

Dated at Rockville, Maryland, this 3rd day of June 2008.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E8-12830 Filed 6-6-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Part 192

[CBP Dec. No. 08-20]

#### Mandatory Pre-Departure Filing of Export Cargo Information Through the Automated Export System

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice of compliance.

**SUMMARY:** This notice informs the public of the date when U.S. Customs and Border Protection (CBP) will require compliance with its regulations pertaining to the mandatory, pre-departure electronic filing of export information through the Automated Export System (AES). CBP regulations at 19 CFR 192.14 setting forth requirements for the advance electronic filing of export information by vessel, air, truck, and rail carriers provide a compliance date contingent upon the redesign of CBP's AES commodity module and the effective date of Department of Commerce (DOC) regulations pertaining to mandatory electronic filing of export information. Since the redesign of the AES commodity module is complete, and the DOC regulations were published as a final rule on June 2, 2008, with an effective date of July 2, 2008, and an implementation date of September 30, 2008, the CBP regulations must be complied with starting September 30, 2008.

**DATES:** The compliance date for the CBP regulations pertaining to the mandatory, pre-departure electronic filing of export cargo information through the AES (19 CFR 192.14) is September 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Gregory Olsavsky, Director, Cargo Control Division, Office of Field Operations, 202-344-1049.

**SUPPLEMENTARY INFORMATION:** On December 5, 2003, CBP published a final rule in the *Federal Register* (68 FR 68140) amending the CBP regulations pertaining to the filing of export cargo information through the AES (19 CFR, Part 192, Subpart B). Specifically, the

final rule added new § 192.14 to require (with a provision for exceptions) that vessel, air, truck, and rail carriers electronically file export cargo information through a CBP-approved electronic data interchange system (then and still the AES) and that such filing occur prior to departure from the United States for vessel and air carriers (24 hours for vessel carriers, two hours prior to scheduled departure time for air carriers) and prior to arrival at the border for truck and rail carriers (one hour for truck carriers, two hours for rail carriers). (The actual filing responsibility is imposed on the U.S. principal party in interest (USPPI), or its agent, representing the carrier.) These regulations were published pursuant to section 343(a) of the Trade Act of 2002, as amended by the Maritime Security Act (19 U.S.C. 2071 note). (See the published rule for a further discussion of these provisions and their underlying authorities.)

Under the 2003 CBP final rule (specifically, § 192.14(e)), the requirements of these regulations were set to be implemented upon the completion of the redesign of CBP's AES commodity module and the effective date of DOC regulations pertaining to mandatory electronic filing of export cargo information. The redesign of the AES is complete, and the DOC has recently published its regulations.

On June 2, 2008, the Bureau of the Census (U.S. Census Bureau or Census Bureau), DOC, published a final rule in the *Federal Register* (73 FR 31548) amending its Foreign Trade regulations to implement provisions of the Foreign Relations Authorization Act (FRA Act). Under the FRA Act, the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Homeland Security, is authorized to publish regulations mandating that all persons required to file export information via a Shippers Export Declaration (SED) under chapter 9 of title 13, United States Code (13 U.S.C.) do so through the AES. Thus, under the final rule, the Census Bureau is requiring mandatory filing of export cargo information through CBP's AES (or through AESDirect, the Census Bureau's free Internet-based system) for all shipments: Vessel, aircraft, truck, and rail. (See the published rule for a further discussion of these provisions and their underlying authorities.) The publication of these DOC regulations and the effective date set forth in those DOC regulations trigger the effectiveness of the CBP regulations.

The effective date of the Census Bureau final rule is July 2, 2008, but the Census Bureau will not commence

implementation of the final rule's provisions until September 30, 2008. Accordingly, the compliance date for the CBP regulations pertaining to pre-departure electronic filing (through AES) of export cargo information, pursuant to 19 CFR 192.14(e), is the implementation date of the DOC final rule, September 30, 2008. After September 30, 2008, CBP will publish a technical amendment to the CFR amending § 192.14 to reflect the compliance date.

Dated: June 2, 2008.

**Jayson P. Ahern,**

*Acting Commissioner, Customs and Border Protection.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-TRI-2007-0318; FRL-8577-1]

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; Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is amending the regulations to make certain updates and corrections to 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. EPA is making 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 is correcting a longstanding typographical error in the regulatory text.

**DATES:** This final rule is effective on August 8, 2008. Facilities will 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.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-TRI-2007-0318. All documents in the docket are listed on the <http://www.regulations.gov> Web

site. 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. General Information**

###### *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.

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

EPA is finalizing 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 amending 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.

##### **III. 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 now updating 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 included.

##### **IV. Final Action**

###### *A. What Is the Agency's Final Action?*

EPA is amending 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 This Final Rule Affect the Universe of Facilities That Are Currently Required To Report to EPA and the States?*

This action will 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 adding or deleting industry groups from the list of industries currently subject to section 313 reporting requirements.

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

TRI reporting requirements will not change as a result of this final rule. This rule revises the NAICS codes to reflect

the OMB NAICS 2007 revision and corrects 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.

