAICS codes, off-site auxiliary establishments would report both the SIC and NAICS codes of the establishment or facility for which they perform support services. Thereafter, such facilities would report only the NAICS code of the establishment or facility for which it performs support services. Similarly, during the transition year, on-site auxiliary establishments that report independently from the other establishments in the facility would report both the SIC and NAICS codes of the covered establishment or facility for which it performs support services. Thereafter, such facilities would report only the NAICS code of the establishment or facility for which it performs support services.

D. Which NAICS Codes Will Be Subject to Tri Requirements Under This Proposed Rule?

EPA has preliminarily determined that facilities with the following NAICS codes (and auxiliary facilities that provide support services for them) would report their toxic chemical releases and other waste management activities to TRI. Once final, this list will be used for regulatory and enforcement purposes. As noted above, it is EPA's intent to include only NAICS codes and industry descriptions on this list that correspond to SIC codes and industry descriptions that are currently covered by EPCRA section 313.

1. NAICS Codes That Correspond to SIC Codes 20 Through 39

NAICS 311—Food Manufacturing

Exceptions:

311119—Exception is limited to Custom Grain Grinding for Animal Feed (previously classified under SIC 0723 Crop Preparation Services for Market, Except Cotton Ginning);

311330—Exception is limited to Candy Stores, Chocolate, Candy Made on Premises not for Immediate Consumption (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores);

311340—Exception is limited to Candy Stores, Nonchocolate, Candy Made on Premises not for Immediate Consumption (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores);

311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries);

311611—Exception is limited to Custom Slaughtering (previously classified under SIC 0751, Livestock Services, Except Veterinary);

311612—Exception is limited to Boxed Beef and Boxed Meat Produced from Purchased Carcasses (previously classified under SIC 5147, Meats and Meat Products);

NAICS 312—Beverage and Tobacco Product Manufacturing

Exceptions: 312229—Exception is limited to Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);

NAICS 313—Textile Mills

Exceptions:

313311—Exception is limited to Converters, broadwoven piece goods and converting textiles, broadwoven (previously classified under SIC 5131, Piece Goods and Notions, broadwoven and non-broadwoven piece good converters), and facilities formerly classified under SIC 7389, Business Services, NEC (Sponging fabric for tailors and dressmakers);

313312—Exception is limited to narrow woven Converting Textiles, and narrow woven piece goods Converters, (previously classified under SIC 5131, Piece Goods and Notions, converters, except broadwoven fabric);

NAICS 314—Textile Product Mills

Exceptions:

314121—Exception is limited to Custom drapery manufacturers for retail sale (previously classified under SIC 5714, Drapery, curtain, and Upholstery Stores)

314129—Exception is limited to Custom slipcover manufacturers for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores)

314999—Exception is limited to Binding carpets and rugs for the trade, Carpet cutting and binding, and Embroidering on textile products (except apparel) for the trade (previously classified under SIC 7389, Embroidering of advertising on shirts and Rug binding for the trade);

NAICS 315—Apparel Manufacturing

Exceptions:

315222—Exception is limited to Custom tailors, men's and boys' suits, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous apparel and accessory stores (custom tailors));

315223—Exception is limited to Custom tailors, men's and boys' dress shirts, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous apparel and accessory stores (custom tailors));

315233—Exception is limited to Bridal dresses or gowns, custom made, Custom tailors, women's, misses' and girls' dresses cut and sewn from purchased fabric (except apparel contractors)(previously classified under SIC 5699, Miscellaneous apparel and accessory stores (custom dressmakers));

NAICS 316—Leather and Allied Product Manufacturing

NAICS 321—Wood Product Manufacturing

NAICS 322—Paper Manufacturing

NAICS 323—Printing and Related Support Activities

Exceptions: 323114—Exception is limited to Instant printing (*i.e.*, quick printing)(previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));

NAICS 324—Petroleum and Coal Products Manufacturing

NAICS 325—Chemical Manufacturing
Exceptions: 325998—Exception is Limited to Aerosol can filling on a job order or contract basis (previously classified under SIC 7389, Business Services, NEC (aerosol packaging))

