

**TRI Form R and Form A Information Collection Request (ICR) Renewal 2017 Response to Comments
EPA-HQ-TRI-2017-0057**

#	Topic	Author	Comment/Response
1	Suggested additional sub-category of “otherwise use”	National Mining Association (NMA)	<p>Comment: NMA supports this Form R modification, but is concerned that none of the currently proposed Z-codes would properly describe the kind of “otherwise use” that is most common at mining operations. A large portion of the material moved is rock that contains no target minerals, or that contains them in concentrations too low to be recovered economically. However, mines routinely use this waste rock for a variety of purposes, including road construction, lining of and embankments for impoundments, foundation materials, backfill and structural support.</p> <p>None of the currently proposed Z-codes accurately capture this kind of use. NMA believes a Z-code is warranted that accurately describes this use and suggests amending the current Z-code list to include <i>Z308: Naturally-occurring TRI chemicals in construction materials</i>.</p> <p>Response: EPA agrees with placing the facilities’ otherwise use of naturally-occurring chemicals in their construction materials into more precise context. EPA has revised the instructions to include “Z308: Construction Materials” as an otherwise use sub-category. “Z399: Other” (originally proposed as Z308) has accordingly become a catchall for other uses. Similarly, EPA has updated the “Other” codes to end in “99” (e.g., Z206 “Other” is now listed as Z299 “Other”).</p>
2	Sub-categories of “otherwise use” are unnecessary and burdensome	American Petroleum Institute (API)	<p>Comment: EPA has not justified or demonstrated how the collection of these sub-categories and sub-uses is “necessary for the proper performance of the functions of the Agency.” Doing so creates additional burden in the form of both recordkeeping and due diligence, needed for a facility to track and certify every sub-use or sub-activity covered by the current umbrella use or activity.</p> <p>Response: EPA respectfully disagrees with the claim that the agency has not</p>

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			<p>explained the utility in collecting information on sub-uses at facilities. In the Supporting Statement (document no. EPA-HQ-TRI-2017-0057-0012), EPA explains:</p> <p>“Reporting on certain sub-activities or sub-uses for some categories of processing activities and otherwise use would help inform data users regarding how a facility uses the chemical and could better enable technology transfers related to pollution prevention activities involving a particular chemical within an industry” (p. 17).</p> <p>Providing public insight into the purposes and functions of TRI chemicals at facilities and encouraging source reduction activities would be in the spirit of both the Emergency Planning and Community Right-to-Know Act and the Pollution Prevention Act.</p> <p>EPA also disagrees with the assertion that adding sub-categories creates additional burden on recordkeeping, as the sub-categories are constituents of activities and uses on which facilities already report. EPA believes that adding these sub-categories could alleviate confusion as to what activities and uses existing checkboxes apply. Accordingly, the Agency has incorporated this change in this ICR renewal.</p>
3	Proposed additional sub-categories of on-site disposal releases	National Mining Association (NMA)	<p>Comment: Mines manage waste rock, slag, and other materials in piles or other engineered structures; these are “Other Disposal.” NMA proposes the following additional categories for Part II, Section 5.5:</p> <ul style="list-style-type: none"> • 5.5.3B – Permitted impoundments (federal or state) • 5.5.4A – Permitted disposal facilities (federal or state) <p>Response: EPA recognizes that additional sub-categories in Section 5.5 may better characterize how regulated the ultimate waste disposal site is. However, given that non-RCRA Subtitle C surface impoundments and other disposal facilities may be permitted by government entities other than federal or state (i.e., tribal and local), EPA would not want to limit the non-RCRA Subtitle C locations to those permitted by federal and state government. Further, TRI reporting is a national program and how non-federal entities</p>

