

80, subpart I, except as provided in paragraphs (c), (d), (e), and (g)(2) of this section:

- (i) June 1, 2010 or diesel fuel produced or imported by any refiner or importer,
 - (ii) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,
 - (iii) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and
 - (iv) December 1, 2010 at all locations.
- (2) The per-gallon sulfur content standard for all LM diesel fuel shall be 15 ppm maximum.
- (3) Diesel fuel used in new stationary internal combustion engines regulated under 40 CFR part 60 shall be subject to the fuel-related provisions of that subpart beginning December 1, 2010.
- (h) Alternative labels to those specified in paragraphs (e)(3) and (f)(2) of this section may be used as approved by EPA.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-TRI-2002-0003; FRL-8180-2]
 RIN 2025-AA10

Community Right-to-Know; Toxic Chemical Release Reporting Using North American Industry Classification System (NAICS); Final Rule

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA has determined it is appropriate to amend its regulations for the Toxics Release Inventory (TRI) to include the North American Industry Classification System (NAICS) codes. We are including the NAICS codes that correspond to the Standard Industrial Classification (SIC) codes that are

currently subject to Toxics Release Inventory (TRI) reporting requirements in order to facilitate the transition from reporting of SIC codes on TRI reporting forms to reporting of NAICS codes. Consistent with the language of section 313(b)(1)(A) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), SIC codes still remain in the regulatory text as a basis for identifying the facilities that are subject to TRI requirements, along with the new NAICS codes.

EPA conducted a careful crosswalk between the SIC codes covered under EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA) and their corresponding NAICS codes. The Agency believes it has correctly identified the covered NAICS codes and no longer expects facilities to identify their SIC codes to determine TRI Program compliance. Facilities may now rely on the list of covered NAICS codes to determine whether they are required to report to the TRI Program.

DATES: This final rule is effective on August 7, 2006. Facilities will be required to report NAICS codes beginning with TRI reporting forms that are due on July 1, 2007, covering releases and other waste management quantities at the facility for the 2006 calendar year.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-TRI-2002-0003. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the HQ EPA Docket Center, EPA West Building, Room B102, 1301 Constitution

Ave., NW., Washington, DC. The 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.

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 Release Inventory Program Division, Mail code 2844T, OEI, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone: 202-566-0750; Fax: 202-566-0741; e-mail address: kendall.judith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action 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 manufacture, process, or otherwise use toxic chemicals listed on the TRI, and that are required under section 313 of EPCRA and section 6607 of the 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 Federal facilities are required to comply with the provisions set forth in section 313 of EPCRA and section 6607 of the PPA. Federal facilities are required 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. 6921 <i>et. seq.</i>), 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 entities likely to be affected by this action. Other types of

entities not listed in the table could also be affected. To determine whether your facility is 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 any questions regarding the applicability of this action

to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

EPA is finalizing this action 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 amending 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. Owners and operators of facilities that are subject to section 313 must identify their principal business activities by NAICS codes beginning with TRI reporting forms that are due on July 1, 2007, covering releases and other waste management quantities at the facility for the 2006 calendar year. Finally, EPA is amending 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.

For the purpose of establishing consistency with the NAICS classification methodology, and to avoid confusion in the future with respect to reporting obligations by establishments that are considered auxiliary establishments under the SIC system, EPA is changing its interpretation that EPCRA reporting requirements apply to auxiliary establishments. EPA believes this change is warranted in light of the significant differences in treatment of auxiliary establishments between the SIC and NAICS systems. It is possible, in light of EPA's new interpretation, that some auxiliary establishments will no longer be subject to TRI reporting requirements. EPA is also amending the regulations to extend the exemption provided in the regulations 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. The TRI regulations currently 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." 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 in the 1997 TRI Industry Expansion Rule, when such owners have no other business interest in the operation of such establishments. This amendment is unrelated to the purpose of this rule which is to change TRI reporting from SIC codes to NAICS codes. The Agency is simply using the opportunity of this rulemaking to extend the exemption to all facilities that are covered under TRI.

III. Background Information

What Is the General Background for This Action?

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 to the State in which the facility is located, 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 chemicals listed in the EPCRA section 313 list of 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 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 the national TRI data base which is readily accessible to the public, researchers, industry, government agencies, and other interested parties.

When Congress enacted EPCRA in 1986, it specifically identified the manufacturing sector, which included facilities in SIC major group codes 20 through 39 (see Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual 1987 (hereinafter referred to as the 1987 SIC Manual), as being subject to the reporting requirements of section 313. Section 313(b)(1)(A) 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, in 1997, pursuant to section 313(b)(1)(B), EPA added seven industry groups to the list of industries required to report to EPA and State governments. 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, 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); 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*); 5169; 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on

a contract or fee basis). (See 40 CFR 372.22.)

As explained below, the United States is in the process of replacing SIC with NAICS. This final action will put NAICS in place for the TRI Program.

IV. Final Action

A. Why Did the EPA Propose This Action, and What Will the Final Action Be?

On April 9, 1997, the Office of Management and Budget (OMB) published a **Federal Register** Notice of final decision (62 FR 17288) to adopt 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. See Executive Office of the President, Office of Management and Budget, North American Industry Classification System—United States, 1997 (hereinafter referred to as the 1997 NAICS Manual). OMB's Economic Classification Policy Committee (ECPC) developed NAICS in cooperation 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.C. 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.