NAICS 326—Plastics and Rubber Products Manufacturing

Exceptions: 326212—Exception is limited to Tire Retreading, Recapping or Rebuilding (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding))

NAICS 327—Nonmetallic Mineral Product Manufacturing

NAICS 331—Primary Metal Manufacturing

NAICS 332—Fabricated Metal Product Manufacturing

NAICS 333—Machinery Manufacturing

NAICS 334—Computer and Electronic Manufacturing

Exceptions:

334611—Exception is limited to Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software))

334612—Exception is limited to mass reproducing pre-recorded Video cassettes, and mass reproducing Video tape or disk (previously classified under SIC 7819, Services Allied to Motion Picture Production (reproduction of video))

NAICS 335—Electrical Equipment, Appliance, and Component Manufacturing

Exceptions: 335312—Exception is limited to Armature rewinding on a factory basis (previously classified under SIC 7694 (Armature Rewinding Shops (remanufacturing))

NAICS 336—Transportation Equipment Manufacturing

NAICS 337—Furniture and Related Product Manufacturing

Exceptions: 337110—Exception is limited to Wood Kitchen Cabinet and Counter top Manufacturing (previously classified under SIC 5712, Furniture Stores (custom wood cabinets))

337121—Exception is limited to Upholstered furniture, household type, custom manufacturing (previously classified under SIC 5712, Furniture Stores (upholstered, custom made furniture))

337122—Exception is limited to Nonupholstered, household type, custom wood furniture manufacturing (previously classified under SIC 5712, Furniture Stores (custom made wood nonupholstered household furniture except cabinets))

NAICS 339—Miscellaneous Manufacturing

Exceptions:

339115—Exception is limited to Ophthalmic Goods Manufacturing, lens grinding (previously classified under SIC 5995, Optical Goods Stores (optical laboratories grinding of lenses to prescription))