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			<p>regulate the permitting of disposal can vary per jurisdiction.</p> <p>Accordingly, EPA is including an optional element titled “waste rock piles” to Section 5.5 of Form R (“Disposal to land onsite”). Waste rock refers to rock that contains insufficient metal concentration to economically process at any given time and is thus typically removed from the mine to allow access to the ore-grade rock. A facility could elect to classify quantities of a chemical contained in waste rock that could thus be classified as such when EPA and others examine TRI data.</p> <p>Section 5.5 of the form already distinguishes between releases to different disposal units (such as “RCRA subtitle C landfills” or “surface impoundments”). Providing facilities an optional way to distinguish management of a reported chemical in waste rock piles will provide additional context about the characteristics of typical management practices associated with this type of disposal (e.g., federal and state agencies generally require that waste rock be contained to reduce the risk of contaminants being released). Moreover, waste management involving waste rock may differ from other types of waste management in ways that are of interest to users of TRI data. This change will allow for facilities with mining activities to better characterize waste rock managed without altering how facilities in most other industrial sectors complete Section 5.5 of the Form R.</p> <p>Slag is a material produced by smelters and is produced after the target metal has been recovered from the metal concentrate. EPA is not at this time incorporating a new Section 5.5 category (optional or required) for quantities of TRI-reportable chemicals from beneficiation and similar processing activities.</p> <p>Note that a facility may provide optional information to help characterize any data reported elsewhere on the form in Section 9.1 (“Miscellaneous</p>

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			Information”) of the Form R. A facility could indicate the quantities of a TRI-reported chemical that were reported in the existing 5.5 framework that are disposed into permitted non-RCRA Subtitle C surface impounds. Section 9.1 information is available to the public, and EPA reviews 9.1 submissions when preparing analyses and for other purposes.
4	Indicate if metal compound form includes elemental metal form data	National Mining Association (NMA)	<p>Comment: ICR, Appendix E: Reporting Form R and Form A Changes and Associated Instruction Revisions at 3 (Jan. 18, 2017) (ICR Appendix E). NMA supports this change. The procedure for reporting releases of metals and metal compounds has caused some confusion in the past among reporting entities and users, and this minor change will make the proper reporting method more straightforward and understandable</p> <p>Response: The agency concurs with the National Mining Association’s (NMA) comment and support regarding the proposed change to Form R that would have a facility indicate whether the Form R it is submitting on a metal compound also includes data on the elemental metal. EPA believes that this change will help clarify the reporting process and provide clearer context for what listed chemical(s) a Form R contains, and agrees that this change will make reporting of elemental metals and compounds more straightforward and understandable. Accordingly, EPA is maintaining this change.</p>
5	Removing substances, particularly metal-containing pigments, from the TRI chemical list	Color Pigments Manufacturers Association (CPMA)	<p>Comment: Prior to EPA’s change of policy regarding delistings in the mid-1990s, CPMA successfully worked with EPA to delist phthalocyanine pigments and barium sulfate. The TRI list shows a footnote excluding phthalocyanine pigments substituted with only hydrogen, bromine and chlorine from the categorical listing "copper and compounds containing copper." Also, as a result of CPMA's petition, the current TRI list contains a footnote excluding barium sulfate from the "barium and compounds containing barium" categorical listing. EPA should review the TRI list for other inorganic color pigments and initiate a rulemaking to remove them from the list.</p> <p>Response: The ICR renewal process is not the appropriate mechanism to</p>

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			<p>address the issue of deleting chemicals from the EPCRA section 313 chemical list. EPCRA section 313(e) provides the statutory process for petitioning EPA to delete chemicals and sets out the criteria for such actions. As noted by the commenter, EPA has established the Metal Compound Categories Petition Policy to address the deleting of specific metal compounds from the listed metal compound categories (56 FR 23703, May 23, 1991). This guidance has been followed in all petition reviews since the guidance was issued.</p> <p>The two delisting actions cited by CPMA were the result of petitions that were granted in 1994 and 1995. Both of these petitions were reviewed under the established Metal Compound Categories Petition Policy. There has not been any “change of policy regarding delistings.” Rather, there have been few delisting petitions filed and those that have been filed were determined not to meet the statutory delisting criteria. In fact, since 1998 the only delisting petition filed for a metal compound was the commenter’s petition to delist chromium antimony titanate. Prior to that, the last petition filed for a metal compound was in 1998 for chromite ore which was subsequently granted via final rule on May 11, 2001 (66 FR 24066). On November 3, 2017, CPMA submitted an amended petition to delist chromium antimony titanate, which EPA is currently reviewing.</p>
6	<p>Include optional information textbox on Form A Certification Statement</p>	<p>American Petroleum Institute (API)</p>	<p>Comment: Facilities do not need to provide information beyond what is already required, so it is unlikely that these additions would be utilized. [...] [API] opposes the inclusion of these free text fields because their inclusion could lead to a future requirement to complete them. The addition of the free text fields would increase the reporting burden and increase the risk of reporting inconsistent information without being necessary for the proper performance of the Agency</p> <p>Response: The agency respectfully disagrees that the addition of optional information textboxes on the Form A Certification Statement (Form A) will lead to future requirements to complete these fields. EPA believes that the</p>