In this final rule, EPA is amending 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. EPA is also amending 40 CFR 372.85(b)(5) and 372.95(b)(10) such that covered facilities must report their appropriate NAICS codes on the TRI reporting form, Form R, or on the Alternate Threshold Certification Statement, Form A, where applicable. EPA is also amending 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 amending 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.

B. Will This Final Rule Affect the Universe Of Facilities That Are Currently Required To Report to EPA and the States?

With the exception of facilities defined as "auxiliary facilities" under SIC (see Unit V.D.), this action will 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 adding or deleting 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. EPA notes that this action also eliminates reporting requirements for owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in the Industry Expansion Rule SIC codes, but this revision does not affect the universe of covered facilities, only who is required to report on such facilities.

The TRI Program developed an extensive SIC to NAICS to SIC crosswalk document based on ECPC's U.S. SIC to NAICS and NAICS to SIC conversion tables in order to identify the universe of NAICS codes that correspond to covered SIC codes. See "Table 1: 1997 NAICS Matched to 1987 SIC" and "Table 2: 1987 SIC Matched to 1997 NAICS" on the U.S. Census

Bureau's Web site at <http://www.census.gov/epcd/www/naicstab.htm>. A more direct crosswalk between the 1987 SIC and 2002 NAICS may be found in "Table 4: 1987 SIC Matched to 2002 NAICS" at <http://www.census.gov/epcd/naics02/>.

EPA developed its crosswalk document by carefully mapping each SIC code to its corresponding NAICS code or codes, and then 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 OMB'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 that have been classified as manufacturing industries under NAICS. Similarly, EPA checked OMB's ECPC 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. EPA conducted similar mapping with respect to the industries added to TRI in the Industry Expansion Rule. Please refer to the preamble to the proposed rule (68 FR 13877–13878) for a more complete discussion of the methodology EPA used to identify NAICS codes that correspond to currently covered SIC codes.

When EPA issued the proposed rule, it identified the NAICS codes that correspond to covered SIC codes based on the OMB crosswalks between the 1987 SIC Manual and the 1997 NAICS Manual. OMB formalized adoption of revisions to the 1997 NAICS Manual in a **Federal Register** notice on January 16, 2001 (66 FR 3826–3827). In 2002, OMB published a revised NAICS Manual. See Executive Office of the President, Office of Management and Budget, North American Industry Classification System United States, 2002 (hereinafter referred to as the 2002 NAICS Manual). As explained in Unit V.E., the final list of NAICS codes to be covered under TRI has been updated to reflect several minor additions and revisions that the 2002 NAICS Manual made to the 1997 NAICS codes that were identified in the proposed rule as corresponding to covered SIC codes

C. Why Will EPA Add NAICS Codes for EPCRA Section 313 and PPA Section 6607 Reporting Purposes?

EPA has determined 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 (1997 NAICS Manual at 21). As a result, the existing SIC system 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 (i.d.). 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.

D. Office of Management and Budget Updates to NAICS

OMB plans to update NAICS every five years. The next update is scheduled for 2007. In accordance with OMB's established NAICS revision practice, a final decision FR notice for the 2007 NAICS revision will be published early in 2006 and the 2007 NAICS Manual will be published early in 2007. The TRI Program will issue **Federal Register** notices to update the NAICS codes that correspond to covered SIC codes every five years, if necessary, after OMB completes its five-year updates.

E. How Will TRI Reporting Requirements Change as a Result of This Final Rule?

TRI reporting requirements remain substantially the same under this action. The difference is that covered facilities will report their primary and secondary NAICS codes on Form R and Form A, rather than their primary and secondary

SIC codes. Because the statute identifies covered facilities by SIC code, the industries subject to TRI requirements will continue to be identified in the regulatory text by SIC code; however, the text will be amended to include NAICS codes as well. See 40 CFR 372.22(b) and 372.23 of the amended regulatory text below. With the exception of auxiliary facilities, facilities that currently report to the TRI Program because they are classified in a covered SIC code must continue to report to the TRI Program under this action if they continue to satisfy the applicable reporting criteria; however, these facilities may now rely on the list of covered NAICS codes in the amended regulations to determine whether they are subject to TRI reporting requirements. Accordingly, EPA no longer expects facilities to identify their SIC codes to determine TRI program compliance.

F. Why Is EPA Extending the Exemption in 40 CFR 372.38(e)?

The TRI regulations at 40 CFR 372.38(e) currently 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 that would allow him to determine compliance or report the required information. 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 in the 1997 TRI 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 amendment to 40 CFR 372.38(e) extends the exemption to other industries, there is no cost to industry associated with it.

V. Summary of Public Comments and EPA Responses

What comments did EPA receive on the proposal to add NAICS codes for TRI reporting and what are EPA's responses?

EPA received comments from five entities in response to the proposal to add NAICS codes for TRI reporting. The submitted comments can be accessed in

the EPA docket under Docket ID No. EPA-HQ-TRI-2002-0003.