- 339116—Dental laboratories (previously classified under SIC 8072, Dental Laboratories)
- NAICS 111998—All Other Miscellaneous Crop Farming (limited to facilities that reduce maple sap to maple syrup (previously classified under SIC 2099: Food Preparations, NEC, Reducing Maple Sap to Maple Syrup));
- NAICS 511110—Newspaper Publishers;
- NAICS 511120—Periodical Publishers;
- NAICS 511130—Book Publishers;
- NAICS 511140—Database and Directory Publishers
- Exceptions: 511140—Exception is limited to Address list compliers, Address list publishers, Address list publishers and printing combined, Address list publishing (*i.e.*, establishments known as publishers), Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Compiling mailing lists, Directory compilers, Mailing list compiling services (previously classified under SIC 7331, Direct Mail Advertising Services (mailing list compliers))
- NAICS 511191—Greeting Card Publishers;
- NAICS 511199—All Other Publishers
- NAICS 512220—Integrated Record Production/Distribution
- NAICS 512230—Music Publishers
- Exceptions: 512230—Exception is limited to Music copyright authorizing use, Music copyright buying and licensing, Music publishers (previously classified under SIC 8999, Services, NEC (music publishing))
- NAICS 211112—Natural Gas Liquid Extraction (limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic Chemical, NEC (recovering sulfur from natural gas))
- NAICS 212324—Kaolin and Ball Clay Mining (limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating kaolin and clay (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1355))
- NAICS 212325—Clay and Ceramic and Refractory Minerals Mining (Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay and ceramic and refractory minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1459)))
- NAICS 212393—Other Chemical and Fertilizer Mineral Mining (limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1479))
- NAICS 212399—All Other Nonmetallic Mineral Mining (limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1499))
- NAICS 488390—Other Support Activities for Water Transportation (limited to Drydocks, floating (*i.e.*, routine repair and maintenance of ships and boats) (previously classified under SIC 3731 Shipbuilding and Repairing (floating drydocks not associated with a shipyard))
- NAICS 811490—Other Personal and Household Goods Repair and Maintenance (limited to Boat, pleasure, repair and maintenance services without retailing new boats) (previously classified under SIC 3732 Boat Building and Repairing (pleasure boat building))
- NAICS 541710—Research and Development in the Physical, Engineering, and Life Sciences (limited to Guided missile and space vehicle engine research and development) (previously classified under SIC 3764), and Guided missile and space vehicle parts (except engines) research and development (previously classified under SIC 3769)
2. NAICS Codes That Correspond to SIC Code 10 (Except 1011, 1084, and 1094)
- NAICS 21211—Bituminous Coal and Lignite Surface Mining
- NAICS 21212—Bituminous Coal Underground Mining
- NAICS 21213—Anthracite Mining
3. NAICS Codes That Correspond to SIC Code 12 (Except 1241)
- NAICS 212221—Gold Ore Mining
- NAICS 212222—Silver Ore Mining
- NAICS 212231—Lead Ore and Zinc Mining
- NAICS 212234—Copper Ore and Nickel Ore Mining
- NAICS 212299—All Other Ore Mining
4. NAICS Codes That Correspond to SIC Codes 4911, 4931, and 4939 (Limited to Facilities That Combust Coal and/or Oil for the Purpose of Generating Power for Distribution in Commerce)
- NAICS 221111—Hydroelectric Power Generation
- NAICS 221112—Fossil Fuel Electric Power Generation
- NAICS 221113—Nuclear Electric Power Generation
- NAICS 221119—All Other Electric Power Generation
- NAICS 221121—Electric Bulk Power Transmission and Control
- NAICS 221122—Electric Power Distribution
5. NAICS Code That Correspond to SIC Code 4953 (Limited to Facilities Regulated Under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. 6921 *et seq.*)
- NAICS 562920—Materials Recovery Facilities (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*)
- NAICS 562211—Hazardous Waste Treatment and Disposal (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)
- NAICS 562212—Solid Waste Landfill (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)
- NAICS 562213—Solid Waste Combustors, and Incinerators (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)
- NAICS 562219—Other Nonhazardous Waste Treatment and disposal. (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)
6. NAICS Code That Corresponds to SIC Code 5169
- NAICS 422690—Other Chemical and Allied Products Wholesalers
7. NAICS Code That Corresponds to SIC 5171
- NAICS 422710—Petroleum Bulk Stations and Terminals (wholesale)
8. NAICS Code That Corresponds to SIC Code 7389 (Limited to Facilities Primarily Engaged in Solvent Recovery Services on a Contract or fee Basis)
- NAICS 562112—Collection of Hazardous Waste Limited to facilities primarily engaged in solvent recovery services on a contract or fees basis
- NAICS 325—Chemical Manufacturing
- E. How Will Section 313 Reporting Requirements Change as a Result of This Proposal?*
- TRI reporting requirements would remain substantially the same under this proposal as they are now. The difference is that, except for the first full reporting year after the effective date of the final rule, covered facilities would be reporting their primary and secondary NAICS codes on Form R and on Alternate Threshold Certification Statements rather than their primary and secondary SIC codes. Because the statute identifies covered facilities by SIC code, the industries subject to TRI requirements would continue to be identified in the regulatory text by SIC code, although the text would be amended to include NAICS codes as

well. See 40 CFR 372.22(b) and 372.23 of the proposed regulatory text below. This is primarily to help owners or operators of covered facilities identify the appropriate NAICS code to be used on reporting forms. By continuing to use SIC codes in the regulatory text, EPA can ensure that currently covered facilities will continue to be covered even if EPA made a mistake in the translation from SIC codes to NAICS codes. Finally, the owner or operator of a covered facility might come to a different conclusion than EPA did with respect to the NAICS code that corresponds to the facility's SIC code. If the regulatory text only included NAICS codes, the owner or operator of such a facility might assume that she is no longer subject to TRI requirements. The proposed regulatory text would ensure that the owner or operator would understand that she must continue to report regardless of whether or not she agrees with EPA's determination on the NAICS code that most appropriately corresponds to her facility's SIC code. In sum, facilities that are currently reporting to TRI because they are classified in SIC codes that are currently subject to TRI reporting requirements would continue to report under this proposed rule if they satisfy the applicable reporting criteria.

