

organizations, and small governmental jurisdictions.

This site-specific treatment variance does not propose to create any new requirements. Rather, it proposes an alternative treatment standard for specific waste codes and applies to only one facility. Therefore, we hereby certify that this rule will not add any new regulatory requirements to small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Mixed waste and variances.

Dated: February 28, 2008.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. E8-4428 Filed 3-5-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-TRI-2007-0318; FRL-8539-5]

RIN 2025-AA22

#### Community Right-to-Know; Corrections and 2007 Updates to the Toxics Release Inventory (TRI) North American Industry Classification System (NAICS) Reporting Codes; Proposed Rule; Request for Public Comments

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the regulations to make certain updates and corrections. EPA is proposing to update 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) 2007 NAICS revision. Facilities would be required to report to TRI using 2007 NAICS codes beginning with TRI reporting forms that are due on July 1, 2009, covering releases and other waste management quantities for the 2008 calendar year. EPA is also proposing to make corrections to the list of NAICS codes subject to reporting under TRI that was published on June 6, 2006, in the final rule adopting NAICS for TRI reporting and to correct a longstanding typographical error in the regulatory text.

**DATES:** Written comments must be received by April 7, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-TRI-2007-0318, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [oei.docket@epa.gov](mailto:oei.docket@epa.gov).

- *Fax:* (202) 566-9744

- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-TRI-2007-0318. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and must be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is

not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open 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, Mailcode 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: [kendall.judith@epa.gov](mailto:kendall.judith@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Why is EPA Issuing this Proposed Rule?

EPA is proposing to update 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) 2007 NAICS revision. OMB's Notice of March 16, 2006, states that "data published for reference years beginning on or after January 1, 2007, should be published using the 2007 NAICS United States Codes." 71 FR 28532.

EPA is also proposing to make corrections to the list of TRI-covered NAICS codes from the 2006 TRI NAICS rule. Certain items that should have been included in the final list of NAICS codes subject to TRI reporting were inadvertently omitted from the final list. Unrelated to the NAICS rule, EPA is using this opportunity to correct a longstanding error in the regulations that refers to section 372.17 when, in fact, the reference should be 40 CFR 372.30.

The updated list of TRI-covered NAICS codes is listed in 40 CFR

372.23(b) "NAICS codes that correspond to SIC codes 20 through 39", and (c) "NAICS codes that correspond to SIC codes other than SIC codes 20 through 39." Labels have been added to the 3-digit subsector codes and the 6-digit national industry codes to provide descriptions of the NAICS industries that are covered for TRI. These labels are being added for clarification purposes, and they are identical to the labels that appear in the OMB NAICS manual, Executive Office of the President, Office of Management and Budget, *North American Industry Classification System, United States, 2007*, Bernan, a division of The Kraus Organization Limited, 2007.

## II. 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 the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA) to report annually to EPA and States their environmental releases and other waste management quantities of covered chemicals. Under Executive Order 13423, published on January 24, 2007 (72 FR 3919), all federal facilities are required to comply with the provisions set forth in Section 313 of EPCRA and section 6607 of the PPA. On April 2, 2007, the White House Council on Environmental Quality (CEQ) issued *Instructions for Implementing Executive Order 13423*, including annual reporting to the TRI program. Executive departments and agencies are required to implement the activities described in the instructions in accordance with sections 1, 2, 3 and 4(b) of the Executive Order.

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.

## III. What is EPA's Statutory 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. 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 Standard Industrial Classification (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. 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 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 (June 6, 2006). EPA is now proposing to amend 40 CFR Part 372 to include OMB's revised NAICS codes for 2007.

Owners and operators of facilities that are subject to section 313 must identify their principal business activities using 2007 NAICS codes beginning with TRI reporting forms that are due on July 1, 2009, covering releases and other waste management quantities at the facility for the 2008 calendar year.

## IV. Background Information

### *What Is the General Background for This Action?*

EPA promulgated a final TRI NAICS rule on June 6, 2006, to amend its regulations for TRI, found at 40 CFR Part 372, to include the NAICS codes. The list of TRI NAICS codes that appeared in the final rule was developed from the 2002 NAICS revision. EPA is proposing updates to that list based on the OMB 2007 NAICS revision. In addition, certain TRI-covered NAICS codes and certain exceptions and limitations to TRI-covered NAICS codes did not appear in the June 6, 2006, notice's list of TRI-covered NAICS codes and are now being proposed for inclusion. These omissions are discussed in greater detail in Section VI of this notice.