A. What comments did EPA receive on its method for implementing NAICS for TRI reporting?

One commenter states that EPA noted in the proposed rule that its intent in adopting NAICS codes for TRI purposes is to make sure presently covered facilities continue to report and so be "consistent with the statutory requirements." The commenter believes, however, that there is no explanation of the statutory requirements that EPA is being consistent with, and whether they are relevant to the changing industry and how it is classified. The commenter also believes that EPA should not attempt to correlate SIC sectors with NAICS sectors. For the purpose of simplification and ease of explanation to the regulated community, the commenter believes that the proposal should state that covered codes will be NAICS 31-33 (NAICS manufacturing sector) plus the Industry Expansion Rule facilities. The commenter has suggested new language for 40 CFR 372.22(b) to achieve this objective. The commenter also believes that in the year after rule approval, EPA should educate facilities regarding the change and assign a proposed NAICS number for the facility to review and accept and that the burden should be on the EPA to educate reporters and make the initial correlations between SIC and NAICS codes. The commenter further states that future NAICS revisions should be used "as is" to include the manufacturing sectors with no consideration of past revisions and that correlation should only be used for historical statistical purposes. The commenter also disagrees with the stated differences between SIC and NAICS systems in the proposed rule. In particular, the commenter points out that NAICS, like SIC, was developed to reflect changes in the economy and in industries and that under both classification systems establishments are classified according to their primary activities.

EPA Response: The commenter is correct that EPA's intent is to implement NAICS in such a way that, with the exception of auxiliary facilities (see Unit V.D.), there is no change in the universe of facilities that is currently required to report toxic chemical releases and other waste management quantities under section 313 of EPCRA and section 6607 of the PPA. EPA believes this approach to implementing NAICS with respect to TRI reporting is the most consistent with EPCRA section 313. As EPA stated in the proposed rule:

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.

68 FR 13876, March 21, 2003. As indicated in this excerpt from the proposed rule, the statutory requirements underlying EPA’s proposed approach are found in section 313 which defines covered facilities in terms of SIC codes. In particular, EPA explained that section 313(b)(1)(A) of EPCRA explicitly identifies, by SIC code, the universe of facilities that was initially subject to TRI reporting when the statute was enacted. See 68 FR 13875. Section 313(b)(1)(A) provides in relevant part:

The requirements of this section shall apply to owners and operators of facilities * * * that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985). * * *

42 U.S.C. 11023(b)(1)(A). In addition, EPCRA authorizes EPA to “add or delete Standard Industrial Classification codes” to the list of those initially identified by Congress in section 313(b)(1)(A) as being subject to TRI reporting requirements. See EPCRA section 313(b)(1)(B), 42 U.S.C. 11023(b)(1)(B). However, EPA may only add SIC codes under section 313(b)(1)(B) if it concludes that each “Standard Industrial Code to which [section 313] applies is relevant to the purposes of [section 313].” Id. EPCRA therefore explicitly provides in section 313(b)(1)(A) and section 313(b)(1)(B) that section 313 applies to facilities in SIC codes 20 through 39 and to facilities in other SIC codes that EPA makes subject to EPCRA requirements by rule, if such facilities also meet the full-time employee and chemical activity criteria. EPA believes, therefore, that the facilities that are currently subject to TRI reporting because they are in a covered SIC code should continue to be subject to TRI requirements after EPA implements NAICS for TRI purposes. Similarly, facilities that are not currently subject to TRI reporting because they are not in a covered SIC code should not be subject to TRI requirements simply because EPA is implementing NAICS for TRI purposes.

EPA agrees with the commenter that NAICS was developed because the economy changes and industries change over time and therefore, the industry classification system must be updated to reflect such changes. EPA also agrees

that establishments are classified according to their primary activities under both SIC and NAICS. However, NAICS is in fact a different classification system than SIC. In particular, the organizing principle underlying NAICS differs in certain fundamental respects from the organizing principles underlying SIC. As the Standard Industrial Classification Manual, 1987 states:

The [SIC] classification system is organized to reflect the structure of the U.S. economy. It does not follow any single principle, such as end use, nature of raw materials, product, or market structure. * * *

1987 SIC Manual at 699. (For a comprehensive discussion of the organizing principles underlying the SIC system, see Economic Classification Policy Committee, Report No. 1: Economic Concepts Incorporated in the Standard Industrial Classification Industries of the United States, Aug. 1994, available at <http://www.census.gov/epcd/naics/ecpcrpt1>). In contrast, NAICS was developed around the single organizing principle that establishments should be grouped into industries “according to similarity in the processes used to produce goods or services.” 1997 NAICS Manual at 13. This makes NAICS “unique among industry classification systems.” Id. at 3.

With respect to TRI, the result of the different organizing principles inherent in SIC and NAICS is that facilities that are classified in the SIC “manufacturing sector” (SIC codes 20–39) which Congress intended to be subject to TRI requirements might not be classified in the NAICS “manufacturing sector” (NAICS codes 31–33). Accordingly, if EPA had proposed that the NAICS “manufacturing sector” report under EPCRA section 313, then some facilities that are currently subject to TRI would be exempt from reporting. Similarly, facilities that are not currently subject to TRI requirements because they are not in the SIC “manufacturing sector” might be classified in the NAICS “manufacturing sector” and would therefore be subject to TRI reporting. For example, as discussed in the preamble to the proposed rule, if all facilities in NAICS codes 31–33 were required to report, then that would mean that retail bakeries (SIC code 5461) would need to start reporting if they met the employee and chemical activity thresholds because they are classified in the NAICS “manufacturing sector” (NAICS 31181). See 68 FR 13876. It may be true in practice that retail bakeries would rarely have to report because they typically would not meet the full-time employee and/or chemical activity criteria.

Nevertheless, even if retail bakeries would not normally satisfy the applicability criteria, they would still incur the burden of making compliance determinations, (e.g., determining whether they manufacture, process or otherwise use listed toxic chemicals in excess of applicable thresholds and whether they meet the full-time employee criterion). More importantly, section 313(b)(1)(A) indicates that retail bakeries are not currently subject to TRI reporting requirements. Nor has EPA made a determination pursuant to section 313(b)(1)(B) that it would be “relevant to the purposes of [section 313]” for retail bakeries to begin reporting to TRI.