EPA is proposing that owners or operators of covered facilities report both SIC codes and NAICS codes during the first full reporting period after the effective date of the final rule. Reporting both SIC and NAICS codes for the first full reporting period is necessary to facilitate continued time-series analysis of the TRI data. Each year, TRI data are compiled, analyzed and presented to the public in a report called the Toxics Release Inventory Public Data Release. A substantial part of the report is devoted to an analysis of the data by industry group for the current year and over time. Industry-specific and chemical-specific on- and off-site releases and other waste management data are analyzed for the most recent reporting year, from 1988 to the present for TRI's original release and transfer categories (since 1991 for the other waste management data), and from 1998 to the present for new industries reporting to TRI since 1998. Time-series analyses of TRI data are critical for reviewing trends in overall releases and management of waste and for measuring industry progress in these areas. For example, the 2000 TRI Public Data Release (presenting 1998 data) includes a table that presents percent change in total TRI on-site and off-site releases for each of the 19 manufacturing industries,

designated by their 2-digit SIC major group code. In all but one of the manufacturing categories, total on- and off-site releases decreased from 1988 to 1998, in several industries by well over 50%. In order to continue to present these types of important analyses to the public, careful tracking of code changes during the SIC to NAICS transition is critical.

Moreover, a dual reporting requirement for the transition reporting period will be useful in fine tuning the list of NAICS industries that corresponds to the list of SIC industries that are currently subject to TRI requirements. The dual reporting for the transition reporting period will serve as an extra quality assurance measure to ensure that with the transition to reporting by NAICS code, no additional industry groups are inadvertently added, and that all currently reporting industries are included. EPA has concluded that the additional burden associated with requiring covered facilities to report both SIC and NAICS codes for one year is negligible. See the discussion below in Unit VI.

F. Why Is EPA Proposing To Extend the Exemption in 40 CFR 372.38(e)?

The TRI regulations 40 CFR 372.38(e) exempt from TRI reporting requirements, "owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC code 20 through 39 where the owner has no other business interest in the operation of the covered facility." The exemption acknowledges the difficulties in requiring such an owner to report when he is not in a position which would allow him to determine compliance or report the required information. 53 FR 4499, 4502. EPA believes it is appropriate to extend this exemption to owners of facilities that lease such facilities to operators of establishments within the SIC codes added to TRI in the Industry Expansion Rule, when such owners have no other business interest in the operation of such establishments. The rationale for the exemption applies equally to those owners as it does to owners of facilities who lease them to operators of establishments in SIC codes 20 through 39. Because the proposed amendment to 40 CFR 372.38(e) extends the exemption to other industries, there is no cost to industry associated with it.

G. What Are the Issues on Which EPA Is Interested in Receiving Comments?

EPA is particularly interested in receiving comments on the following issues:

(i) The proposed list of NAICS industries that correspond to the SIC industries that are subject to TRI requirements.

(ii) Whether the dual reporting requirement (reporting of both SIC and NAICS codes) should be included for the first reporting period after the effective date of the final rule, and whether the requirement should be extended into subsequent reporting years.

(iii) The estimated burden of the new reporting requirements.

(iv) Alternatives for the regulatory text that would accomplish the objectives specified in this proposal.

VI. What Additional Reporting Burden Is Associated With This Action?

EPA has evaluated the potential burden and cost of using NAICS for TRI reporting as described in this proposal. EPA expects that the burden associated with this change for affected facilities would be negligible. OMB adopted NAICS as the United States' industry classification system in 1997, and facilities are or should be already familiar with their NAICS codes from other administrative and regulatory reporting requirements of EPA and other governmental entities. EPA does not expect or intend that this proposed rule would affect the universe of facilities that are currently required to report to TRI. EPA would simply be assigning NAICS industry codes to those SIC industries which are already subject to section 313 reporting requirements, and requiring covered facilities in those industries to report under the NAICS code that corresponds to the covered SIC code. Only those facilities that meet the SIC code requirements in 40 CFR 372.22(b) would continue to report releases and other waste management quantities of toxic chemicals to the TRI.

