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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-OPPT-2017-0197; FRL-9968-26]

RIN 2070-AK32

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: In the **Federal Register** of August 17, 2017, EPA published both a direct final rule and a proposed rule to update the list of NAICS codes subject to reporting under the TRI to reflect the Office of Management and Budget (OMB) 2017 NAICS code revision. As noted in the direct final rule, if EPA received relevant adverse comment on the proposed update, the Agency would publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final action will not take effect. The Agency did receive a relevant adverse comment on the proposed update, and is therefore withdrawing the direct final rule and will instead proceed with a final rule based on the proposed rule after considering all public comments.

DATES: Effective [*insert date of publication in the Federal Register*] the direct final rule published in the **Federal Register** of August 17, 2017 (82 FR 39038) (FRL-9964-77) is withdrawn.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:*

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

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

A list of potentially affected entities is provided in the **Federal Register** of August 17, 2017. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Rule is Being Withdrawn?

In the August 17, 2017 **Federal Register**, EPA published both a direct final rule (*see* 82 FR 39038) and a proposed rule (*see* 82 FR 39101) pursuant to sections 313(g)(1) and 328 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for the purpose of updating the list of NAICS codes subject to TRI reporting under EPCRA section 313 to include OMB's revised 2017 NAICS codes. The action would have also modified the list of relevant exceptions and limitations to the covered NAICS codes included in the CFR for TRI reporting purposes.

Since the direct final rule and proposed rule's publication, EPA received a public comment supporting the overall update, but noting that the direct final rule inadvertently omitted one of the covered NAICS codes updated by OMB. As a result of this omission, EPA is withdrawing the direct final rule published in the **Federal Register** on August 17, 2017, and will instead proceed with a final rule based on the proposed rule after considering (and responding to) all public comments received.

III. How Do I Access the Docket?

To access the docket, please go to <http://www.regulations.gov> and follow the online instructions using the docket identification (ID) number EPA-HQ-OPPT-2017-0197. Additional information about the Docket Facility is also provided under **ADDRESSES** in the August 17, 2017 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Good Cause Finding

EPA finds that there is “good cause” under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to withdraw the direct final rule discussed in this document without prior notice and comment. Alongside the direct final rule, EPA published an identical proposed rule and gave notice in the **Federal Register** that the direct final rule would be withdrawn if the Agency received adverse comment.

For this document, notice and comment is impracticable and unnecessary because EPA is under a time limit to publish this withdrawal before the direct final rule is to take effect to limit confusion among Federal agencies and the regulated community. As such, EPA has determined that this document is not subject to the 30-day delay of effective date generally required by 5 U.S.C. 553(d). This withdrawal must become effective prior to the effective date of the direct final rule being withdrawn.

V. Statutory and Executive Order Reviews

This document withdraws regulatory requirements that have not gone into effect. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and Executive Order review requirements applicable to the direct final rule being withdrawn were discussed in the August 17, 2017 **Federal Register**

document. Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

VI. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), 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**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. As required by 5 U.S.C. 808(2), this determination is supported by a brief statement in Unit IV.

List of Subjects in 40 CFR Part 372

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

Dated: November 7, 2017.

E. Scott Pruitt,

Administrator.

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