Similar changes in the universe of facilities that are subject to EPCRA section 313 could occur with respect to the SIC industries added to TRI in the 1997 Industry Expansion Rule. Such changes would not be the result of changes in the economic activities at the facility itself. Nor would they be the result of a rulemaking supported by the statutory finding required under section 313(b)(1)(B) (or section 313(b)(2) which authorizes EPA to apply section 313 requirements to particular facilities without regard to their SIC codes). Rather, the changes would result simply because the organizing principles for the industry classification system that is in effect today are different from those underlying the industry classification system that was in effect for 50 years prior to the time that Congress enacted EPCRA. EPA does not believe that this is a sufficient basis to impose reporting obligations on facilities that otherwise would not be subject to section 313 or to exempt facilities from TRI reporting requirements that otherwise would be required to report. EPA conducted a careful crosswalk between SIC codes covered under EPCRA section 313 and PPA section 6607 and the corresponding NAICS codes. The Agency believes it has correctly identified the covered NAICS codes as reflected in the amended 40 CFR part 372, and no longer expects facilities to identify their SIC codes to determine TRI program compliance. Facilities may now rely on the list of covered NAICS codes in the amended 40 CFR part 372 to determine whether they are required to report to the TRI program.

EPA disagrees with the commenter’s recommendation that EPA assign NAICS codes to currently reporting facilities. Unlike some government programs that do assign SIC or NAICS codes to a particular establishment based on information provided to the government about the facility’s activities, EPA has never followed this approach in

implementing section 313. Facilities have typically self-determined their SIC codes for purposes of TRI and EPA believes that they should continue to do so with NAICS codes. Owners and operators have first-hand knowledge of the activities undertaken at their facilities and such knowledge is useful in assigning an appropriate SIC or NAICS code to a facility. This is particularly true with respect to determining SIC or NAICS codes for TRI reporting because facilities often need to evaluate activities and economic data at multiple establishments and make judgments based on that information in accordance with 40 CFR 372.22(b)(3) in order to determine the SIC or NAICS code that applies to the entire facility.

B. What comments did EPA receive seeking clarification of TRI reporting requirements for particular facilities?

One commenter, although in support of the proposal to incorporate NAICS codes into the TRI program, requested that the Agency clarify the TRI reporting requirements for recycling facilities that are exempt from obtaining RCRA Subtitle C permits. The commenter notes that many hazardous waste management facilities are exempt from RCRA permitting requirements, but are still regulated under RCRA Subtitle C. According to the commenter, at least one EPA Regional Office provided guidance indicating that facilities that recycle mercury-containing fluorescent lamps and other Universal Wastes are required to report to TRI because these facilities fall under SIC code 4953 and are regulated under RCRA Subtitle C. By contrast, however, the commenter noted that in another region, a mercury-lamp recycling facility has assumed that it is properly categorized under SIC 5093 and the EPA Regional Office in that case has not provided any guidance or information contradicting the facility's assumption of its designation under this SIC code. The commenter believes that recycling facilities should be exempt from TRI reporting, but if not, that EPA should clarify in this rulemaking the SIC or NAICS codes that these facilities come under that would require TRI reporting.

EPA Response: As an initial matter, EPA believes that this comment is beyond the scope of this rulemaking which simply identifies the NAICS codes that correspond to SIC codes that are currently subject to EPCRA section 313. Nonetheless, EPA believes it may be helpful to provide some additional clarification on this point in this preamble. By doing so, however, EPA does not intend in any way to reconsider or otherwise reopen the issue

of the applicability of EPCRA section 313 to facilities in SIC code 4953 (or the corresponding NAICS codes identified below), or the types of facilities in SIC code 4953 (or the corresponding NAICS codes) that are subject to TRI. In addition, as noted in Unit V.A. of this preamble, SIC or NAICS code determinations are very fact-specific, and it is not appropriate to attempt to address questions related to specific facilities in this context. Therefore, this response should not be construed as addressing facility-specific issues regarding such determinations.

In order to determine if a recycling facility, such as a mercury-lamp recycler, is required to report under TRI, two determinations, in addition to the employee and chemical activity thresholds, are necessary. First, the facility must be in a covered SIC code (or a corresponding NAICS code). Second, if the facility is in a covered SIC code (or a corresponding NAICS code), the facility must also be regulated under RCRA Subtitle C.

The NAICS Determination. The commenter requested that EPA clarify whether recycling facilities are classified under SIC code 4953 (Refuse Systems) or under SIC code 5093 (Scrap and Waste Materials) for purposes of TRI reporting. SIC code 4953 includes establishments that are "primarily engaged in the collection and disposal of refuse by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for the disposal of such materials." 1987 SIC Manual at 285. Facilities that are classified under SIC 4953 are classified in one of the following NAICS codes: NAICS 562211, Hazardous Waste Treatment and Disposal; 562212, Solid Waste Landfill; 562213, Solid Waste Combustors and Incinerators; 562219, Other Nonhazardous Waste Treatment and Disposal; or 562920, Materials Recovery Facilities. A facility in one of the above NAICS categories is required to submit a TRI report if it is also regulated under Subtitle C and meets the employee and chemical activity thresholds.

By contrast, facilities classified under SIC 5093, Scrap and Waste Materials, are not covered by the TRI Program, and they are classified under NAICS 42193, Recyclable Material Wholesalers. SIC code 5093 includes establishments that are "primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials." 1987 SIC Manual at 301.

