

40 C.F.R. § 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.

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