

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

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

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

## III. Overview of Proposed Rule

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

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

## IV. Background

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

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

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

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

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

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

### B. What Action Is EPA Proposing in This Notice?

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