



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-OPPT-2017-0197; FRL-9964-77]

RIN 2070-AK32

Community Right-to-Know; Adopting 2017 North American Industry Classification System (NAICS) Codes for Toxics Release Inventory (TRI) Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is updating the list of North American Industry Classification System (NAICS) codes subject to reporting under the Toxics Release Inventory (TRI) to reflect the Office of Management and Budget (OMB) 2017 NAICS code revision. As a result of this action, facilities would be required to use 2017 NAICS codes when reporting to TRI beginning with TRI reporting forms that are due on July 1, 2018, covering releases and other waste management quantities for the 2017 calendar year. EPA is also modifying the list of exceptions and limitations associated with NAICS codes in the CFR for TRI reporting purposes by deleting the descriptive text. EPA believes that these amendments are non-controversial and does not expect to receive any adverse comments. However, in addition to this direct final rule, elsewhere in this issue of the **Federal Register**, EPA is issuing the same amendment as a Notice of Proposed Rulemaking that will be used in the

event that adverse comment is received. If EPA receives no adverse comment, the Agency will not take further action on the proposed rule and the direct final rule will become effective as provided in this action. If EPA receives relevant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final action will not take effect and directing them to the Notice of Proposed Rulemaking. EPA would then address all relevant adverse public comments in a subsequent final rule.

DATES: This final rule is effective on [*insert date 90 days after date of publication in the **Federal Register***] without further notice, unless EPA receives adverse comment by [*insert date 30 days after date of publication in the **Federal Register***]. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect and directing them to the Notice of Proposed Rulemaking that appears elsewhere in this issue of the **Federal Register**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2007-0197, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 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 OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Stephanie Griffin, Toxics Release Inventory Program Division, Mailcode 7410M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-1463; email address: *griffin.stephanie@epa.gov*.

For general information contact: The Emergency Planning and Community Right-to-Know Information Center; telephone number: (800) 424-9346, TDD (800) 553-7672; website: *https://www.epa.gov/home/epa-hotlines*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you own or operate facilities that have 10 or more full-time employees or the equivalent of 20,000 employee hours per year that manufacture, process, or otherwise use toxic chemicals listed on the TRI, and that are required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or section 6607 of the Pollution Prevention Act (PPA) to report annually to EPA and States or Tribes their environmental releases or other waste management quantities of covered chemicals. (A rule was published on April 19, 2012 (77 FR 23409), requiring facilities located in Indian country to report to the appropriate tribal government official and EPA instead of to the state and EPA.)

The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. (*Exceptions and/or limitations exist for these NAICS codes.)

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920

(limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

• Federal facilities. Under Executive Order 13693 (80 FR 15871, March 25, 2015), all federal facilities are required to comply with the provisions set forth in section 313 of EPCRA and section 6607 of the PPA. On June 10, 2015, the White House Council on Environmental Quality (CEQ) issued *Instructions for Implementing Executive Order 13693*, requiring federal agencies and contractors to comply with these laws regardless of NAICS code delineations (see 80 FR 34149, June 15, 2015).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What is the Agency's authority for taking this action?

EPA is taking this action under sections 313(g)(1) and 328 of EPCRA, 42 U.S.C. 11023(g)(1) and 11048. In general, section 313 of EPCRA requires owners and operators of covered facilities in specified SIC codes that manufacture, process, or otherwise use listed toxic chemicals 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. Congress also granted EPA broad rulemaking authority to allow the Agency to fully

implement the statute. EPCRA section 328 states that: “The Administrator may prescribe such regulations as may be necessary to carry out this chapter.” 42 U.S.C. 11048.

C. What action is the Agency taking?

In response to OMB’s revisions to the NAICS codes effective January 1, 2017, EPA is amending 40 CFR Part 372 to include 2017 NAICS codes for TRI reporting. EPA is also modifying the list of exceptions and limitations of NAICS codes for TRI reporting purposes in the CFR.

Under this action, TRI reporting requirements remain unchanged. However, due to the 2017 NAICS modifications, some facilities will need to modify their reported NAICS codes as outlined in the table below, which identifies only the revised TRI NAICS reporting codes and is not an exhaustive list of all NAICS reporting codes subject to EPCRA section 313 and PPA section 6607. A complete listing of all TRI covered facilities can be found in the regulations at 40 CFR 372.23.