## V. Proposed Action

### *A. What Is the Agency Proposing?*

EPA will amend 40 CFR Part 372 to correct the list of NAICS codes for TRI reporting and to update the list using 2007 NAICS codes so that the NAICS codes listed in the TRI regulations accurately reflect the universe of covered facilities under section 313 of EPCRA and section 6607 of the PPA.

In addition, unrelated to the NAICS codes, EPA is using this rulemaking as an opportunity to correct a reference to a nonexistent section in Part 372. Specifically, § 372.5 (Persons subject to this part) reads, in pertinent part "If the owner and operator of a facility are different persons, only one need report under § 372.17 or provide a notice under § 372.45 for each toxic chemical in a mixture or trade name product distributed from the facility." There is no 40 CFR 372.17 and therefore, reference to this section is an error which the Agency is proposing to revise to refer to the appropriate section on TRI reporting requirements, § 372.30 (Reporting requirements and schedule for reporting).

### *B. Will the Proposal Change the Universe of Facilities That Are Currently Required to Report to EPA and the States?*

EPA's final rule of June 2006 defined the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA. Certain facilities that should have been included in the final list of NAICS codes subject to TRI reporting in the June 2006 rule were inadvertently omitted. We are clarifying in this notice that those facilities are subject to TRI reporting.

### *C. How Will Section 313 Reporting Requirements Change as a Result of This Proposed Rule?*

TRI reporting requirements will not change as a result of this final rule. This rule will revise the NAICS codes to reflect the OMB NAICS 2007 revision and correct inadvertent omissions that occurred when identifying the NAICS codes that are associated with the SIC codes that are covered by the statute. This rule will help clarify that certain sectors are still required to report to TRI and to accurately reflect all covered sectors in the list of TRI-covered NAICS codes.

## VI. Which TRI-Covered NAICS Codes Have Been Modified Under This Proposed Rule?

An OMB **Federal Register** notice published on March 16, 2006 (71 FR 28532), updates NAICS for 2007. All

facilities that currently report to TRI will still be required to report to TRI. However, due to the 2007 NAICS modifications, some facilities will need to modify their NAICS codes as outlined in the tables below. The following OMB final revisions are those that apply to the 2002 TRI-covered NAICS codes in

the manufacturing sector (NAICS 31–33).

For a small subset of 2002 NAICS codes, the 2007 NAICS revisions replace one 2002 NAICS code with two or more 2007 NAICS codes (see the table below). In one case—for the 2002 NAICS code 339111—the 2002 NAICS code number

has been completely replaced by other more specific existing NAICS codes and the code 339111 no longer appears in the NAICS code listing.

The following final revisions from the OMB 2007 NAICS rule apply to 2002 TRI-covered NAICS codes in the NAICS manufacturing sector.

2002 NAICS code	2002 NAICS and U.S. description		2007 NAICS code	2002 NAICS and U.S. description
315211 ...	Men's and Boys' Cut and Sew Apparel Contractors <i>embroidery contractors</i> <i>except embroidery contractors</i>	→	314999 315211	All Other Miscellaneous Textile Product Mills. Men's and Boys' Cut and Sew Apparel Contractors.
315212 ...	Women's, Girls' and Infants' Cut and Sew Apparel Contractors <i>embroidery contractors</i> <i>except embroidery contractors</i>	→	314999 315212	All Other Miscellaneous Textile Product Mills. Women's, Girls' and Infants' Cut and Sew Apparel Contractors.
326199 ...	All Other Plastics Product Manufacturing. <i>except inflatable plastics boats</i> <i>inflatable plastics boats</i>	→	326199 336612	All Other Plastics Product Manufacturing. Boat Building.
326291 ...	Rubber Product Manufacturing for Mechanical Use. <i>except rubber tubing for mechanical use</i> <i>rubber tubing for mechanical use</i>	→	326291 326299	Rubber Product Manufacturing for Mechanical Use. All Other Rubber Product Manufacturing.
326299 ...	All Other Rubber Product Manufacturing. <i>except inflatable rubber boats</i> <i>inflatable rubber boats</i>	→	326299 336612	All Other Rubber Product Manufacturing. Boat Building.
334220 ...	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing <i>except communications signal testing and evaluation equipment</i> <i>communications signal testing and evaluation equipment</i>	→	334220 334515	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Instrument Manufacturing for Measuring and Testing Electricity and Signals.
339111 ...	Laboratory Apparatus and Furniture Manufacturing. <i>laboratory distilling equipment</i> <i>laboratory freezers</i> <i>laboratory furnaces and ovens</i> <i>laboratory scales and balances</i> <i>laboratory centrifuges</i> <i>laboratory furniture (e.g. stools, tables, benches) except laboratory distilling equipment, freezers, furnaces, ovens, scales, balances, centrifuges, and furniture</i>	→	333298 333415 333994 333997 333999 337127 339113	All Other Industrial Machinery Manufacturing. Air-conditioning and Warm Air Heating Equipment. And Commercial and Industrial Refrigeration Equipment Manufacturing. Industrial Process Furnace and Oven Manufacturing. Scale and Balance Manufacturing. All Other Miscellaneous General Purpose Machinery Manufacturing. Institutional Furniture Manufacturing. Surgical Appliance and Supplies Manufacturing.