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			<p>optional textboxes would allow facilities to include information that may not be conveyed when reporting to TRI. The Form A does not provide an opportunity for a facility to provide contextual information about its operations or management of a chemical listed on the form. Some facilities may see benefit in providing this type of information. For example, a facility may wish to showcase pollution prevention activities or indicate the applicable annual reportable amount for a chemical the facility is listing on the form.</p> <p>Since Reporting Year 2008, the EPA has provided an optional textbox on the Form R (adding a second optional textbox starting with Reporting Year 2011), and has found that facilities that elect to use these textboxes often provide useful information on their operations and reporting. Allowing for TRI reporters using the Form A to provide optional information as well would provide similar utility to facilities as provided via the textboxes included on the Form R.</p> <p>The agency recognizes that information provided in optional textboxes can help inform regulatory decisions involving the reporting forms, such as the addition of optional barrier codes to the Form R during the 2014 ICR renewal. These codes may be used when a facility did not implement any new source reduction activity for the reported-on chemical to indicate one or more possible barriers a facility might be facing with regard to the implementation of source reduction activities. However, EPA disagrees that the textboxes themselves would lead to a future requirement to complete the textboxes.</p> <p>API also asserts that the addition of optional information textboxes would increase the reporting burden as well as the risk of reporting inconsistent information. The agency proposed the information textbox as an optional field to allow a facility to provide information should it elect to do so. A facility would be free to disregard these optional textboxes. EPA is unsure as</p>

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			<p>to what increased risk of a facility providing inconsistent information were the Form A to contain optional textboxes. The agency has not noticed an increase in inconsistent information being submitted due to the optional textboxes available on the Form R and the agency believes that facilities that elect to use the optional textboxes would likely provide information that adds context rather than provide invalid information, for example, to note information that may not be otherwise provided on the reporting form.</p> <p>We have revised the Form A to allow facilities to provide optional free text data into the Form A for each chemical identity listed.</p>
7	<p>Finer range gradations for maximum on-site quantity of chemical</p>	<p>American Petroleum Institute (API) and National Mining Association (NMA)</p>	<p>Comments: <u>API:</u> The current range codes and corresponding intervals should not be changed. If revised, depending on the level of granularity in the range codes, facilities would have to conduct additional calculations and/or data collection, which would add to the reporting burden. Some TRI reporters use internal hazmat tracking software to provide the maximum pounds data. If more specific quantity data is required, then more due diligence is likely required as well. Additionally, many of our members use the same internal hazmat tracking software for both Tier II chemical reporting and TRI reporting. Changes to the TRI range codes would make it harder to reconcile data between the two programs since they would have differing and overlapping sets of range codes.</p> <p><u>NMA:</u> EPA reasons that finer gradients would provide more useful information to users. EPA also concludes that the additional burden on reporters would be negligible, because “facilities already possess this information and are just providing clarification.” ICR at 31. For the mining industry, EPA’s rationale is not accurate. Requiring these finer gradients would impose a significantly greater reporting burden on mining operations because contrary to EPA’s conclusion in the ICR, mines typically do not have this information readily available.</p>