2012 NAICS Code	2012 NAICS and U.S. Description	2017 NAICS Code	2017 NAICS and U.S. Description
333911	Pump and Pumping Equipment Manufacturing	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
333913	Measuring and Dispensing Pump Manufacturing	”	”
335221	Household Cooking Appliance Manufacturing	335220	Major Household Appliance Manufacturing

2012 NAICS Code	2012 NAICS and U.S. Description	2017 NAICS Code	2017 NAICS and U.S. Description
335222	Household Refrigerator and Home Freezer Manufacturing	”	”
335224	Household Laundry Equipment Manufacturing	”	”
335228	Other Major Household Appliance Manufacturing	”	”
512220	Integrated Record Production/Distribution	512250	<p>Record Production and Distribution</p> <p><i>This merges both TRI-covered and non-TRI-covered NAICS codes. Only 512220 (Integrated Record Production/Distribution) was covered by TRI. TRI will note that only the “Integrated Record Production/Distribution” facilities under NAICS code 512250 are required to report.</i></p>
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)	541713	<p>Research and Development in Nanotechnology</p> <p><i>This merges both TRI-covered and non-TRI-covered NAICS codes. Only 541712 (Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)) was covered by TRI. TRI will note that only the “Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)”</i></p>

2012 NAICS Code	2012 NAICS and U.S. Description	2017 NAICS Code	2017 NAICS and U.S. Description
			<i>facilities under NAICS code 541713 are required to report. TRI does not include all facilities classified under NAICS code 541712, and the same limitations will be extended to NAICS code 541713.</i>
”	”	541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) <i>TRI does not include all facilities classified under NAICS code 541712, and the same limitations will be extended to NAICS code 541715. TRI will specify which facilities under NAICS code 541715 are required to report.</i>
212231	Lead Ore and Zinc Ore Mining	212230*	Copper, Nickel, Lead, and Zinc Mining
212234	Copper Ore and Nickel Ore Mining	”	”

* A conforming update is also being made to 40 CFR 372.38(h).

Crosswalk tables between all 2012 NAICS codes and 2017 NAICS codes can be found on the Internet at <http://www.census.gov/epcd/www/naics.html>.

EPA is also modifying the list of exceptions and limitations of NAICS codes for TRI reporting purposes in the CFR. Because NAICS codes may cross-reference some SIC codes in both TRI-covered and non-covered TRI sectors, EPA has historically included descriptive text in 40 CFR Part 372 to help indicate exceptions and limitations to TRI coverage for a specific NAICS code in line with the previous SIC code descriptors. However, NAICS codes are updated every five years, and these updates may require EPA to revise this text describing an exception or limitation to the scope of a particular NAICS code. Consequently, this descriptive text does not always align fully with SIC codes' full descriptions.

For example, historically, 40 CFR Part 372 would list NAICS code 323211 with the following exception: "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.e., instant printing) (previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing))". This action simplifies the listing to display only the SIC code and title rather than include the description: "Exception is limited to facilities previously classified under SIC 7334, Photocopying and Duplicating Services".

Moving forward, in 40 CFR Part 372, EPA will not include descriptive text for SIC codes when listing the limitations and exceptions applicable to TRI-covered NAICS codes. Instead, the Agency will simply list the SIC codes, including their titles, as applicable limitations and exceptions. Because exceptions and limitations are included in 40 CFR Part 372.23(b) & (c) to align the listing of NAICS codes with the list of SIC codes covered by TRI reporting requirements as shown in 40 CFR Part 372.23(a), the

SIC codes rather than the descriptive text defines the types of facilities covered by TRI. By removing the descriptive text from the exceptions and limitations listed in these two paragraphs, this action mitigates potential confusion caused by qualitative descriptions of SIC codes and does not alter the universe of the facilities affected by TRI reporting requirements. Facilities with questions regarding the SIC code descriptions should refer to the SIC manual, available at: <https://www.osha.gov/pls/imis/sicsearch.html>.

D. Why is EPA taking this action?

On April 9, 1997, OMB published a **Federal Register** Notice of final decision (62 FR 17288) to adopt the NAICS economic classification system, replacing the SIC system which had traditionally been used by the Federal Government for collecting and organizing industry-related statistics. Consistent with EPCRA, on June 6, 2006, EPA amended 40 CFR Part 372 to include the 2002 NAICS codes that correspond to the SIC codes that are currently subject to section 313 of EPCRA and section 6607 of the PPA (71 FR 32464). OMB revises the NAICS codes every five years. Therefore, on June 9, 2008 (73 FR 32466), EPA amended 40 CFR Part 372 to include the 2007 NAICS codes that correspond to the SIC codes that are currently subject to section 313 of EPCRA and section 6607 of the PPA, and again on July 18, 2013 (78 FR 42875), to include the 2012 NAICS codes.

In the **Federal Register** on August 4, 2015 (80 FR 46480), OMB announced updated NAICS codes for 2017, and on August 8, 2016 (81 FR 52584), finalized and further modified the NAICS codes for 2017. This direct final action will amend 40 CFR Part 372 to include OMB's revised NAICS codes for 2017.

E. How is EPA taking this action?

Given the nature of this action, EPA is therefore taking this action by publishing this direct final rule and a Notice of Proposed Rulemaking elsewhere in this issue of the **Federal Register**.

