

Toxics Release Inventory/Community Right-To-Know: U.S. Environmental Protection Agency Final Rule Adopting 2017 North American Industry Classification System



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The United States Environmental Protection Agency (“EPA”) issued a December 26th Federal Register notice adopting a final rule addressing Section 313 of the Emergency Plan and Community Right-To-Know Act (“EPCRA”) Toxics Release Inventory (“TRI”). See 82 Fed. Reg. 60906.

The final rule updates the list of North American Industry Classification System (“NAICS”) codes subject to reporting under the TRI to incorporate Office of Management and Budget (“OMB”) 2017 code revisions.

Section 313 of EPCRA requires owners or operators of covered 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 to meet certain annual reporting requirements. These annual reporting requirements to EPA and states or tribes address environmental releases or other waste management quantities of covered chemicals. Such requirements are applicable to manufacturing, processing, or otherwise using listed toxic chemicals in amounts above specified thresholds.

The preamble to the December 26th final rule states that in response to OMB’s revisions to the NAICS codes effective January, 2017, EPA is amending 40 C.F.R. Part 372 to include the relevant 2017 NAICS codes for TRI reporting. The federal agency states it is also modifying the list of exceptions and limitations previously included in the Code of Federal Regulations for the applicable NAICS codes for TRI reporting purposes. Otherwise, the TRI reporting requirements are stated to remain unchanged.

EPA had previously published on August 17th these revisions as both a direct final rule and a proposed rule. However, because of the receipt of a relevant adverse comment, it withdrew the direct final rule.

As to the adverse comment, EPA notes:

While the commenter largely supported the update to OMB’s 2017 NAICS codes, it noted that the 2012 NAICS code 211112 (Natural Gas Liquid Extraction) was not included in the direct final rule’s revised codes, although OMB had updated NAICS code 211112 to NAICS code 211130 (Natural Gas Extraction) in 2017.

The federal agency states in the December 28th preamble that it agrees with the comment, noting:

The 2012 NAICS code 211112, which was updated to 211130 in the 2017 NAICS codes revision, was intended to be captured in the direct final rule. The direct final rule inadvertently omitted this update. Thus, EPA withdrew the direct final rule and is proceeding to amend the NAICS code list with this final rule.

[A copy of the Federal Register notice can be downloaded here.](#)