

3745-100-09 **Notification about toxic chemicals.**

[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 the "Incorporation by Reference" paragraph at the end of rule 3745-100-01.]

(A) Except as provided in paragraphs (C), (D) and (E) of this rule, and rule 3745-100-10 of the Administrative Code, a person who owns or operates a facility or establishment which:

- (1) Is in SIC codes 20 to 39 or a NAICS code that corresponds to SIC codes 20 to 39, as set forth in paragraph (B) of rule 3745-100-17 of the Administrative Code;
- (2) Manufacturers (including imports) or processes a toxic chemical; and
- (3) Sells or otherwise distributes a mixture or trade name product containing the toxic chemical to a facility described in rule 3745-100-05 of the Administrative Code, or to a person who in turn may sell or otherwise distribute such mixture or trade name product to a facility described in paragraph (B) of rule 3745-100-05 of the Administrative Code.

A person who owns or operates a facility or establishment shall 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 rule.

(B) The notification required in paragraph (A) of this rule shall be in writing and shall include:

- (1) A statement that the mixture or trade name product contains a toxic chemical 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 CAS number of each chemical, if applicable, as set forth in rule 3745-100-10 of the Administrative Code.
- (3) The per cent by weight of each toxic chemical in the mixture or trade name product.

(C) Notification under this rule shall be provided as follows:

- (1) For a mixture or trade name product containing a toxic chemical listed in rule 3745-100-10 of the Administrative Code with an effective date of January 1, 1987, the person shall provide the written notice described in paragraph (B) of this rule to each recipient of the mixture or trade name product with a 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 rule 3745-100-10 of the Administrative Code with an effective date of January 1, 1989 or later, the person shall provide the written notice described in paragraph (B) of this rule 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 rule by adding a toxic chemical, removing a toxic chemical, or changing the per cent 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 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 that any notification provided to such other person in that calendar year for the mixture or trade name product either did not properly identify any of the toxic chemicals or did not accurately present the per cent by weight of any of the toxic chemicals in the mixture or trade name product, the person shall provide a new notification to the recipient within thirty days of the discovery which contains the information described in paragraph (B) of this rule, and identifies the prior shipments of the mixture or product in that calendar year to which the new notification applies.
- (5) If a "Material Safety Data Sheet" is required to be prepared and distributed for the mixture or trade name product in accordance with 29 CFR 1910.1200, the notification must be attached to or otherwise incorporated into such "Material Safety Data Sheet." When the notification is attached to the "Material Safety Data Sheet," the notice must contain clear instructions that the notification must not be detached from the "Material Safety Data Sheet" and that any copying and redistribution of the "Material Safety Data Sheet" shall include copying and redistribution of the notice attached to copies of the "Material Safety Data Sheet" subsequently redistributed.

(D) Notifications are not required in the following instances:

- (1) If a mixture or trade name product contains no toxic chemical in excess of the applicable de minimis concentration as specified in paragraph (A) of rule 3745-100-08 of the Administrative Code.
- (2) If a mixture or trade name product is on of the following:
 - (a) An "article" as defined in rule 3745-100-01 of the Administrative Code.
 - (b) Foods, drugs, cosmetics, alcoholic beverages, tobacco or tobacco products packaged for distribution to the general public.
 - (c) Any consumer product, as the term is defined in the Consumer Product Safety Act contained in 15 USC 2051 to 2084, packaged for distribution to the general public.
- (E) If the person considers the specific identity of a toxic chemical in a mixture or trade name product to be a trade secret under provisions of 29 CFR 1910.1200, the notice shall contain a generic chemical name that is descriptive of that toxic chemical.
- (F) If the person considers the specific per cent by weight composition of a toxic chemical in the mixture or trade name product to be a trade secret under applicable state law or under the "Restatement of Torts," section 757, comment B, the notice must contain a statement that the chemical is present at a concentration that does not exceed a specified upper-bound concentration value: for example, a mixture contains twelve per cent of a toxic chemical. However, the supplier considers the specific concentration of the toxic chemical in the product to be a trade secret. The notice would indicate that the toxic chemical is present in the mixture in a concentration of no more than fifteen per cent by weight. The upper-bound value chosen must be no larger than necessary to adequately protect the trade secret.
- (G) A person is not subject to the requirements of this rule to the extent the person does not know that the facility or establishment is selling or otherwise distributing a toxic chemical to another person in a mixture or trade name product. However, for purposes of this rule, a person has such knowledge if the person receives a notice under this rule from a supplier of a mixture or trade name product and the person in turn sells or otherwise distributes that mixture or trade name product to another person.
- (H) If two or more persons who do not have any common corporate or business interest (including common ownership or control), as described in paragraph (F) of rule 3745-100-08 of the Administrative Code, operate separate establishments within a single facility, each such person shall treat the establishment it operates as a facility for purposes of this rule. The determination under paragraph (A) of this rule shall be made for those establishments.

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