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			<p>Response: After careful review and consideration of comments received from API and NMA on incorporating a finer gradation for range codes used for the “Maximum Amount of the EPCRA Section 313 Chemical On-site at Any Time during the Calendar Year,” the agency will not incorporate this change at this time.</p>
8	<p>Comment alleging inaccuracy of ICR burden estimate</p>	<p>Color Pigments Manufacturers Association (CPMA)</p>	<p>Comment: EPA assumes that each submission of a Form R for the TRI will require 35.71 hours to complete, for a total of 3.56 million hours for 76,034 responses. Missing from this estimation is the disproportionate impact that TRI reporting has on small manufacturers and formulators. Many small businesses simply do not have the dedicated staff to devote a week to complete Form R reports, and must use contracted experts to assist in collecting information and completing reports. EPA does not sufficiently consider these costs and the burden created by TRI reporting requirements. The economic impact on small business for reporting hundreds of pigments and other materials encapsulated in formulations of inks, paints, coatings and plastics could be greatly reduced by removing unnecessary substances and products from the TRI reporting list. If EPA does not propose to delist such substances, EPA needs to redo its cost analysis based on the assumption that a substantial number of submitters will have to hire outside contractors to perform this work.</p> <p>Response: The agency respectfully disagrees with CPMA that EPA does not sufficiently consider the burden and cost on facilities affected by TRI reporting requirements. EPA uses a Ratio-Based Burden Methodology (RBBM), which was developed through a careful review process that included the consideration and incorporation of public comments, and was approved by the Office of Management and Budget (OMB) on 10/14/2011 (76 FR 68747). Further, OMB re-approved the use of this methodology and related burden estimate during the most recent ICR renewal of TRI’s Reporting Forms and Instructions (approved on November 24, 2014) (80 FR 4914). The RBBM TRI’s burden estimates comply with Paperwork Reduction Act (PRA) requirements for providing burden estimates, “to the</p>

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			<p>extent practicable,” while reflecting a reasonable sense of average conditions and an appropriate level of specificity.</p> <p>The commenters assertion that RBBM TRI’s burden estimates are incorrect or incomplete because certain firms may incur higher costs is flawed, as the RBBM estimates are designed to estimate an average cost with the understanding some firms will have higher costs and others will have lower costs. It is also important to note that an important purpose of the burden estimates is to track changes from year to year against an established baseline, and this objective could not be achieved if the established RBBM methodology were abandoned.</p> <p>CPMA has not provided any information on form preparation costs for consultant versus employed staff to support their claim. As indicated above, the RBBM methodology provides a burden estimate that incorporates all aspects of per chemical form-related burden. Additionally, EPA considers impacts to small businesses in its rulemakings and other activities related to TRI, and the agency has provided TRI reporting options to help minimize burden on small businesses (e.g., availability of the Form A Certification Statement and range reporting).</p> <p>In regards to CPMA’s comment on “removing unnecessary substances and products from the TRI reporting list,” see the response above: “Petition to remove substances, particularly metal-containing pigments, from the TRI chemical list”</p>
9	<p>Requests that “overburden” reporting exemption be extended from metal mining facilities to include non-metal mining</p>	<p>National Lime Association (NLA)</p>	<p>Comment: EPA should establish a similar exemption (Metal Mining Sector) from TRI reporting obligations for overburden from non-metal mining operations, including multi-establishment facilities such as lime plants with co-located limestone mines. The rationale for exempting TRI reporting in overburden is the same for our industry as it was for the metal mining sector. The only reason that an exemption does not exist is because the agency never contemplated that such material would be reported in the first place,</p>

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	facilities		<p>given that limestone quarries are not themselves covered under the TRI reporting program.</p> <p>Response: The ICR renewal process is not the appropriate mechanism to address and/or solicit possible exemptions from TRI reporting obligations. The agency appreciates that NLA raises its concerns regarding the inapplicability of the overburden exemption to operations conducted by facilities it represents. EPA is open to dialogue with NLA and any other stakeholder on this topic and recognizes that NLA has raised this topic in its comment submitted to the EPA’s docket on the “Evaluation of Existing Regulations” (Docket: EPA-HQ-OA-2017-0190).</p>
10	Reporting of source reduction activities on Form R	National Mining Association (NMA)	<p>Comment: Most releases of TRI chemicals at mine sites are of naturally-occurring metals in ore, waste rock, or mine water. The amounts released are tied directly to production volume, and they are therefore not susceptible to the kinds of source reduction activities that reporting facilities must identify at Part II, Section 8.10 of the Form R. NMA proposes that EPA provide space at this point in the Form R to allow reporting mines to identify releases that cannot be reduced through source reduction activities. This change would allow reporting mines to put their releases in context, and would provide TRI data users more specific information regarding where source reduction is and is not feasible at mining operations.</p> <p>Response: EPA agrees that allowing facilities to indicate that releases cannot be reduced through source reduction activities would benefit the Form R. Accordingly, during the 2014 ICR renewal, EPA provided optional “barrier codes” that a facility can use on the Form R when it indicates that it did not implement any new source reduction activity for the reported chemical. Further, for each code provided, a facility has the option to provide additional optional information on any barriers identified. In this optional information textbox, a facility could provide the type of information that NMA has highlighted in its comment.</p>