In many cases, recycling facilities may be engaged in both of these activities, and possibly other SIC or NAICS-defined activities as well. In such

situations, where facilities consist of two or more establishments, the TRI regulations provide instructions for determining the primary SIC or NAICS code for the entire facility for TRI reporting purposes. If all of the establishments at the facility have covered SIC or NAICS codes, then the facility has met the SIC or NAICS code requirement. 40 CFR 372.22(b)(2). In the case of a multi-establishment facility with at least one establishment in a non-covered SIC or NAICS code, 40 CFR 372.22(b)(3) requires the facility to compare the relative value added of the various establishments to determine whether the facility as a whole is in a covered SIC or NAICS code. For example, under section 372(b)(3)(i), if a recycling facility consists of a SIC 4953 establishment and a SIC 5093 establishment, and the relative value added of the facility's SIC 5093 scrap and waste material wholesale operations is greater than 50 percent of the total value added of services provided or products shipped or produced by the whole facility, then the facility would be classified in SIC code 5093 and would not be subject to TRI reporting. Without facility-specific information of this nature, EPA cannot determine the proper SIC or NAICS code for a particular recycling facility or for recycling facilities in general.

Regulated Under Subtitle C. The commenter requested that EPA clarify the applicability of TRI to facilities that are exempt from RCRA permitting requirements, but are still regulated under RCRA Subtitle C, because for the SIC code 4953 and the corresponding NAICS codes, TRI reporting is "limited to facilities regulated under [RCRA] Subtitle C." 40 CFR 372.22.

The commenter mistakenly believes that recycling facilities are exempt from TRI reporting. EPA has not provided rules or guidance that exempt recycling facilities from TRI reporting. As the commenter correctly notes, there are recycling facilities that are not required to obtain a RCRA permit (or interim status) but nonetheless, are regulated under Subtitle C. For example, some recycling facilities must complete the hazardous waste manifest, an important part of the Subtitle C cradle to grave tracking system. Some recycling facilities also must provide notifications and reports to EPA and authorized states. Still other recycling facilities must comply with air emission standards issued under Subtitle C. Each of these facilities would be regulated under RCRA Subtitle C and would also be required to report to TRI if reporting thresholds were met.

C. What comments did EPA receive regarding cross references from SIC codes to NAICS codes?

One comment was submitted that stated that EPA has not provided a comprehensive cross reference to correspond SIC codes to NAICS codes, and does not refer the regulated community to the NAICS manual to assist them in selecting the appropriate NAICS code. The commenter believes that EPA's assignment of NAICS codes to the SIC codes that are currently subject to TRI reporting requirements is not straightforward and transparent. The commenter further believes that the proposed revisions to 40 CFR 372.23 are just a compilation of "exceptions and/or limitations" with little guidance on determining corresponding codes. The commenter is concerned that facilities that use other reference sources to determine corresponding NAICS codes might arrive at a different conclusion than EPA and could therefore be subject to an enforcement action. The commenter also believes that EPA should consider making the OMB crosswalk information available in a guidance document or codifying the information.

EPA Response: EPA disagrees that it has not provided a comprehensive cross reference to adequately correspond SIC codes to NAICS codes. The NAICS codes in the proposed regulatory text at 40 CFR 372.23 that correspond to the SIC codes that are currently subject to TRI reporting requirements were determined by using comprehensive SIC to NAICS and NAICS to SIC crosswalk documents that were developed by OMB's ECPC. As the commenter notes, the OMB crosswalk documents are included in the docket for the proposed rule. They are also publicly accessible on the Census Bureau's Web site at <http://www.census.gov/epcd/www/naics.html> and <http://www.census.gov/epcd/naics02/>. EPA used the OMB crosswalk as the basis for its determinations of TRI NAICS reporting facilities because OMB is the Federal government entity that is responsible for developing and maintaining Federal classifications. As such, OMB has considerable experience and expertise in making classification decisions for Federal statistical purposes. EPA has examined these decisions and determined that it is appropriate to follow them, along with the exceptions presented in the regulatory text, for TRI reporting purposes.

EPA also disagrees that its assignment of NAICS codes to the SIC codes that are currently subject to TRI reporting requirements is not straightforward and

transparent. The regulatory text at 40 CFR 372.23(b) and (c) is simply a condensed version of the information presented in the OMB crosswalk. The methodology that EPA used to translate the lengthy OMB crosswalk into the condensed version of it that appears in the regulatory text is explained at length in the proposed rule. See 68 FR 13877–13879.

In response to the commenter's suggestion that EPA codify the actual OMB crosswalk, EPA believes the amount of information that would need to be codified would make it more difficult for facilities to determine whether or not the NAICS code that applies to their facility corresponds to a covered SIC code. If codified, the portion of the OMB crosswalk that would need to be included in the CFR would likely occupy dozens of pages. In contrast, the list of NAICS codes in the regulatory text at 40 CFR 372.23 will likely occupy two to three pages in the CFR. In order to present the crosswalk information in a condensed form, it was necessary for EPA to create exceptions and limitations to accurately identify the specific NAICS codes that correspond to currently covered SIC codes.