VII. What Are the References Cited in This Proposed Rule?

1. Executive Office of the President, Office of Management and Budget, *North American Industry Classification System*, United States, 1997 (NTIS PB98-127293).

2. Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual, 1987* (NTIS PB87-100012).

1. 1997 NAICS United States Structure, Including Relationship to 1987 U.S. SIC, *Table 1—1997 NAICS United States Matched to 1987 U.S. SIC, Table 2—1987 U.S. SIC Matched to 1997 NAICS United States*. (<http://www.census.gov/epcd/www/naicstab.htm>).

2. U.S. Census Bureau letter from Mark E. Wallace to Maria J. Doa, U.S. EPA.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule 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 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. EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's collections of information, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the Information Collection Requests (ICRs) OMB control numbers 2070-0093 (EPA ICR No. 1363.11) for Form R and 2070-0143 (EPA ICR No. 1704.05) for Form A.

Copies of the ICR documents may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded from the Internet at <http://www.epa.gov/icr>. Include the EPA ICR and OMB numbers in any correspondence.

This proposed rule would not impose any new information collection burden on affected facilities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Facilities that would be affected by the proposed rule already report their industrial classification codes on the approved reporting forms using SIC codes. Moreover, as noted above, OMB adopted NAICS over five years ago, so affected facilities are or should already be familiar with their NAICS codes from administrative and regulatory reporting requirements of EPA and other governmental entities that have already converted to NAICS reporting.

Although EPA does not believe that the reporting requirements associated with this proposed rule would impose any new information collection burden, Form R and Form A will have to be amended to account for the reporting of both SIC and NAICS codes for the first full reporting year after the effective date of the final rule. They will also have to be amended to account for the reporting of NAICS codes after that first full reporting year. EPA will work with OMB to make the necessary changes to the TRI reporting forms.

C. *Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*, 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule 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 a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a "small business" by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After consideration of the potential economic impacts of this proposed rule on small entities, it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

The change proposed by this rulemaking is to require affected facilities to report their NAICS rather than their SIC code, except for the first year of implementation when both the SIC and the NAICS codes will be reported. In the first year, the additional burden of reporting both SIC and NAICS codes is negligible considering that the SIC code is readily available from previous reporting forms submitted by the facility and that facilities are already using the NAICS code in other government data collection exercises. In subsequent years, the net burden on small entities should be zero as the NAICS code replaces the SIC code on the reporting forms. We welcome comments on issues related to potential impacts of the proposed rule on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires 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 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 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.

EPA has determined that this proposed 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. As discussed in Section VI above, EPA believes that affected facilities already are or should be familiar with their NAICS codes from other activities, including reporting to other governmental authorities. Provision of the NAICS code in addition to, or in lieu of, the SIC code is expected to impose negligible incremental burden on affected facilities. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations 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 government."

This proposed rule does not have federalism implications. It will not 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 government, as specified in Executive Order 13132. This action merely adopts, for TRI reporting purposes, the NAICS industry classification system that has replaced the SIC system previously used for collecting statistical data and for other administrative and regulatory purposes. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. This action merely adopts, for TRI reporting purposes, the NAICS industry classification system that has replaced the SIC system previously used for collecting statistical data and for other administrative and regulatory purposes. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal Governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13211, Actions Concerning Regulations 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.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. 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 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, 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.

