

3745-100-08 **Exemptions.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (FF) of rule 3745-100-01 of the Administrative Code titled "Referenced materials."]

- (A) ~~De Minimis~~ 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 one per cent of the mixture, or 0.1 per cent 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 rule 3745-100-06 of the Administrative Code or determining the amount of release to be reported under rule 3745-100-07 of the Administrative Code. 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 rule 3745-100-06 of the Administrative Code, the person is required to report under rule 3745-100-07 of the Administrative Code. This exemption does not apply to toxic chemicals listed in rule 3745-100-16 of the Administrative Code, except for purposes of paragraph (D)(1) of rule 3745-100-09 of the Administrative Code.
- (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 rule 3745-100-06, 3745-100-14, or 3745-100-16 of the Administrative Code or determining the amount of release to be reported under rule 3745-100-07 of the Administrative Code. 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 rule 3745-100-06 of the Administrative Code, the person is required to report under rule 3745-100-07 of the Administrative Code. Persons potentially subject to this exemption should carefully review the definitions of "article" and "release" in rule 3745-100-01 of the Administrative Code. 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 paragraphs (C)(1) to (C)(5) of this rule, 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 rule 3745-100-06, 3745-100-14, or 3745-100-16 of the Administrative Code or determining the amount of releases to be reported under rule 3745-100-07 of the Administrative Code. However, this exemption only applies to the quantity of the toxic chemical used for the purpose described in paragraphs (C)(1) to (C)(5) of this rule. If the toxic chemical is also manufactured (including imported), processed or otherwise used at the covered facility other than as described in paragraphs (C)(1) to (C)(5) of this rule in excess of an applicable threshold quantity set forth in rule 3745-100-06 of the Administrative Code, the person is required to report under rule 3745-100-07 of the Administrative Code. This exemption only applies to the quantity of the toxic chemical for the following purposes:
- (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 noncontact 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 paragraph (O) of rule 3745-100-01 of the Administrative Code, a person is not required to consider the quantity so manufactured, processed or used when determining whether an applicable threshold has been met under rule 3745-100-06, 3745-100-14, or 3745-100-16 of the Administrative Code or determining the amount of release to be reported under rule 3745-100-07 of the Administrative Code. 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 rule 3745-100-07 of the Administrative Code 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 ~~within SIC codes 20 through 39~~ in any SIC code or NAICS code in rule 3745-100-17 that are 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 ~~that person~~ operates as a facility for purposes of this rule. The determinations in rules 3745-100-05 and 3745-100-06 of the Administrative Code shall be made for those establishments. If any such operator determines that ~~the~~ the establishment is a covered facility under rule 3745-100-05 of the Administrative Code and that a toxic chemical has been manufactured (including imported), processed or otherwise used at the establishment in excess of an applicable threshold in rule 3745-100-06 of the Administrative Code for a calendar year, the operator shall submit a report in accordance with rule 3745-100-07 of the Administrative Code for the establishment. For purposes of this, 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 rule 3745-100-06, 3745-100-14, or 3745-100-16 of the Administrative Code, or determining the amounts to be reported under rule 3745-100-07 of the Administrative Code.
- (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 rule 3745-100-06, 3745-100-14, or 3745-100-16 of the Administrative Code, or determining the amounts to be reported under rule 3745-100-07 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates: 10/20/2016

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3751.02
Rule Amplifies: 3751.03
Prior Effective Dates: 6/22/1989, 5/07/2001, 01/04/2006, 10/25/2011