

not know the specific chemical identity of the chemical, does not know the specific concentration at which the chemical is present in the mixture or trade name product, including information they have themselves developed, and has not been told the upper bound concentration of the chemical in the mixture or trade name product, the owner or operator is not required to report with respect to that toxic chemical.

(c) A covered facility may consist of more than one establishment. The owner or operator of such a facility at which a toxic chemical was manufactured (including imported), processed, or otherwise used in excess of an applicable threshold may submit a separate Form R for each establishment or for each group of establishments within the facility to report the activities involving the toxic chemical at each establishment or group of establishments, provided that activities involving that toxic chemical at all the establishments within the covered facility are reported. If each establishment or group of establishments files separate reports then for all other chemicals subject to reporting at that facility they must also submit separate reports. However, an establishment or group of establishments does not have to submit a report for a chemical that is not manufactured (including imported), processed, otherwise used, or released at that establishment or group of establishments.

(d) Each report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year. The first such report for calendar year 1987 activities must be submitted on or before July 1, 1988.

[53 FR 4525, Feb. 16, 1988; 53 FR 12748, Apr. 18, 1988, as amended at 56 FR 29185, June 26, 1991; 64 FR 58751, Oct. 29, 1999; 72 FR 26553, May 10, 2007]

§ 372.38 Exemptions.

(a) *De minimis concentrations of a toxic chemical in a mixture.* 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 as defined in 29 CFR 1910.1200(d)(4), 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. This exemption 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, except for purposes of § 372.45(d)(1).

(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

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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

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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, 212231, 212234 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.

[53 FR 4525, Feb. 16, 1988, as amended at 62 FR 23892, May 1, 1997; 64 FR 58751, Oct. 29, 1999; 71 FR 32477, June 6, 2006]

Subpart C—Supplier Notification Requirements

§ 372.45 Notification about toxic chemicals.

(a) Except as provided in paragraphs (c), (d), and (e) of this section and § 372.65, a person who owns or operates a facility or establishment which:

(1) Is in SIC codes 20 through 39 or a NAICS code that corresponds to SIC codes 20 through 39 as set forth in § 372.23(b),

(2) Manufactures (including imports) or processes a toxic chemical, and

(3) Sells or otherwise distributes a mixture or trade name product containing the toxic chemical, to (i) a facility described in § 372.22, or (ii) to a person who in turn may sell or otherwise distributes such mixture or trade name product to a facility described in § 372.22(b), must notify each person to whom the mixture or trade name product is sold or otherwise distributed from the facility or establishment in accordance with paragraph (b) of this section.

(b) The notification required in paragraph (a) of this section shall be in writing and shall include:

(1) A statement that the mixture or trade name product contains a toxic chemical or chemicals subject to the reporting requirements of section 313 of

Title III of the Superfund Amendments and Reauthorization Act of 1986 and 40 CFR part 372.

(2) The name of each toxic chemical, and the associated Chemical Abstracts Service registry number of each chemical if applicable, as set forth in § 372.65.

(3) The percent by weight of each toxic chemical in the mixture or trade name product.

(c) Notification under this section shall be provided as follows:

(1) For a mixture or trade name product containing a toxic chemical listed in § 373.65 with an effective date of January 1, 1987, the person shall provide the written notice described in paragraph (b) of this section to each recipient of the mixture or trade name product with at least the first shipment of each mixture or trade name product to each recipient in each calendar year beginning January 1, 1989.

(2) For a mixture or trade name product containing a toxic chemical listed in § 372.65 with an effective date of January 1, 1989 or later, the person shall provide the written notice described in paragraph (b) of this section to each recipient of the mixture or trade name product with at least the first shipment of the mixture or trade name product to each recipient in each calendar year beginning with the applicable effective date.

(3) If a person changes a mixture or trade name product for which notification was previously provided under paragraph (b) of this section by adding a toxic chemical, removing a toxic chemical, or changing the percent by weight of a toxic chemical in the mixture or trade name product, the person shall provide each recipient of the changed mixture or trade name product a revised notification reflecting the change with the first shipment of the changed mixture or trade name product to the recipient.

(4) If a person discovers (i) that a mixture or trade name product previously sold or otherwise distributed to another person during the calendar year of the discovery contains one or more toxic chemicals and (ii), that any notification provided to such other persons in that calendar year for the mixture or trade name product either did not properly identify any of the toxic