EPA recognizes that NAICS, like SIC, is a standard that was developed by OMB primarily as a means to collect and organize industrial statistics for the federal government. However, EPA has not identified an alternative voluntary consensus standard for defining industry classifications. Even if one exists, EPA believes it would be impractical to use such a standard for reporting purposes under section 313 of EPCRA and section 6607 of the PPA. One of the reasons for switching from SIC to NAICS is to maintain consistency within EPA and among other government agencies in the way that industry-specific data is collected, organized and made available to the

public in various databases and publications. Moreover, although NAICS is based on a different organizing principle than SIC, the two classification systems share many similarities. Industry has had several decades to become familiar with SIC so the transition to NAICS as opposed to an alternative industry classification system should be more efficient and less burdensome. Therefore, EPA believes it is appropriate to use NAICS codes for purposes of section 313 reporting.

List of Subjects in 40 CFR Part 372

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

Dated: March 6, 2003.

Christine Todd Whitman,
Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. Amend § 372.3 by adding the definition for previously classified in alphabetical order to read as follows:

§ 372.3 Definitions.

* * * * *

Previously classified means to have been properly classified, according to § 372.22(b) under a given Standard

Industrial Classification (SIC) code, as identified in the Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget.

* * * * *

3. Amend § 372.22, by revising paragraph (b) introductory text and paragraphs (b)(1), (b)(2), (b)(3)(i) and (b)(3)(ii) to read as follows:

§ 372.22 Covered facilities for toxic chemical release reporting.

* * * * *

(b) The facility is in a Standard Industrial Classification (SIC) (as in effect on January 1, 1987) major group or industry code listed in § 372.239a), (for which the corresponding North American Industry Classification System (NAICS) (as in effect on January 1, 1997) subsector and industry codes are listed in § 372.23(b) and 372.23(c)) by virtue of the fact that it meets one of the following criteria:

(1) The facility is an establishment with a primary SIC major group or industry code listed in § 372.23(a), or a primary NAICS subsector or industry code listed in § 372.23(b) or 372.23(c).

(2) The facility is a multi-establishment complex where all establishments have primary SIC major group or industry codes listed in § 372.23(a), or primary NAICS subsector or industry codes listed in § 372.23(b) or 372.23(c).

(3) * * *

(i) The sum of the value of services provided and/or products shipped and/

or produced from those establishments that have primary SIC major group or industry codes listed in § 372.23(a), or primary NAICS subsector or industry codes listed in § 372.23(b) or 372.23(c) is greater than 50 percent of the total value of all services provided and/or products shipped from and/or produced by all establishments at the facility.

(ii) One establishment having a primary SIC major group or industry code listed in § 372.23(a), or a primary NAICS subsector or industry codes listed in § 372.23(b) or 372.23(b) contributes more in terms of value of services provided and/or products shipped from and/or produced at the facility than any other establishment within that facilities.

* * * * *

3. Add a new § 372.23 to Subpart B to read as follows:

§ 372.23 SIC and NAICS codes to which this Part applies.

The requirements of this part supply to facilities in the following SIC and NAICS codes. This section contains three listings. Paragraph (a) of this section lists the SIC code to which this part applies. Paragraph (b) of this section list the NAICS codes that correspond to SIC codes 20 through 39 to which this part applies. Paragraph (c) of this section lists the NAICS codes that correspond to SIC codes other than SIC codes 20 through 39 to which this part applies.

(a) SIC codes.

Major group or industry code	Exceptions and/or limitations
10	Except 1011, 1081, and 1094. Except 1241.
12	
20 through 39	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution. Limited to facilities regulated under the Resources Conservation and Recovery Act, 42 U.S.C. 6921, <i>et seq.</i>
4911, 4931, 4939	
4953	
5169	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis.
5171	
7389	

(b) NAICS codes that correspond to SIC codes 20 through 39

Subsector code or industry code	Exceptions and/or limitations
311	Except 311119—Exception is limited to facilities primarily engaged in Custom Grain Grinding for Animal Feed (previously classified under SIC 0723, Crop Preparation Services for Market, Except Cotton Ginning); Except 311330—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311340—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries);