1. *Direct final rule.* Although EPA believes that this action is non-controversial and is not expected to result in any adverse comments, a direct final rule provides an opportunity for adverse comment. If EPA receives no adverse comment, the Agency will not take further action on the proposed rule and the direct final rule will become effective as provided in this action. However, if EPA receives relevant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final action will not take effect and directing them to the proposed rule that appears elsewhere in this issue of the **Federal Register**. EPA would then address all adverse public comments in the context of issuing a subsequent final rule.

2. *Proposed rule.* In addition to this direct final rule, the same amendments are presented in a proposed rule that appears elsewhere in this issue of the **Federal Register**. As indicated previously, the proposed rule will be used in the event that relevant adverse comment is received on the amendment within this direct final rule.

F. What are the incremental impacts of this action?

EPA analyzed the potential costs and benefits associated with this action, and determined that since this action will not add or remove any reporting requirements, there is no net increase in respondent burden or other economic impacts to consider.

G. How do I submit a comment on this action?

Submit your relevant adverse comments, identified by docket identification (ID) number EPA-HQ-OPPT-2007-0197, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden. Facilities that are affected by the rule are already required to report their industrial classification codes on the approved reporting forms under section 313 of EPCRA and 6607 of the PPA. In addition, OMB has previously approved the information collection requirements contained in 40 CFR part 372 under the provisions of the PRA, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2025-0009 (EPA ICR No. 1363-21) for Form R and Form A. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 et seq. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This direct final rule adds no new reporting requirements, and there would be no net increase in respondent burden. This rule would only update the NAICS codes already

reported by respondents. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action would impose no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks.

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

EPA has determined that the human health or environmental risk addressed by this action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. §804(2).

List of Subjects in 40 CFR Part 372

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

Dated: August 7, 2017,

Wendy Cleland-Hamnett,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I 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 § 372.22 by revising the introductory text for paragraph (b) 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, 2017, for reporting year 2018 and thereafter) subsector and industry codes are listed in § 372.23(b) and (c) by virtue of the fact that it meets one of the following criteria:

* * * * *

3. Amend § 372.23 by revising paragraphs (b) and (c) to read as follows:

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

* * * * *

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

Subsector code or industry code	Exceptions and/or limitations
311—Food Manufacturing	Except 311119—Exception is limited to facilities previously classified under SIC 0723, Crop Preparation Services for Market, Except Cotton Ginning;
	Except 311340—Exception is limited to facilities previously classified under SIC 5441, Candy, Nut, and Confectionery Stores;
	Except 311352—Exception is limited to facilities previously classified under SIC 5441, Candy, Nut, and Confectionery Stores;
	Except 311611—Exception is limited to facilities previously classified under SIC 0751, Livestock Services, Except Veterinary;
	Except 311612—Exception is limited to facilities previously classified under SIC 5147, Meats and Meat Products;
	Except 311811— Exception is limited to facilities previously classified under SIC 5461, Retail Bakeries;
312—Beverage and Tobacco Product Manufacturing	Except 312112—Exception is limited to facilities previously classified under SIC 5149, Groceries and Related Products, Not Elsewhere Classified;
	Except 312230—Exception is limited to facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified, except facilities primarily engaged in solvent recovery services on a contract or fee basis;
313—Textile Mills	Except 313310—Exception is limited to facilities

	previously classified under SIC 5131, Piece Goods, Notions, and Other Dry Good; and facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified, except facilities primarily engaged in solvent recovery services on a contract or fee basis;
314—Textile Product Mills	Except 314120—Exception is limited to facilities previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores;
	Except 314999—Exception is limited to facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified, except facilities primarily engaged in solvent recovery services on a contract or fee basis;
315—Apparel Manufacturing	Except 315220—Exception is limited to facilities previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores;
316—Leather and Allied Product Manufacturing.	
321—Wood Product Manufacturing.	
322—Paper Manufacturing.	
323—Printing and Related Support Activities	Except 323111—Exception is limited to facilities previously classified under SIC 7334, Photocopying and Duplicating Services;
324—Petroleum and Coal Products Manufacturing.	
325—Chemical Manufacturing	Except 325998—Exception is limited to facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified;