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			<p>EPA recognizes that beyond the barrier codes already provided that there may be situations where a facility may find itself unable to conduct a source reduction activity for an industrial operation and may elect to provide information on this barrier to source reduction. Accordingly, EPA is adding a barrier code titled “Reduction does not appear to be technically feasible.” EPA will also assess the feasibility of modifying TRI-MEweb to allow a facility to elect to indicate an estimate of the quantity of the chemical that is believed to be unamenable to source reduction (e.g., quantity of chemical already contained in material managed by a facility).</p> <p>Currently, TRI-MEweb, the reporting software facilities use to prepare and submit TRI reporting forms, only allows a facility to elect to provide barrier code data if it checks the “NA” box in Section 8.10 (“Did Your Facility Engage in Any Newly Implemented Source Reduction Activities for This Chemical During the Reporting Year?”). The Agency will explore the possibility of allowing a facility to report both source reduction activities as well as barriers to conducting source reduction activities on a Form R and welcomes additional comment on this topic.</p>
11	Indicating whether an air release contains chromium-VI (hexavalent chromium)	American Petroleum Institute (API) and National Mining Association (NMA)	<p>Comment: <u>API:</u> This information [on chromium-VI] is not as readily accessible as EPA asserts, specifically for releases from point sources, and would require additional estimation/calculation. [...] This proposed change should not be included in the final updated form. However, if this reporting requirement change is made, a mechanism/option for reporters to indicate “unknown” must be included if they have no data to indicate the presence of hexavalent chromium in their releases.</p> <p><u>NMA:</u> Contrary to EPA’s claims, this information [on chromium-VI] is not readily available or accessible and would add a significantly increased reporting burden on facilities. Consequently, NMA opposes this change in Form R. If EPA includes this change, NMA recommends that the agency include a mechanism for reporters to select an option of “unknown” if they</p>

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			<p>have no data to indicate the presence of hexavalent chromium in their releases.</p> <p>Response: In response to comments received, EPA will not incorporate this change at this time.</p>
12	Add management codes for transfers to POTWs	National Mining Association (NMA)	<p>Comment: EPA proposes to add coding that specifies how wastes transferred to POTWs are treated or disposed. ICR, Appendix E at 2. The change would make reporting about wastes transferred to POTWs consistent with current reporting requirements for other off-site waste transfers (for instance, to RCRA treatment, storage or disposal facilities). NMA members sometimes transfer wastes to POTWs, but usually are not aware of the ultimate disposition of the wastes, which is within the control of the POTW, not the reporting facility. The proposed codes include two that reporting facilities can use if they do not know treatment or disposal information: M36 for Other or Unknown Disposal, and M37 for Other or Unknown Treatment. As long as EPA includes the M36 and M37 codes in the revised Form R instructions, NMA does not oppose this change.</p> <p>Response: EPA concurs with this comment and is incorporating this change, including the M36 and M37 codes. However, EPA is using a PW code designation for POTW transfers rather than the M code designation as proposed to make clear which codes are to be used for POTW transfers versus other types of off-site transfers.</p>
13	Separate Section 8.8 into separate boxes for quantities associated with (1) remedial actions, (2) catastrophic events, and (3) one-time events not associated with	American Petroleum Institute (API)	<p>Comment: This information is already reported elsewhere and thus there is no added value in reporting it to EPA, and doing so is duplicative. Additionally, some one-time events, such as spills, may be covered under the CERCLA section 101(14) Petroleum Exclusion regarding reporting to agencies. Separating one-time events into various categories, presents an opportunity for agencies to compare individual facility events reported to the National Response Center (NRC) during the reporting year against the TRI releases and creates confusion as to whether a release was immediately reportable. Therefore, the categories in Form R, Part II, Section 8.8 should</p>

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	production processes		<p>remain consolidated.</p> <p>Response: After careful review and consideration of API's comment on the proposed separation of Section 8.8 into separate data elements for quantities associated with (1) remedial actions, (2) catastrophic events, and (3) one-time events not associated with production processes, EPA will not incorporate this change at this time.</p>