Subsector code or industry code	Exceptions and/or limitations
	Except 311611—Exception is limited to facilities primarily engaged in Custom Slaughtering for individuals (previously classified under SIC 0751, Livestock Services, Except Veterinary, Slaughtering, custom: for individuals);
312	Except 311612—Exception is limited to facilities primarily engaged in the cutting up and resale of purchased fresh carcasses for the trade (including boxed beef), and in the wholesale distribution of fresh, cured, and processed (but not canned) meats and lard (previously classified under SIC 5147, Meats and Meat Products);
313	Except 312229—Exception is limited to facilities primarily engaged in providing Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);
314	Except 313311—Exception is limited to facilities primarily engaged in converting broadwoven piece goods and broadwoven textiles, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, broadwoven and non-broadwoven piece good converters), and facilities primarily engaged in sponging fabric for tailors and dressmakers (previously classified under SIC 7389, Business Services, NEC (Sponging fabric for tailors and dressmakers));
315	Except 313312—Exception is limited to facilities primarily engaged in converting narrow woven Textiles, and narrow woven piece goods, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, converters, except broadwoven fabric);
316	Except 314121—Exception is limited to facilities primarily engaged in making Custom drapery for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores);
321	Except 314129—Exception is limited to facilities primarily engaged in making Custom slipcovers for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores);
322	Except 314999—Exception is limited to facilities primarily engaged in Binding carpets and rugs for the trade, Carpet cutting and binding, and Embroidering on textile products (except apparel) for the trade (previously classified under SIC 7389, Business Services Not Elsewhere Classified, Embroidering of advertising on shirts and Rug binding for the trade);
323	Except 315222—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' suits, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors));
324	Except 315223—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' dress shirts, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors));
325	Except 315233—Exception is limited to custom tailors primarily engaged in making and selling bridal dresses or gowns, or women's, misses' and girls' dresses cut and sewn from purchased fabric (except apparel contractors)(dressmakers) (previously classified under SIC Code 5699, Miscellaneous Apparel and Accessory Stores);
326	Except 323114—Exception is limited to facilities primarily engaged in reproducing text, drawings, plans, maps, or other copy, by blueprinting, photocopying, mimeographing, or other methods of duplication other than printing or microfilming (<i>i.e.</i> , instant printing) (previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));
327	
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335	Except 325998—Exception is limited to facilities primarily engaged in Aerosol can filling on a job order or contract basis (previously classified under SIC 7389, Business Services, NEC (aerosol packaging));
336	Except 326212—Tire Retreading, (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding));
337	
338	
339	Except 334611—Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software));
340	Except 334612—Exception is limited to facilities primarily engaged in mass reproducing prerecorded Video cassettes, and mass reproducing Video tape or disk (previously classified under SIC 7819, Services Allied to Motion Picture Production (reproduction of Video));
341	Except 335312—Exception is limited to facilities primarily engaged in armature rewinding on a factory basis (previously classified under SIC 7694 (Armature Rewinding Shops (remanufacturing)));
342	
343	Except 337110—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom wood kitchen cabinets and counter tops (previously classified under SIC 5712, Furniture Stores (custom wood cabinets));
344	Except 337121—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom made upholstered household furniture (previously classified under SIC 5712, Furniture Stores (upholstered, custom made furniture));
345	Except 337122—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture nonupholstered, household type, custom wood furniture (previously classified under SIC 5712, Furniture Stores (custom made wood nonupholstered household furniture except cabinets));
346	Except 339115—Exception is limited to lens grinding facilities that are primarily engaged in the retail sale of eyeglasses and contact lenses to prescription for individuals (previously classified under SIC 5995, Optical Goods Stores (optical laboratories grinding of lenses to prescription));
347	Except 339116—Dental Laboratories (previously classified under SIC 8072, Dental Laboratories);