326—Plastics and Rubber Products Manufacturing	Except 326212—Exception is limited to facilities previously classified under SIC 7534, Tire Retreading and Repair Shops;
327—Nonmetallic Mineral Product Manufacturing	Except 327110—Exception is limited to facilities previously classified under SIC 5719, Miscellaneous home furnishing Stores;
331—Primary Metal Manufacturing.	
332—Fabricated Metal Product Manufacturing.	
333—Machinery Manufacturing.	
334—Computer and Electronic Product Manufacturing	Except 334614—Exception is limited to facilities previously classified under SIC 7372, Prepackaged Software; and to facilities previously classified under SIC 7819, Services Allied to Motion Picture Production;
335—Electrical Equipment, Appliance, and Component Manufacturing	Except 335312—Exception is limited to facilities previously classified under SIC 7694, Armature Rewinding Shops;
336—Transportation Equipment Manufacturing.	
337—Furniture and Related Product Manufacturing	Except 337110—Exception is limited to facilities previously classified under SIC 5712, Furniture Stores;
	Except 337121—Exception is limited to facilities previously classified under SIC 5712, Furniture Stores;
	Except 337122—Exception is limited to facilities previously classified under SIC 5712, Furniture Stores;
339—Miscellaneous	Except 339113—Exception is limited to facilities

Manufacturing	previously classified under SIC 5999, Miscellaneous Retail Stores, Not Elsewhere Classified;
	Except 339115—Exception is limited to lens grinding facilities previously classified under SIC 5995, Optical Goods Stores;
	Except 339116—Exception is limited to facilities previously classified under SIC 8072, Dental Laboratories;
111998—All Other Miscellaneous Crop Farming	Limited to facilities previously classified under SIC 2099, Food Preparations, Not Elsewhere Classified;
113310—Logging	
211112—Natural Gas Liquid Extraction	Limited to facilities that recover sulfur from natural gas and previously classified under SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified;
212324—Kaolin and Ball Clay Mining	Limited to facilities operating without a mine or quarry and previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated;
212325—Mining	Limited to facilities operating without a mine or quarry and previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated;
212393—Other Chemical and Fertilizer Mineral Mining	Limited to facilities operating without a mine or quarry and previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated;
212399—All Other Nonmetallic Mineral Mining	Limited to facilities operating without a mine or quarry and previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated;
488390—Other Support Activities for Water	Limited to facilities previously classified under SIC 3731, Shipbuilding and Repairing;

Transportation	
511110—Newspaper Publishers.	
511120—Periodical Publishers.	
511130—Book Publishers.	
511140—Directory and Mailing List Publishers	Except facilities previously classified under SIC 7331, Direct Mail Advertising Services;
511191—Greeting Card Publishers.	
511199—All Other Publishers	
512230—Music Publishers	Except facilities previously classified under SIC 8999, Services, Not Elsewhere Classified;
512250—Record Production and Distribution	Limited to facilities previously classified under SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks;
519130—Internet Publishing and Broadcasting and Web Search Portals	Limited to Internet publishing facilities previously classified under SIC 2711, Newspapers: Publishing, or Publishing and Printing; facilities previously classified under SIC 2721, Periodicals: Publishing, or Publishing and Printing; facilities previously classified under SIC 2731, Books: Publishing, or Publishing and Printing; facilities previously classified under SIC 2741, Miscellaneous Publishing; facilities previously classified under SIC 2771, Greeting Cards; Except for facilities primarily engaged in web search portals;
541713—Research and Development in Nanotechnology	Limited to facilities previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts; and facilities previously classified under SIC 3769, Guided Missile and Space

	Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified;
541715—Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	Limited to facilities previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts; and facilities previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified;
811490—Other Personal and Household Goods Repair and Maintenance	Limited to facilities previously classified under SIC 3732, Boat Building and Repairing.

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

Subsector or industry code	Exceptions and/or limitations
212111—Bituminous Coal and Lignite Surface Mining.	
212112—Bituminous Coal and Underground Mining.	
212113—Anthracite Mining.	
212221—Gold Ore Mining.	
212222—Silver Ore Mining.	
212230—Copper, Nickel, Lead, and Zinc Mining.	
212299—Other Metal Ore	

Mining.	
221111—Hydroelectric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221112—Fossil Fuel Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221113—Nuclear Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221118—Other Electric Power Generation	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221121—Electric Bulk Power Transmission and Control	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221122—Electric Power Distribution	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221330—Steam and Air Conditioning Supply	Limited to facilities previously classified under SIC 4939, Combination Utility Services, Not Elsewhere Classified.
424690—Other Chemical and Allied Products Merchant Wholesalers.	
424710—Petroleum Bulk Stations and Terminals.	
425110—Business to Business Electronic Markets.	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
425120—Wholesale Trade Agents and Brokers	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
562112—Hazardous Waste	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis and previously classified

Collection	under SIC 7389, Business Services, Not Elsewhere Classified;
562211—Hazardous Waste Treatment and Disposal	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562212—Solid Waste Landfill	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562213—Solid Waste Combustors and Incinerators	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562219—Other Nonhazardous Waste Treatment and Disposal	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562920—Materials Recovery Facilities	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>

4. Amend § 372.38 by revising paragraph (h) to read as follows:

§ 372.38 Exemptions.

* * * * *

(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, 212230 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.

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