The commenter indicates that facilities might use reference sources other than the OMB crosswalk to determine corresponding NAICS codes, and that they will therefore have to consult the OMB crosswalk in the docket for the proposed rule to verify their determinations. First, as noted above, the OMB crosswalk is not only available in the EPA public docket for the proposed rule, but it is also available on the NAICS Web site hosted at the Census Bureau. Second, EPA would like to clarify that in this rulemaking, the Agency is simply identifying the NAICS codes that correspond to SIC codes that are currently subject to TRI reporting. As discussed above, EPA believes OMB's experience and expertise with implementing SIC and NAICS make its crosswalk between SIC and NAICS reliable for that purpose. Therefore, if a facility chooses to identify its NAICS code for TRI purposes based only on its current SIC code, EPA strongly recommends that the facility use the OMB crosswalk. To the extent that other Federal Government agencies, State governments or private parties have developed similar crosswalks, EPA discourages their use for determining NAICS codes for TRI purposes. Such crosswalks may reflect classification decisions that depend on the nature of the programs administered by such entities. NAICS codes that are assigned to facilities by such entities for

administrative purposes may also reflect such program-specific interpretations.

That does not mean, however, that owners or operators cannot or should not consult the NAICS Manual itself to determine the most appropriate NAICS code for their facilities based on the activities that occur at the facility. In fact, EPA strongly encourages owners and operators to consult the NAICS Manual when determining the most appropriate NAICS code for their facilities. In the unlikely event that a facility that is in a covered SIC code uses the NAICS Manual to determine a NAICS code for the facility, and concludes that the most appropriate NAICS code is not the same one that OMB has determined corresponds to its SIC code, then that facility is welcome to contact EPA to discuss the discrepancy. Ultimately, any disagreement between a facility and EPA with respect to the facility's proper NAICS code will be resolved based on the facility's activities and whether they are most appropriately described by one of the NAICS industry descriptions identified in the regulatory text or by some other NAICS code.

D. What comments did EPA receive regarding its proposal to require "auxiliary facilities" to continue to report to TRI using the NAICS code of the establishment or facility for which it performs support services?

Two commenters disagreed with EPA's guidance in the preamble to the proposed rule that auxiliary facilities should report using the NAICS code of the facility for which they perform support services and recommend that EPA reconsider how to classify auxiliary facilities in light of the fact that the SIC classification methodology differs significantly from the NAICS classification methodology. One of the commenters further stated that EPA should also consider that new auxiliary facilities (e.g., Research & Development sites) will likely determine their appropriate NAICS code by following the methodology in the NAICS manual which does not define auxiliary facilities, while older R&D facilities would still be reporting since they were considered auxiliary facilities under the obsolete SIC classification system.

EPA Response: EPA has reconsidered guidance in the preamble to the proposed rule with respect to the reporting of NAICS codes by auxiliary facilities. The 1987 SIC Manual defines auxiliary establishments as establishments primarily engaged in performing management or support services for other establishments. [1987 SIC Manual at 13.]. The SIC system

assigns these establishments (e.g., research and development laboratories, warehouses, storage facilities) SIC codes according to the primary activity of the operating establishments they serve. *Id.* at 16. For example, auxiliary establishments tied to manufacturing establishments are given a manufacturing SIC code. For purposes of TRI reporting, auxiliary establishments are often referred to as "auxiliary facilities." In order to remain consistent with the SIC nomenclature, EPA will use the term "auxiliary establishment" rather than "auxiliary facility" in the following discussion.

EPCRA section 313(b)(1)(A) states that section 313 requirements "shall apply to owners and operators of facilities * * * that are in [SIC] codes 20 through 39." Since the inception of the TRI Program in 1988, the Agency has interpreted EPCRA section 313 to cover operating establishments and auxiliary establishments, consistent with the 1987 SIC Manual definition of auxiliary establishment. EPA noted at the time that it believed that this would be the most consistent way to treat auxiliary establishments. 53 FR 4500, 4503 (Feb. 16, 1988).

NAICS, however, did not adopt the SIC system concept of auxiliary establishments. NAICS was developed around the single organizing principle that establishments should be grouped into industries according to similarities in the processes used to produce goods or services." 1997 NAICS Manual at 13. Thus, under NAICS, former SIC auxiliary establishments are assigned NAICS codes according to their own activities (e.g., a research and development facility that supported a SIC 3728 Aircraft Parts and Auxiliary Equipment facility would be classified under NAICS 54171, Research and Development in the Physical, Engineering, and Life Sciences).

For the purpose of establishing consistency with the NAICS classification methodology, and to avoid confusion in the future with respect to reporting obligations by establishments that are considered auxiliary establishments under the SIC system, EPA is changing its interpretation that EPCRA reporting requirements apply to auxiliary establishments. EPA believes this change is warranted in light of the significant differences in treatment of auxiliary establishments between the SIC and NAICS systems. In future reporting years, NAICS codes will be the only economic classification codes that are used by reporting facilities on TRI reporting forms, and new entities that may have been classified as auxiliary establishments facilities under SIC will

look to the NAICS manual for reporting guidance, not the 1987 SIC Manual. These new establishments will not have any prior experience with the SIC system and the concept of auxiliary establishments. Without extensive outreach by EPA and possibly changes to the regulations in part 372, it will be difficult to communicate to these establishments that they may have a TRI reporting obligation based not on their own activities but on those of the establishments they serve.

It is possible, in light of EPA's new interpretation, that some auxiliary establishments will no longer be subject to TRI reporting requirements. For example, under EPA's previous interpretation, a stand-alone auxiliary establishment (e.g., a warehouse that is not part of a larger facility) that met the employee and chemical activity thresholds, and that was classified in a covered SIC or NAICS code only because it served an off-site operating establishment in a covered SIC or NAICS code, would have been subject to TRI reporting requirements. Under the new interpretation, the same establishment would no longer be subject to such requirements because it would not meet the SIC or NAICS code requirement. In contrast, auxiliary establishments that are part of multi-establishment facilities whose primary SIC or NAICS codes are covered under EPCRA section 313 would still be subject to section 313 if the entire facility also met the employee and chemical activity thresholds.