None of the NAICS 2007 revisions for the manufacturing sector (NAICS 31–33) listed in the table above result in changes to the list of covered NAICS codes from the 2006 TRI NAICS rule, in which EPA amended its regulations for

TRI to include NAICS codes. OMB has simply moved some of the definitions within specific NAICS manufacturing codes to other NAICS manufacturing codes, all of which are presently covered under the TRI regulations.

The following final revisions from the OMB 2007 NAICS rule apply to 2002 TRI-covered NAICS codes in sectors outside of the NAICS manufacturing sector.

2002 NAICS code	2002 NAICS and U.S. description		2007 NAICS code	2002 NAICS and U.S. description
516110 ...	Internet Publishing and Broadcasting	→	519130	Internet Publishing and Broadcasting and Web Search Portals.
541710 ...	Research and Development in the Physical, Engineering, and Life Sciences <i>biotechnology research and development</i> <i>except biotechnology research and development</i>	→	541711 541712	Research and Development in Biotechnology. Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).

The changes listed in the table above result in two minor changes to the list of covered NAICS codes in the 2006 TRI NAICS rule, in which EPA amended its regulations for TRI to include NAICS codes. NAICS 516110, Internet Publishing and Broadcasting, has been changed in the 2007 NAICS revision to 519130, Internet Publishing and Broadcasting and Web Search Portals. TRI will make this revision to its final list of covered NAICS codes; however, Web Search Portals will be listed as an exception from the reporting requirements since Web Search Portals are not covered in section 313 of EPCRA and section 6607 of PPA. Thus the facilities actually covered for the purposes of TRI reporting will remain the same.

NAICS 541710, Research and Development in the Physical, Engineering, and Life Sciences, has been separated into two different NAICS codes in order to single out biotechnology research and development. The 2002 NAICS code 541710 has become two new 2007 NAICS codes: NAICS 541711, Research and Development in Biotechnology, and NAICS 541712, Research and

Development in the Physical, Engineering, and Life Sciences (except Biotechnology). The latter 2007 NAICS code, 541712, will replace 2002 NAICS code 541710 in the final list of TRI-covered NAICS codes. As with 2002 NAICS code 541710, TRI coverage for 2007 NAICS code 541712 will be 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).

The 2007 NAICS code 541711 will not be added to the list of TRI-covered facilities, since facilities conducting research and development in biotechnology are not covered under section 313 of EPCRA and section 6607 of the PPA. Limitations exist and are noted in 40 CFR 372.23(b) for both NAICS 519130 and 541712.

EPA is also proposing several changes to the list of TRI-covered NAICS codes

due to omissions that were identified from the list of NAICS codes published in the final TRI NAICS rulemaking dated June 6, 2006 (71 FR 32464). Two NAICS codes, 113310, Logging, and 221330, Steam and Air Conditioning Supply (with limitations), will be added to the final list of covered NAICS codes. NAICS 113310 corresponds to the TRI-covered SIC manufacturing code for logging, SIC 2411. NAICS 221330, Steam and Air Conditioning Supply, limited to facilities engaged in providing combinations of electric, gas, and other services, not elsewhere classified (N.E.C.), corresponds to covered SIC code 4939, Combination Utility Services N.E.C.

In addition, three exceptions (see table below) corresponding to NAICS manufacturing codes 312, 327, and 399 should have been listed in the June 6, 2006, final rule and would be added to the list of NAICS codes in the final regulations in 40 CFR 372.23. These changes do not alter the universe of facilities covered by section 313 of EPCRA and section 6607 of PPA, but rather amend the current TRI regulations to more accurately reflect that universe.

NAICS subsector (3-digit)	NAICS industries (6 digit)	Exception
312 .....	312112—Bottled Water Manufacturing	Exception is limited to facilities primarily engaged in bottling mineral or spring water (previously classified under SIC 5149, Groceries and Related Products, NEC).
327 .....	327112—Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing.	Exception is limited to facilities primarily engaged in manufacturing and selling pottery on site (previously classified under SIC 5719, Miscellaneous Homefurnishing Stores).
339 .....	339113—Surgical Appliance and Supplies Manufacturing.	Exception is limited to facilities primarily engaged in manufacturing orthopedic devices to prescription in a retail environment (previously classified under SIC 5999, Miscellaneous Retail Stores, NEC).

