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Title 40 –Protection of Environment

Chapter I –Environmental Protection Agency

Subchapter J –Superfund, Emergency Planning, and Community Right-to-Know Programs

Part 372 –Toxic Chemical Release Reporting: Community Right-to-Know

Subpart B –Reporting Requirements

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

Source: 53 FR 4525, Feb. 16, 1988, unless otherwise noted.

§ 372.38 Exemptions.

(a) *De minimis concentrations of a toxic chemical in a mixture.*

(1) If a toxic chemical is present in a mixture of chemicals at a covered facility and the toxic chemical is in a concentration in the mixture which is below 1 percent of the mixture, or 0.1 percent of the mixture in the case of a toxic chemical which is a carcinogen, a person is not required to consider the quantity of the toxic chemical present in such mixture when determining whether an applicable threshold has been met under § 372.25 or determining the amount of release to be reported under § 372.30. For purposes of the exemption in this paragraph (a), the following sources establish a chemical as a carcinogen or potential carcinogen:

(i) National Toxicology Program (NTP), Annual Report on Carcinogens (latest edition);

(ii) International Agency for Research on Cancer (IARC) Monographs (latest editions); or

(iii) 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

(2) The exemption in this paragraph (a) applies whether the person received the mixture from another person, or the person produced the mixture, either by mixing the chemicals involved or by causing a chemical reaction which resulted in the creation of the toxic chemical in the mixture. However, this exemption applies only to the quantity of the toxic chemical present in the mixture. If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the mixture or in a mixture at higher concentrations, in excess of an applicable threshold quantity set forth in § 372.25, the person is required to report under § 372.30. This exemption does not apply to toxic chemicals listed in § 372.28.

(b) **Articles.** If a toxic chemical is present in an article at a covered facility, a person is not required to consider the quantity of the toxic chemical present in such article when determining whether an applicable threshold has been met under §§ 372.25, 372.27, or 372.28 or determining the amount of release to be reported under § 372.30. This exemption applies whether the person received the article from another person or the person produced the article. However, this exemption applies only to the quantity of the toxic chemical present in the article. If the toxic chemical is manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the article, in excess of an applicable threshold quantity set forth in § 372.25, § 372.27, or § 372.28, the person is required to report under § 372.30. Persons potentially subject to this exemption should carefully review the definitions of *article* and *release* in § 372.3. If a release of a toxic chemical occurs as a result of the processing or use of an item at the facility, that item does not meet the definition of *article*.

- (c) **Uses.** If a toxic chemical is used at a covered facility for a purpose described in this paragraph (c), a person is not required to consider the quantity of the toxic chemical used for such purpose when determining whether an applicable threshold has been met under §§ 372.25, 372.27, or 372.28 or determining the amount of releases to be reported under § 372.30. However, this exemption only applies to the quantity of the toxic chemical used for the purpose described in this paragraph (c). If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as described in this paragraph (c), in excess of an applicable threshold quantity set forth in § 372.25, § 372.27, or § 372.28, the person is required to report under § 372.30.
- (1) Use as a structural component of the facility.
 - (2) Use of products for routine janitorial or facility grounds maintenance. Examples include use of janitorial cleaning supplies, fertilizers, and pesticides similar in type or concentration to consumer products.
 - (3) Personal use by employees or other persons at the facility of foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility operated cafeteria, store, or infirmary.
 - (4) Use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility.
 - (5) Use of toxic chemicals present in process water and non-contact cooling water as drawn from the environment or from municipal sources, or toxic chemicals present in air used either as compressed air or as part of combustion.
- (d) **Activities in laboratories.** If a toxic chemical is manufactured, processed, or used in a laboratory at a covered facility under the supervision of a technically qualified individual as defined in § 720.3(ee) of this title, a person is not required to consider the quantity so manufactured, processed, or used when determining whether an applicable threshold has been met under §§ 372.25, 372.27, or 372.28 or determining the amount of release to be reported under § 372.30. This exemption does not apply in the following cases:
- (1) Specialty chemical production.
 - (2) Manufacture, processing, or use of toxic chemicals in pilot plant scale operations.
 - (3) Activities conducted outside the laboratory.
- (e) **Certain owners of leased property.** The owner of a covered facility is not subject to reporting under § 372.30 if such owner's only interest in the facility is ownership of the real estate upon which the facility is operated. This exemption applies to owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments in any SIC code or NAICS code in § 372.23 that is subject to the requirements of this part, where the owner has no other business interest in the operation of the covered facility.
- (f) **Reporting by certain operators of establishments on leased property such as industrial parks.** If two or more persons, who do not have any common corporate or business interest (including common ownership or control), operate separate establishments within a single facility, each such person shall treat the establishments it operates as a facility for purposes of this part. The determinations in §§ 372.22 and 372.25 shall be made for those establishments. If any such operator determines that its establishment is a covered facility under § 372.22 and that a toxic chemical has been manufactured (including imported), processed, or otherwise used at the establishment in excess of an applicable

threshold in §§ 372.25, 372.27, or 372.28 for a calendar year, the operator shall submit a report in accordance with § 372.30 for the establishment. For purposes of this paragraph (f), a common corporate or business interest includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by the other, or ownership of a controlling interest in both persons by a third person.

- (g) **Coal extraction activities.** If a toxic chemical is manufactured, processed, or otherwise used in extraction by facilities in SIC code 12, or in NAICS codes 212111, 212112 or 212113, a person is not required to consider the quantity of the toxic chemical so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under §§ 372.25, 372.27, or 372.28, or determining the amounts to be reported under § 372.30.
- (h) **Metal mining overburden.** If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, or in NAICS codes 212221, 212222, 212230 or 212299, a person is not required to consider the quantity of the toxic chemical so processed, or otherwise used when determining whether an applicable threshold has been met under §§ 372.25, 372.27, or 372.28, or determining the amounts to be reported under § 372.30.

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