Subsector code or industry code	Exceptions and/or limitations
111998	Limited to facilities primarily engaged in reducing maple sap to maple syrup (previously classified under SIC 2099, Food Preparations, NEC, Reducing Maple Sap to Maple Syrup);
211112	Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic Chemicals, NEC (recovering sulfur from natural gas));
212111 212112 212113 212324	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating kaolin and clay (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1455));
212325	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay and ceramic and refractory minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1459));
212393	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1479));
212399	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1499));
488390	Limited to facilities that are primarily engaged in providing routine repair and maintenance of ships and boats from floating drydocks (previously classified under SIC 3731, Shipbuilding and Repairing (floating drydocks not associated with a shipyard));
511110 511120 511130 511140	Except facilities that are primarily engaged in furnishing services for direct mail advertising including Address list compilers, Address list publishers, Address list publishers and printing combined, Address list publishing, Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Mailing list compilers, Directory compilers, and Mailing list compiling services (previously classified under SIC 7331, Direct Mail Advertising Services (mailing list compilers));
511191 511199 512220 512230	Except facilities primarily engaged in Music copyright authorizing use, Music copyright buying and licensing, and Music publishers working on their own account (previously classified under SIC 8999, Services, NEC (music publishing));
541710	Limited to facilities that are primarily engaged in Guided missile and space vehicle engine research and development (previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts), and in Guided missile and space vehicle parts (except engines) research and development (previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified);
811490	Limited to facilities that are primarily engaged in repairing and servicing pleasure and sail boats without retailing new boats (previously classified under SIC 3732, Boat Building and Repairing (pleasure boat building));

(c) NAICS codes that correspond to SIC codes other than SIC codes 20 through 39.

Subsector or industry code	Exceptions and/or limitations
212111 212112 212113 212221 212222 212231 212234 212299 221111	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221112	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221113	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221119	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221121	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.

Subsector or industry code	Exceptions and/or limitations
221122	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
422690 422710 562112	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC);
562211	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562212	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562213	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562219	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562920	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>

4. Amend § 372.38 by revising paragraphs (e), (g), and (h) to read as follows:

§ 372.38 Exemptions.

* * * * *

(e) *Certain owners of leased property.* The owner of a covered facility is not subject to reporting under § 372.30 if such owner's only interest in the facility is ownership of the real estate upon which the facility is operated. This exemption applies to owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments in any SIC code or NAICS code in § 372.23 that is subject to the requirement of this part, where the owner has no other business interest in the operation of the covered facility.

* * * * *

(g) *Coal extraction activities.* If a toxic chemical is manufactured, processed, or otherwise used in extraction by facilities in SIC code 12, or in NAICS codes 212111, 212112 or 212113, a person is not required to consider the quantity of the toxic chemical so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

(h) *Metal mining overburden.* If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, or in NAICS codes 212221, 212222, 212231, 212234 or 212299, a person is not required to consider the quantity of the toxic chemical so processed; or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

5. Amend § 372.45 by revising paragraph (a)(1) to read as follows:

§ 372.45 Notification about toxic chemicals.

(a) * * *

(1) Is in SIC codes 20 through 39 or a NAICS code that corresponds to SIC codes 20 through 39 as set forth in § 372.22(b).

* * * * *

6. Amend § 372.85 by revising paragraph (b)(5) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

* * * * *

(b) * * *

(5) The four-digit SIC code(s) and the six-digit NAICS code(s) for the facility or establishments in the facility through the reporting period ending July 1, 2004. After the reporting period ending July 1, 2004, the six-digit NAICS code(s) for the facility or establishments in the facility.

* * * * *

7. Amend § 372.95 by revising paragraph (b)(10) to read as follows:

§ 372.95 Alternate threshold certification and instructions.

* * * * *

(b) * * *

(10) The four digit-SIC code(s) and the six-digit NAICS code(s) for the facility or establishments in the facility through the reporting period ending July 1, 2004. After the reporting period ending July 1, 2004, the six-digit NAICS code(s) for the facility or establishments in the facility.

* * * * *

[FR Doc. 03-6582 Filed 3-20-03; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA-2003-14372]

RIN 2127-AJ01

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 2000 calendar year before October 25, 2003. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than May 20, 2003. Insurers listed in the appendices are required to submit reports on or before October 25, 2003.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice. Submit your comments in writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. You may also submit written comments to the docket on a computer diskette. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. You may visit the Docket