#### *D. Office of Management and Budget (OMB) Updates to NAICS*

OMB plans to update NAICS every five years with the next update scheduled for 2012. If necessary, the TRI program will issue a **Federal Register** notice to update the TRI NAICS codes at that time.

#### **V. Summary of Public Comments and EPA Responses**

No comments were received during the 30-day comment period following publication of the proposed rule to update TRI NAICS codes.

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

This 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>.

#### **VII. 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. 1363-15) for Form R and 2070-0143 (EPA ICR No. 1704-09) 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 this 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 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 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 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, including 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 rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *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.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

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

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

Dated: June 3, 2008.

**Stephen L. Johnson,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations 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.

**§ 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 (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);
313 Textile Mills .....	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)); 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);
314 Textile Product Mills .....	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); 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); 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);
315 Apparel Manufacturing .....	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)); 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)); 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);
316 Leather and Allied Product Manufacturing.	
321 Wood Product Manufacturing.	
322 Paper Manufacturing.	

Subsector code or industry code	Exceptions and/or limitations
323 Printing and Related Support Activities .....	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>i.e.</i> , instant printing) (previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));
324 Petroleum and Coal Products Manufacturing.	
325 Chemical Manufacturing .....	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));
326 Plastics and Rubber Products Manufacturing.	Except 326212—Tire Retreading, (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding));
327 Nonmetallic Mineral Product Manufacturing.	Except 327112—Exception is limited to facilities primarily engaged in manufacturing and selling pottery on site (previously classified under SIC 5719, Miscellaneous Homefurnishing Stores);
331 Primary Metal Manufacturing.	
332 Fabricated Metal Product Manufacturing.	
333 Machinery Manufacturing.	
334 Computer and Electronic Product Manufacturing.	Except 334611—Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software)); 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));
335 Electrical Equipment, Appliance, and Component Manufacturing.	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)));
336 Transportation Equipment Manufacturing.	
337 Furniture and Related Product Manufacturing.	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)); 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)); 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));
339 Miscellaneous Manufacturing .....	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); 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)); Except 339116—Dental Laboratories (previously classified under SIC 8072, Dental Laboratories);
111998 All Other Miscellaneous Crop Farming	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 Nonmetallic 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.	

Subsector code or industry code	Exceptions and/or limitations
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.	
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).

Subsector or industry code	Exceptions and/or limitations
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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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Parts 571 and 585

[Docket No. NHTSA-2008-0104]

RIN 2127-AK27

#### Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Side Impact Protection; Side Impact Phase-In Reporting Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration of a September 11, 2007 final rule that substantially upgraded Federal Motor Vehicle Safety Standard (FMVSS) No. 214, "Side Impact Protection," by incorporating a vehicle-to-pole test into the standard, adopting technically-advanced test dummies and enhanced injury criteria, and incorporating the advanced dummies into the standard's moving deformable barrier test. To respond to petitioners' concerns about lead time as quickly as possible, the agency is publishing its response to the petitions in parts. Today's document addresses lead time issues, and other matters that need to be resolved or clarified concerning lead time and the phasing-in of the new requirements. A second document will be published subsequently that addresses the other issues raised by the petitions.

**DATES:** *Effective date:* August 8, 2008. If you wish to petition for reconsideration of this rule, your petition must be received by July 24, 2008.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should

refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Christopher J. Wiacek, NHTSA Office of Crashworthiness Standards, telephone 202-366-4801. For legal issues, you may call Deirdre R. Fujita, NHTSA Office of Chief Counsel, telephone 202-366-2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

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#### I. Background

On September 11, 2007, NHTSA published a final rule that substantially upgraded Federal Motor Vehicle Safety Standard (FMVSS) No. 214, "Side impact protection," (72 FR 51908, Docket No. NHTSA-29134).<sup>1</sup> Until the final rule, FMVSS No. 214 provided only thoracic and pelvic protection in a test using a moving deformable barrier (MDB) to simulate an intersection collision with one vehicle being struck in the side by another vehicle. NHTSA upgraded FMVSS No. 214 to require all light vehicles with a gross vehicle weight rating (GVWR) of 4,536 kg or less (10,000 lb. or less) to protect front seat occupants in a vehicle-to-pole test simulating a vehicle crashing sideways into narrow fixed objects, such as utility poles and trees. By doing so it required vehicle manufacturers to assure head and improved chest protection in side crashes for a wide range of occupant sizes and over a broad range of seating positions. It ensured the installation of new technologies, such as side curtain air bags<sup>2</sup> and torso side air bags, which are capable of improving head and thorax protection to occupants of

<sup>1</sup> The final rule fulfilled the mandate of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)," which was signed by President George W. Bush in August 2005. Evidently aware of the agency's then-pending notice of proposed rulemaking to upgrade FMVSS No. 214, Section 10302 of the Act directed the agency "to complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes."

<sup>2</sup> These different side air bag systems are described in a glossary in Appendix A to the September 11, 2007 final rule (72 FR at 51954).