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

This proposed rule adds no new reporting requirements, and there will be no net increase in respondent burden. Facilities were first required to report their toxic chemical releases and other waste management activities to EPA using NAICS codes beginning in 2007 for reporting year 2006. Covered facilities should refer to the updated NAICS code list in 40 CFR 372.23 when reporting. Crosswalk tables between 2007 NAICS and 2002 NAICS can be found on the Internet at <http://www.census.gov/epcd/www/naics.html>.

**VIII. Regulatory Assessment Requirements**

*A. Executive Order 12866*

This action is not a “significant regulatory action” under the terms of

Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

*B. Paperwork Reduction Act*

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.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the Information Collection Request (ICR) OMB control numbers 2070–0093 (EPA ICR No. 1363–14) for Form R and 2070–0143 (EPA ICR No. 1704–08) for Form

A. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Rick Westlund, 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.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of 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 which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are TRI reporting facilities that have 10 or more full-time employee equivalents (i.e., a total of 20,000 hours or greater). We have determined that, since this rule makes only very minor revisions and updates to the TRI NAICS codes that are already being used by TRI-covered facilities on TRI reporting forms, the resulting burden due to these minor changes is negligible, and will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

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. 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.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Because this proposed rule simply updates and makes very minor corrections to the TRI NAICS codes that have already been implemented for reporting by TRI facilities, the rule will not impose substantial direct compliance costs on TRI reporting facilities regulated under section 313 of EPCRA and 6607 of the PPA.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an

accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. 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." EPA has concluded that this proposed rule may have tribal implications as TRI reporting facilities may be on tribal lands. However, the rule simply updates and makes corrections to the TRI NAICS codes that have already been implemented for reporting by TRI facilities, include those on tribal lands. As such, the rule will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law.

*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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*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.

This proposed rulemaking does not involve technical standards. Therefore,

EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the rule addresses information collection and does not affect the level of protection provided to human health or the environment.

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

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

Dated: February 28, 2008.

**Stephen L. Johnson,**  
*Administrator.*

For the reasons set out in the preamble, title 40 Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

**PART 372—[AMENDED]**

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

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

**§ 372.5 [Amended]**

2. Amend § 372.5, by removing the reference to “372.17” and adding in its place the reference “372.30”.

3. Amend § 372.22 by revising paragraph (b) introductory text 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, 2007, for reporting year 2008 and thereafter) 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:

\* \* \* \* \*

4. 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
113310 Logging 311 Food Manufacturing .....	Except 311119—Exception is limited to facilities primarily engaged in Custom Grain Grinding for Animal Feed (previously classified under SIC 0723, Crop Preparation Services for Market, Except Cotton Ginning); Except 311330—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311340—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries); 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); Except 311612—Exception is limited to facilities primarily engaged in the cutting up and resale of purchased fresh carcasses for the trade (including boxed beef), and in the wholesale distribution of fresh, cured, and processed (but not canned) meats and lard (previously classified under SIC 5147, Meats and Meat Products);
312 Beverage and Tobacco Product Manufacturing.	Except 312112—Exception is limited to facilities primarily engaged in bottling mineral or spring water (previously classified under SIC 5149, Groceries and Related Products, NEC);  Except 312229—Exception is limited to facilities primarily engaged in providing Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);

Subsector code or industry code	Exceptions and/or limitations
313 Textile Mills .....	<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 Textile Product Mills ...	<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 Apparel Manufacturing	<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 Leather and Allied Product Manufacturing	
321 Wood Product Manufacturing	
322 Paper Manufacturing	
323 Printing and Related Support Activities.	<p>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.e., instant printing) (previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));</p>
324 Petroleum and Coal Products Manufacturing	
325 Chemical Manufacturing.	<p>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));</p>
326 Plastics and Rubber Products Manufacturing.	<p>Except 326212—Tire Retreading, (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding));</p>
327 Nonmetallic Mineral Product Manufacturing.	<p>Except 327112—Exception is limited to facilities primarily engaged in manufacturing and selling pottery on site (previously classified under SIC 5719, Miscellaneous Homefurnishing Stores);</p>
331 Primary Metal Manufacturing	
332 Fabricated Metal Product Manufacturing	
333 Machinery Manufacturing	
334 Computer and Electronic Product Manufacturing	<p>Except 334611—Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software));</p>
335 Electrical Equipment, Appliance, and Component Manufacturing.	<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>
336 Transportation Equipment Manufacturing	<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>
337 Furniture and Related Product Manufacturing.	<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>
338 Furniture and Related Product Manufacturing.	<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>
339 Miscellaneous Manufacturing.	<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 Miscellaneous Manufacturing.	<p>Except 339113—Exception is limited to facilities primarily engaged in manufacturing orthopedic devices to prescription in a retail environment (previously classified under SIC 5999, Miscellaneous Retail Stores, NEC);</p>