In this regard, it is important to note that this new interpretation could affect the determination of the primary SIC or NAICS code for a multi-establishment facility in the first instance. For example, under 40 CFR 372.22(b)(2), if all establishments in a multi-establishment facility have covered primary SIC or NAICS codes, then the entire facility has met the SIC or NAICS code requirement. Consider a multi-establishment facility that consists of two establishments. One is an auto parts manufacturing establishment that is in a covered manufacturing code, and the other is an auxiliary establishment (e.g., a warehouse) that serves the manufacturing establishment. Under EPA's previous interpretation, this multi-establishment facility would have been in a covered primary SIC code because both establishments share the same manufacturing code. Under the new interpretation, the warehouse would not be in a covered SIC code simply because of its status in the SIC system as an auxiliary facility. Nor is it likely to be in a covered NAICS code. Instead, it would have a NAICS code

that is appropriate for its particular warehousing activities. Thus, this particular multi-establishment facility would no longer meet the SIC or NAICS code requirement based solely on 40 CFR 372.22(b)(2). Note however, that the facility could still meet the SIC or NAICS code requirement based on 40 CFR 372.22(b)(3), which requires owners or operators to compare the relative value added by the various establishments in a multi-establishment facility to determine whether the facility as a whole is in a covered primary SIC or NAICS code. For example, if the value added by the manufacturing establishment in the example above exceeded that of the warehousing establishment, then the entire multi-establishment facility would meet the SIC or NAICS code requirement under either of the tests in 40 CFR 372.22(b).

E. What comments did EPA receive regarding OMB's NAICS 2002 update that was published in the January 16, 2001 Federal Register (66 FR 3826)?

EPA received recommendations that the NAICS codes in the proposed rule be updated to match the NAICS 2002 listing according to the OMB notice of final decision published January 16, 2001 (66 FR 3826) that adopted the 2002 NAICS codes.

EPA Response: EPA agrees with the commenter and has updated the final rule to reflect minor, non-substantive changes that the 2002 NAICS Manual made to certain 1997 NAICS codes that were included in the proposed rule. The 2002 NAICS update made no changes to the 1997 manufacturing sector NAICS codes.

Outside of the manufacturing sector, the only TRI covered sectors that were affected by the 2002 NAICS revisions were the Wholesale Trade and Information sectors (NAICS sectors 42 and 51, respectively). These revisions and additions are included in the final list of NAICS codes that will be covered under TRI. See 40 CFR 372.23 of the final regulatory text.

As stated before, with the exception of auxiliary facilities, this final rule will 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 adding or deleting industry groups from the list of industries that are currently subject to section 313 reporting requirements.

VI. Which NAICS Codes Are Subject to TRI Requirements Under This Final Rule?

Using the OMB crosswalk tables and the methodology described in the proposed rule (68 FR 13877-13878),

EPA has determined that facilities classified in the NAICS codes listed in the final regulations in 40 CFR 372.23 must report their toxic chemical releases and other waste management quantities to EPA and State governments. This list will be used for regulatory and enforcement purposes.

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

EPA has evaluated the potential burden and cost of using NAICS for TRI reporting and expects that the burden associated with this change for affected facilities is negligible. OMB adopted NAICS as the United States' industry classification system in 1997, and facilities should already be familiar with their NAICS codes from other administrative and regulatory reporting requirements of EPA and other governmental entities. With the exception of auxiliary facilities, EPA does not expect or intend this action to affect the universe of facilities that are currently required to report under section 313 of EPCRA. EPA is simply identifying NAICS industry codes which correspond to those SIC codes that 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 requirements in 40 CFR 372.22(b) will need to continue to report releases and other waste management quantities of toxic chemicals under section 313 of EPCRA. The changed interpretation for auxiliary facility reporting will likely result in some reduction of burden, however, the Agency can not quantify what burden reduction is likely to occur because there is no way to tell how many stand-alone auxiliaries currently report or how auxiliaries currently affect multi-establishment applicability determinations.

VIII. What Are the References Cited in This Final 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)

3. 1997 NAICS U.S. Structure, Including Relationship to 1987 U.S. SIC, "Table 1: 1997 NAICS Matched to 1987 SIC" and "Table 2: 1987 SIC Matched to 1997 NAICS" (<http://www.census.gov/epcd/www/naicstab.htm>).

4. **Federal Register:** April 20, 2000 (Volume 65, Number 77), Office of Management and Budget, North American Industry Classification System—Update for 2002: Notice of solicitation of comments on the Economic Classification Policy Committee's recommendations for the 2002 revision of the North American Industry Classification System

5. **Federal Register:** January 16, 2001 (Volume 66, Number 10), Office of Management and Budget, North American Industry Classification System—Revision for 2002; Notice of final decision

6. Economic Classification Policy Committee, Report No. 1: Economic Concepts Incorporated in the Standard Industrial Classification Industries of the United States, Aug. 1994 (<http://www.census.gov/epcd/naics/ecpcrpt1>).

7. Executive Office of the President, Office of Management and Budget, North American Industry Classification System, United States, 2002 (NTIS PB2002-101430*88).

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Agency must determine whether a 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 with the following impacts: (1) May 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) creates a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

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 this 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 that is independently owned and operated and is not dominant in its field.

The change required by this rulemaking is to require facilities to report their NAICS codes rather than their SIC codes. The burden of reporting NAICS codes in place of SIC codes is negligible considering that facilities are or should be already using NAICS codes in other government data collection exercises. After consideration of the potential economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. Facilities that are affected by the rule already report their industrial classification codes on the approved reporting forms using SIC codes. Moreover, OMB adopted NAICS several 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. EPA will seek approval from OMB for the amended reporting forms (which will include data fields for NAICS codes instead of SIC codes) prior to the date when facilities must submit reports to the TRI Program using NAICS codes.

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. 1363-13) for Form R and 2070-0143 (EPA ICR No. 1704-07) for Form A. A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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 the regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective 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 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 lieu of the SIC code is expected to impose negligible incremental burden on affected facilities. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132

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. The phrase, "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 rule does not have federalism implications. It will not have substantial direct effect 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, NAICS in place of the SIC system which has previously been used for collecting statistical data and for

other administrative and regulatory purposes. Thus, Executive Order 13132 does not apply to this rule.

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 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.

G. 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 rule is not subject to EO 13045 because it is not economically significant as defined under Executive Order 12866.

H. 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.

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, and no other classification systems were brought to its attention in comments. 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 for purposes of EPCRA section 313 reporting.

J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A “major rule,” as defined by 5 U.S.C. 804(2), can not take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule.” This rule will be effective on August 7, 2006.

List of Subjects in 40 CFR Part 372

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

Dated: May 18, 2006.

Stephen L. Johnson,
Administrator.

■ Therefore, 40 CFR part 372 is 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 in alphabetical order a definition for “Previously classified” to read as follows:

§ 372.3 Definitions.

* * * * *

Previously classified means 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 paragraphs (b) introductory text, (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 § 372.23(a) (for which the corresponding North

American Industry Classification System (NAICS) (as in effect on January 1, 2002) 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 code listed in § 372.23(b) or § 372.23(c) 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 the facility.

* * * * *

■ 4. 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 apply to facilities in the following SIC and NAICS codes. This section contains three listings. Paragraph (a) of this section lists the SIC codes to which this part applies. Paragraph (b) of this section lists 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.
12	Except 1241.
20 through 39	
4911, 4931, 4939	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
4953	Limited to facilities regulated under the Resource Conservation and Recovery Act, 42 U.S.C. 6921, et seq.

Major group or industry code	Exceptions and/or limitations
5169 5171 7389	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis.

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

Subsector code or industry code	Exceptions and/or limitations
311	<p>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);</p> <p>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);</p> <p>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);</p> <p>Except 311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries);</p> <p>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);</p> <p>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), (previously classified under SIC 5147, Meats and Meat Products);</p>
312	Except 312229—Exception is limited to facilities primarily engaged in providing Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);
313	<p>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));</p> <p>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);</p>
314	<p>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);</p> <p>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);</p> <p>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);</p>
315	<p>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));</p> <p>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));</p> <p>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)(custom dressmakers) (previously classified under SIC Code 5699, Miscellaneous Apparel and Accessory Stores);</p>
316 321 322 323	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));
324 325	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));
326	Except 326212—Tire Retreading, (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding));
327 331 332 333 334	Except 334611—Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software));

Subsector code or industry code	Exceptions and/or limitations
335	<p>Except 334612—Exception is limited to facilities primarily engaged in 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));</p> <p>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)));</p>
336	
337	<p>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));</p>
	<p>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));</p>
	<p>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));</p>
339	<p>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));</p>
	<p>Except 339116—Dental Laboratories (previously classified under SIC 8072, Dental Laboratories);</p>
111998	<p>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);</p>
211112	<p>Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic Chemicals, NEC (recovering sulfur from natural gas));</p>
212324	<p>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));</p>
212325	<p>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));</p>
212393	<p>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));</p>
212399	<p>Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating non-metallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1499));</p>
488390	<p>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));</p>
511110	
511120	
511130	
511140	<p>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));</p>
511191	
511199	
512220	
512230	<p>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));</p>
516110	<p>Limited to facilities primarily engaged in Internet newspaper publishing (previously classified under SIC 2711, Newspapers: Publishing, or Publishing and Printing), Internet periodical publishing (previously classified under SIC 2721, Periodicals: Publishing, or Publishing and Printing), Internet book publishing (previously classified under SIC 2731, Books: Publishing, or Publishing and Printing), Miscellaneous Internet publishing (previously classified under SIC 2741, Miscellaneous Publishing), Internet greeting card publishers (previously classified under SIC 2771, Greeting Cards);</p>
541710	<p>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);</p>
811490	<p>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));</p>

(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.
221122	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
424690	
424710	
425110	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
425120	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
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>

■ 5. 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 requirements 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.

■ 6. 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 § 372.23(b),

* * * * *

■ 7. 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) for the facility or establishments in the facility until the reporting year ending December 31, 2005, for which reporting forms are due July 1, 2006. Beginning with the reporting year ending December 31, 2006, for which reporting forms are due July 1, 2007, and for each subsequent reporting year, the six-digit NAICS code(s) for the facility or establishments in the facility.

* * * * *

■ 8. 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) for the facility or establishments in the facility until the reporting year ending December 31, 2005, for which reporting forms are due July 1, 2006. Beginning with the reporting year ending December 31, 2006, for which reporting

forms are due July 1, 2007, and for each subsequent reporting year, the six-digit

NAICS code(s) for the facility or establishments in the facility.

* * * * *

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