Subsector code or industry code	Exceptions and/or limitations
	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));
111998 All Other Miscellaneous Crop Farming.	Except 339116—Dental Laboratories (previously classified under SIC 8072, Dental Laboratories); Limited to facilities primarily engaged in reducing maple sap to maple syrup (previously classified under SIC 2099, Food Preparations, NEC, Reducing Maple Sap to Maple Syrup);
211112 Natural Gas Liquid Extraction.	Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic chemicals, NEC (recovering sulfur from natural gas));
212324 Kaolin and Ball Clay Mining.	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating kaolin and clay (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1455));
212325 Mining .....	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay and ceramic and refractory minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1459));
212393 Other Chemical and Fertilizer Mineral Mining.	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1479));
212399 All Other Non-metallic Mineral Mining.	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1499));
488390 Other Support Activities for Water Transportation.	Limited to facilities that are primarily engaged in providing routine repair and maintenance of ships and boats from floating drydocks (previously classified under SIC 3731, Shipbuilding and Repairing (floating drydocks not associated with a shipyard));
511110 Newspaper Publishers	
511120 Periodical Publishers	
511130 Book Publishers	
511140 Directory and Mailing List Publishers.	Except facilities that are primarily engaged in furnishing services for direct mail advertising including Address list compilers, Address list publishers, Address list publishers and printing combined, Address list publishing, Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Mailing list compilers, Directory compilers, and Mailing list compiling services (previously classified under SIC 7331, Direct Mail Advertising Services (mailing list compilers));
511191 Greeting Card Publishers	
511199 All Other Publishers	
512220 Integrated Record Production/Distribution	
512230 Music Publishers ..	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));
519130 Internet Publishing and Broadcasting and Web Search Portals.	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); Except for facilities primarily engaged in web search portals;
541712 Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).	Limited to facilities that are primarily engaged in Guided missile and space vehicle engine research and development (previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts), and in Guided missile and space vehicle parts (except engines) research and development (previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified);
811490 Other Personal and Household Goods Repair and Maintenance.	Limited to facilities that are primarily engaged in repairing and servicing pleasure and sail boats without retailing new boats (previously classified under SIC 3732, Boat Building and Repairing (pleasure boat building));

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

Subsector or industry code	Exceptions and/or limitations
212111 Bituminous Coal and Lignite Surface Mining	
212112 Bituminous Coal and Underground Mining	
212113 Anthracite Mining	
212221 Gold Ore Mining	
212222 Silver Ore Mining	



Subsector or industry code	Exceptions and/or limitations
212231 Lead Ore and Zinc Ore Mining	
212234 Copper Ore and Nickel Ore 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.
221119 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 engaged in providing combinations of electric, gas, and other services, not elsewhere classified (N.E.C.) (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 Collection	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC);
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>

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 761

[EPA-HQ-RCRA-2008-0123; FRL-8538-6]

RIN 2050-AG42

### Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, LLC

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

**ACTION:** Proposed rule.

**SUMMARY:** With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, and distribution in commerce of polychlorinated biphenyls (PCBs). For purposes of TSCA, "manufacture" is

defined to include import into the Customs Territory of the United States (U.S.). TSCA section 6(e)(3)(B) gives EPA the authority to grant petitions to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. On November 14, 2006, Veolia ES Technical Solutions, LLC, (Veolia) submitted a petition to EPA to import up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. In this document, EPA is proposing to grant Veolia's petition and soliciting comment on this proposed decision.

**DATES:** Comments must be received on or before April 21, 2008.

If a hearing is requested on or before April 7, 2008, an informal hearing will be held at a location and on a date to be announced in a future **Federal Register**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-

RCRA-2008-0123 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by electronic mail to: [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov), Attention Docket ID No. EPA-HQ-RCRA-2008-0123.
- *Fax*: Comments may be faxed to 202-566-9744, Attention Docket ID No. EPA-HQ-RCRA-2008-0123.
- *Mail*: Comments may be sent to Environmental Protection Agency, EPA Docket Center (EPA/DC), Resource Conservation and Recovery Act (RCRA) Docket, 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-RCRA-2008-0123. Please include a total of two copies.
- *Hand Delivery*: Comments may be hand delivered to the Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID