

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 33.00: IMPLEMENTATION OF M.G.L. c. 111F, EMPLOYEE AND COMMUNITY
"RIGHT TO KNOW"

Section

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33.01: Purpose and Authority

310 CMR 33.00 is promulgated under authority of M.G.L. c. 111F. The purpose of 310 CMR 33.00 is to implement effectively the provisions of M.G.L. c. 111F, thereby ensuring an orderly dissemination of information related to toxic and hazardous substances and further protecting the public health and safety.

33.02: Definitions

The following terms as used in 310 CMR 33.00 shall have the following meanings, unless otherwise specified:

Community resident shall mean any resident of a municipality in which an employer manufactures, processes, uses or stores toxic or hazardous substances as defined in 310 CMR 33.02.

Critical shall mean vital or indispensable for the adequate solution, overcoming, or managing of a crisis.

The Department shall mean the Commissioner of the Department of Environmental Protection or his designee.

Essential shall mean necessary or indispensable to.

Frivolous shall mean lacking in substance or serious intent.

Immediate access shall mean access within 24 hours or access during the period of an on-going emergency or crisis situation.

Imminent threat to public health or safety shall mean a situation which poses a risk of endangering the health or safety of the public or portion thereof, and which calls for prompt response to eliminate, reduce, or counter such risk.

Material safety data sheet or MSDS shall mean the written document which sets forth the following for a toxic or hazardous substance:

- (a) The chemical name, any common names, and the CAS number of the toxic or hazardous substance.
- (b) The hazards or other risks in the use of the toxic or hazardous substance, including:
 - 1. the potential for fire, explosion, corrosivity, and reactivity;
 - 2. the acute and chronic health effects of risks from exposure; including the medical conditions that might be aggravated by exposure; and
 - 3. the potential routes of exposure and symptoms of overexposure.
- (c) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic or hazardous substances, including appropriate emergency treatment in case of overexposure at hazardous levels.

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- (d) The emergency procedures for spills, fire, disposal and first aid.
- (e) A description in lay terms, of the specific potential health risks posed by the toxic or hazardous substance intended to alert any person reading this information, including but not limited to carcinogenic, mutagenic, teratogenic, or neurotoxic effects, for substances so designated on the Massachusetts substance list, pursuant to M.G.L. c. 111F, § 4(c).
- (f) The month and year that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

Municipal coordinator shall mean the fire chief, fire commissioner, public health commissioner or public health officer, or member of the suant to M.G.L. c. 111F, § 1 and 310 CMR 33.03, or an acting municipal coordinator so designated.

Performance of a duty to protect public health and safety shall mean any action, including monitoring or investigation to determine whether other action is necessary, taken by a duly-constituted agency of the Commonwealth or political subdivision thereof; with the purpose of fulfilling (in whole or in part) any responsibility assigned by statue, regulation, ordinance, or by-law to provide, maintain, preserve, or safeguard safe or healthful conditions for the public, or to eliminate, reduce, or prevent threats to the health and safety of the public or portion thereof.

Public health officer shall mean a paid health agent or a member of the board of health.

Reason to believe shall mean an intelligible and articulated grounds for holding an opinion.

State agency shall mean an agency, authority, board, commission, department, or office of the Commonwealth or any county or district thereof.

Toxic or hazardous substance shall mean any chemical substance or mixture of substances in a gaseous, liquid or solid state which is listed in the Massachusetts substance list compiled in compliance with the provisions of M.G.L. c. 111F, § 4, and which is manufactured, processed, used or stored in the workplace, but which shall not include alcoholic beverages as defined in M.G.L. c. 138, § 1, or articles intended for personal consumption by employees in the workplace, or consumer articles packaged for distribution to, and used by, the general public, or articles sold or used in retail food establishments and all other retail trade establishments, exclusive of articles used in processing and repair areas, or substances being transported in interstate commerce.

Willful or intentional violation shall mean any deliberate, intentional, or purposeful violation of M.G.L. c. 111F or regulations promulgated thereunder.

Wrongful violation shall mean any violation of M.G.L. c. 111F or of regulations promulgated thereunder, other than a willful or intentional violation.

33.03: Municipal Coordinators

(1) Method of Appointment. A municipal coordinator shall be designated by a written document signed by the chief executive officer of a city or town. The designation document shall be a public record. The chief executive officer shall also designate in the same manner an acting municipal coordinator, who shall be authorized to exercise and perform all rights and duties of the municipal coordinator when the municipal coordinator is absent or incapacitated. The acting municipal coordinator shall be either the fire chief, fire commissioner, public health commissioner or public health officer, or that official who ordinarily assumes the other duties of the municipal coordinator during absence or incapacity, or a member of the board of selectmen in a town which lacks all of the aforesaid officials. The appropriate regional office of the Department shall be informed of the identity, business address, and telephone number of the municipal coordinator and acting municipal coordinator within 15 days of the appointment.

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(2) Requests for filing of MSDS. An employer may at any time be directed to file a copy of any or all MSDS(s) with the municipal coordinator of a community in which a workplace is located by a written request from the municipal coordinator addressed to the employer at that workplace, or other known business address of that employer. An employer must file all requested MSDSs with the municipal coordinator within four working days of receipt of a written request. If an employer fails to provide requested MSDS(s), the Department may provide them to the municipal coordinator upon request.

(3) A municipal coordinator may allow staff and clerical employees acting under his or her direct supervision access to MSDS information for the purpose of performing clerical duties, without notice to employers. A municipal coordinator may allow employees under his or her supervision access to MSDS information for purposes related to the performance of their duties, where the information is directly related to imminent threats to public health or safety such employees may encounter in the course of their duties; upon allowing such access the municipal coordinator shall notify the relevant employer. The supervisor of a municipal coordinator shall have access to MSDS information for purposes related to the supervision of the municipal coordinator, without notice to employers.

(4) Security. Any municipal coordinator who receives copies of any MSDS shall take reasonable measures to segregate all MSDSs from all public records and to safeguard said MSDSs from unauthorized disclosure, and shall provide notice of the consequences of unauthorized disclosure when allowing access to such information. The municipal coordinator shall retain all MSDSs received for a period of at least five years from the date of receipt.

33.04: Filing of MSDS

(1) Any employer who manufactures, uses, processes or stores any hazardous or toxic substance in any workplace (other than a research laboratory exempted under M.G.L. c. 111F and 105 CMR 670.015) shall file a completed copy of each material safety data sheet (MSDS) for each such substance with the Department's regional office for the region in which each such workplace is located. Each MSDS shall contain the information required by M.G.L. c. 111F, § 1 and by 454 CMR 21.06, and shall be identical to the copy maintained by the employer in a central location in the workplace, as required by M.G.L. c. 111F, § 11(a). Where a trade secret claim is made pursuant to M.G.L. c. 111F, § 5, the MSDS shall be identical to the MSDS filed with the Department of Public Health, including the identifying code required by 105 CMR 670.020(C)(9). Each such employer shall attach to each collection of MSDSs an employer identification sheet, which shall contain the following information in the following order:

- (a) the employer's name.
- (b) the workplace address.
- (c) the four digit Standard Industrial Classification (SIC) number for that workplace.
- (d) the employer's mailing address (if different),
- (e) the position title and, when possible, the name of an individual to contact for further information,
- (f) the business and emergency telephone number of the person identified in 310 CMR 33.04(1)(e),
- (g) an estimate of the number of employees at the workplace listed in 310 CMR 33.04(1)(b).

(2) Any employer who receives, compiles, or prepares new or revised information related to a MSDS on file with the Department shall provide an updated MSDS to the Department within six months of obtaining such information. Any employer who receives, compiles, or prepares an MSDS for a substance or mixture that has not been the subject of a previous filing with the Department shall file such MSDS within 30 days of such receipt, compilation, or preparation. An updated employer identification sheet, as described in 310 CMR 33.04(1), shall accompany each filing of new or updated MSDS.

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- (3) The Department at any time may reject as incomplete or inadequate any MSDS which fails to provide all information required under M.G.L. c. 111F, § 1, provided that:
- (a) Where the chemical name, common name, and CAS identification number have been omitted from a MSDS on the basis of a trade secret claim made to or recognized by the Department of Public Health, such MSDS shall be deemed complete with respect to those items, if the words "trade secret" and the identifying code appear on the form, unless and until the trade secret claim is denied by the Department of Public Health and any appeal period has lapsed.
 - (b) Where an employer who does not manufacture the substance has made diligent efforts to obtain complete information, as defined in M.G.L. c. 111F, § 9(b), no action shall be taken against that employer with respect to that information.
- (4) The regional office may keep on file a "master list" copy of MSDSs for toxic or hazardous substances or regulated mixtures, consisting of one completed MSDS for each such substance or mixture prepared by a particular manufacturer, together with an index of all employers who manufacture, use, process, or store regulated substances or mixtures obtained from that manufacturer. The master list may be used as the source of relevant MSDSs released to state or municipal officials or petitioning community residents.

33.05: Release of MSDS to Government Officials

- (1) Departments of Public Health and Labor and Industries. All employers are hereby notified that the Departments of Public Health and Labor and Industries shall have continual access to all MSDSs filed with the Department via interlocking filing systems; thus, copies of all MSDSs filed with the Department have been provided to these agencies upon entry in the system.
- (2) Other Agencies of the Commonwealth. Any other state agency may file a written request for MSDS information.
- (a) Such request shall identify to the extent possible the name and location of each employer to whom the request pertains, and each substance about which information is sought. Where specific identification is not possible, the request should identify categories of employers or substances.
 - (b) The request shall contain a written justification explaining why the information is essential to the performance of a duty to protect public health or safety, including:
 1. a reference to the authority to be exercised, and
 2. a statement of the actions proposed as performance of such a duty. A statement that the information is essential to determine whether any additional actions are necessary shall be sufficient, if accompanied by a summary of some or all contemplated actions the requesting agency is authorized to take.
 3. the specific reasons access to MSDS information is essential.
 - (c) The request shall be filed with the appropriate regional office of the Department.
 - (d) The Department shall make a written determination whether to release any MSDS information. Copies of the determination shall be mailed to the requesting agency and to the relevant employer(s). When an MSDS is released, it shall be accompanied by a statement advising the recipient of the restrictions on disclosure of said MSDS.
- (3) Imminent Threat.
- (a) Where the Department determines that an imminent threat to public health or safety exists, it may release a copy of any relevant MSDS information to any state agency with authority and responsibility to act to respond to such threat, or to the municipal coordinator of the affected municipality. Within five working days of such release, the Department shall prepare a written statement outlining the basis for the determination that an imminent threat existed and notifying the employer of the release of MSDS information.

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(b) Where a municipal coordinator determines that an imminent threat to public health or safety exists, the municipal coordinator may release a copy of any relevant MSDS to any official of the same municipality if the municipal coordinator also determines that immediate access to the MSDS information is critical to the other official's performance of a duty to protect public health or safety (under existing statute, regulation, ordinance or by-law). Within five working days of such release, the municipal coordinator shall prepare a written statement outlining the basis for the determinations that an imminent threat existed and that such immediate access was critical, and notifying the relevant employer(s) of the release. A copy of this statement shall be provided to the Department. The municipal coordinator shall advise the recipient of the restrictions on disclosure of said MSDS at the time of the release.

33.06: Community Petition Process

(1) Filing of Petition. On or after April 1, 1985, a community resident in a city or town in which an employer manufactures, uses, processes, or stores toxic or hazardous substances, who has reason to believe that the utilization of such substances is or may be endangering public health or safety, may file a petition with the municipal coordinator of that community requesting an investigation. The municipal coordinator may establish reasonable procedural rules for the filing of such petitions. Such a petition must include the following:

- (a) The signature, name and residential address of the petitioner;
- (b) A statement that the petition is filed under the provisions of M.G.L. c. Chapter 111F (or the "Right to Know" Law);
- (c) A statement of the petitioner's grounds for belief that the use or presence of toxic or hazardous substances is or may be endangering public health or safety; and
- (d) Any other information or data known to the petitioner which would assist the municipal coordinator in conducting an investigation, including:
 1. the name of the employer(s) who are believed to manufacture, use, process or store the toxic or hazardous substance(s),
 2. the name or names of the toxic or hazardous substance(s), if known to the petitioner;
 3. any information concerning the effects of such substance(s);
 4. any other relevant information or data.

(2) Multiple Signature Petitions.

- (a) A single petition may be submitted by more than one resident, provided that the signature, name and address of each petitioner is included. Such a petition may include a designation of one resident as the representative of all petitioners. Absent such a designation, the community resident whose name appears first on the petition shall be deemed the representative petitioner. Responses to such a petition may be provided to only the representative petitioner. Disclosure of information between and among community residents whose names appear on such a petition is disclosure to persons specifically authorized to receive such information; however, a person whose name is stricken from the petition pursuant to 310 CMR 33.06(3)(a) is not specifically authorized to receive such information.
- (b) A municipal coordinator may consolidate petitions received from more than one resident concerning the same substance(s) and employer(s), provided that:
 1. notification of each petition is provided to the employer(s) within five working days of receipt, and
 2. the response to the consolidated petition is made within the appropriate period of time, measured from receipt of the first such petition, and
 3. each petitioner receives a copy of the response.

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(3) Response by Municipal Coordinator.

(a) Initial review. Upon receipt of a petition the municipal coordinator may within five working days review such petition for compliance with the requirements of 310 CMR 33.06(1)(a),(b), (c) and (d). A petition that fails to meet such requirements may be returned to the petitioner, along with a specification of which requirements are not met. In the case of a multiple signature petition, the municipal coordinator may return the petition to the representative petitioner. Where any names on a multiple signature petition are stricken for failure to provide a signature, name, or address within the community, the municipal coordinator may process the petition on behalf of the remaining petitioners, but must notify the representative petitioner. It shall be the obligation of the representative petitioner receiving such notice to inform those whose names were stricken.

(b) Notice to employer. Within five working days of receipt of a petition not returned under 310 CMR 33.06(1)(a), the municipal coordinator shall notify the relevant employer(s). Such notification must include either a copy of the petition or a brief summary of the petition, identifying the petitioner, the stated grounds of the petition, and any other information provided in the petition. The notice must afford the employer an opportunity to respond to the petition. This opportunity may be limited to material received by the municipal coordinator within a period of time specified in the notice, which shall be no less than four working days.

(c) Investigation. The municipal coordinator may, within 15 working days of receipt of a petition, determine to conduct an investigation of the alleged danger to public health and safety. Such investigation may, but need not, include any of the following measures for which the municipal coordinator has authority under existing statutes, ordinances, or by-laws;

1. requests for further information from the employer or petitioner;
2. inspection of the employer's workplace;
3. collection and analysis of air, water, soil, or discharge samples, including samples of material in the workplace;
4. any other investigatory measure.

Such investigation may also include review of MSDS information, literature research, inquiries to the Department of Public Health or other government agencies concerning the nature and effects of hazardous and toxic substances, and similar investigatory techniques. The investigation, if undertaken, must be completed within ten working days.

(d) Response to petition. At the conclusion of an investigation, if one is conducted, or within 15 working days of receipt of a petition [that is not rejected under 310 CMR 33.06(3)(a)] if no investigation is conducted, the municipal coordinator shall prepare a written response to the petition. The response shall contain the municipal coordinator's determination of whether public health or safety is or may be endangered, and the recommendation of whatever measures, if any, the municipal coordinator believes are needed to protect public health and safety. The response shall include:

1. a summary of the information contained in the petition;
2. a summary of the response, if any, made by the employer(s);
3. a recommendation to the Department on the release of MSDS(s) to the petitioner, according to the standards set forth in 310 CMR 33.06(4)(b);
4. the reasons for the municipal coordinator's determination;
5. a statement of what specific actions (by local or state officials), if any, the municipal coordinator proposes to take or recommend to protect public health or safety; and
6. any other information deemed relevant by the municipal coordinator.
7. the procedure for requesting review of the response by the Department.

(e) Factors in making determination. The municipal coordinator may, but need not, consider any or all of the following factors in making a determination under 310 CMR 33.06(3)(d), based on information then known to the municipal coordinator:

1. the nature and quantity of the hazardous or toxic substance(s) present;
2. the number of people who are being or may be exposed to the substance(s);
3. the proximity of the substances to sensitive populations, public or private drinking water supplies, or other significant potential receptors;

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4. the employer's compliance or non-compliance with existing statutes, regulations, ordinances, or by-laws regulating the public health or safety;
 5. authority vested in the municipal coordinator and in other public officials;
 6. the degree of risk posed by the substance(s), relative to other known public health or safety concerns in the community; and
 7. any other factor deemed relevant by the municipal coordinator.
- (f) Distribution of municipal coordinator's response. Within 15 working days of receipt of a petition [that is not rejected under 310 CMR 33.06(3)(a)], or within ten additional working days if an investigation is conducted, the municipal coordinator shall forward copies of the report to the Department's regional office (for the region in which the community is located) and to the petitioner (or representative petitioner). If an employer requests a copy of the report when making a response to a petition, the municipal coordinator shall also supply a copy of the report to the employer. The municipal coordinator may also provide a copy of the report to any official who has authority to take any action recommended in the report; the petitioner (or representative petitioner) and the employer shall be informed if any such official receives the report.
- (g) Whenever the municipal coordinator determines that public health or safety is endangered, he or she may take whatever action is authorized by existing statute, ordinance, or by-law, to protect to public health or safety.
- (h) Review by the Department. Any petitioning community resident who believes that the municipal coordinator's written response to the petition does not adequately address the matters contained in the petition may, within 15 working days of the date of response, file a written request that the Department review the response. Such a request shall be addressed to the appropriate regional office and shall include:
1. the signature, name and residential address of the resident;
 2. a copy of the petition and any material filed therewith;
 3. a copy of the municipal coordinator's written response; and
 4. a written statement specifying the deficiencies of the municipal coordinator's response.
- A copy of the request shall be filed simultaneously with the municipal coordinator. A single request for review may be filed by more than one resident, if the signature, name, and address of each was included in the original petition. The Department may consolidate requests for review received from more than one resident, provided that notification of each such petition is provided to the relevant employer(s) within five working days of receipt, and that the response to the consolidated petition is made within the appropriate period of time, measured from receipt of the first such petition.
- (4) Action by the Department.
- (a) Release of MSDS(s).
1. Within five working days of receipt of a municipal coordinator's recommendation that an MSDS be released, the regional office of the Department shall notify the relevant employer(s) and afford the employer(s) an opportunity to respond to the recommendation within four working days. If the employer makes a response, the employer shall simultaneously serve a copy of the response upon the petitioning resident or the representative petitioner of a group of petitioners.
 2. If the employer indicates that there is no objection to the release of MSDS information, the Department shall release such information promptly. If the employer makes no response or indicates any objection, the Department within 15 working days of receipt of the municipal coordinator's recommendation shall determine whether release of MSDS information is appropriate as set forth in 310 CMR 33.06(4)(a)3. When the Department also receives a request to review the municipal coordinator's response, the determination may be delayed until the response required by 301 CMR 33.06(4)(b) is issued.
 3. The Department shall not release MSDS information when, based on particular facts, it finds that:
 - a. the request is frivolous, or
 - b. the request is intended to harass the employer(s), or

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- c. the relevant employer(s) or substance(s) cannot reasonably be identified, or
- d. the circumstances on which the petition is based are not rationally related to the release of MSDS information.

A written finding stating the Department's determination shall be provided to the petitioner (or representative petitioner) and the employer. A statement advising the petitioner (or representative petitioner) of the restrictions on disclosure of the information shall accompany any MSDS released. The Department may assess charges for copying MSDSs on the same basis as charges for copying public records.

(b) Review of response of municipal coordinator.

1. Within five working days of receipt of a request for review of a municipal coordinator's response to a petition, the regional office of the Department shall notify the relevant employer(s) of such request and afford the employer(s) an opportunity to respond to the request within four working days.

2. Within 15 working days of receipt of such a request for review, the Department shall review such request, MSDS information, the municipal coordinator's written response, any additional information provided by the municipal coordinator or the employer, and any other relevant information. The Department shall prepare a written response summarizing the information considered, the Department's determination of what actions, if any, it will take to alleviate any danger to public health or safety and the reasons for such determination. In making its determination, the Department may, but need not, consider any or all of the following factors:

- a. the nature and quantity of the hazardous or toxic substances;
- b. the number of people who are being or may be exposed to the substance(s);
- c. the proximity of the substance to sensitive populations, public or private drinking water supplies, or other significant potential receptors;
- d. the employer's compliance or non-compliance with existing statutes, regulations, ordinances, or by-laws regulating the public health or safety;
- e. the Department's authority under existing law;
- f. the degree of risk posed by the substance(s), relative to other known public health or safety concerns in the region; and
- g. any other relevant factor.

3. The Department's written response shall be mailed to the community resident (or representative petitioner) who requested the review, the municipal coordinator, and the employer. A copy of the response may be provided to any official who is requested to take action to protect the public health and safety, provided that no MSDS shall be distributed to any such official absent compliance with the requirements of 310 CMR 33.05.

4. The Department may provide public record information as a part of its response. Such information may be disclosed by the recipient without regard to the provisions of M.G.L. c. 111F, § 21(b). In any transmittal of M.G.L. c. 111F information together with public record information, the information subject to the provisions of M.G.L. c. 111F, § 21(b) shall be clearly segregated from such public record information, and accompanied by a summary of the restrictions on disclosure of such information provided by said § 21(b).

5. The Department may take any action authorized by law to protect the public health or safety in response to a request for review. The Department's authority to act under any law shall not be impaired by any failure in making a written response under 310 CMR 33.06 to identify such an action as a measure to be taken to alleviate any risk to public health and safety. A determination that no action is to be taken shall not operate as a bar to any enforcement action under any statute, nor as a release of any claim or right of action based on conditions existing at the time such determination is made.

33.07: Enforcement Procedures

- (1) Willful violations. Whenever the Department has cause to believe that any employer or manufacturer has willfully and intentionally violated any provision of M.G.L. c. 111F, §§ 16, 17 or 18, or any provision of 310 CMR 33.00, the Department may report such willful and intentional violation to the Attorney General and request that the Attorney General bring an action in the appropriate court of the Commonwealth to restrain such violation and seek available penalties.
- (2) Wrongful violations.
 - (a) Whenever the Department has cause to believe that an employer or manufacturer has wrongfully failed to comply with any provision of M.G.L. c. 111F, §§ 16, 17 or 18, or any provision of 310 CMR 33.00, the Department may within 120 days of such violation, or within 120 days of the date on which knowledge of the violation is obtained, undertake an investigation.
 - (b) Investigations. The Department shall notify the relevant employer or manufacturer of the investigation by certified mail, return receipt requested. The notice shall include a statement detailing the nature of the violation and the date(s) on which it is alleged to have occurred. The notice shall inform the employer or manufacturer that he or she has 20 calendar days in which to respond to the notice, should he or she wish to do so. In conducting an investigation, the Department may consider any relevant information, and may request such information from the employer or manufacturer. The Department shall consider all information received that provides mitigation or extenuation of the violation, including the employer's efforts to obtain information or otherwise comply with the relevant requirements, but shall have no affirmative obligation to develop such information.
 - (c) Determination of good cause. Upon completion of an investigation, the Department shall determine whether good cause exists to believe that a wrongful violation has occurred.
 1. if the Department determines that good cause does not exist to believe that a wrongful violation has occurred, the Department shall notify the employer of such determination in writing within ten days.
 2. if the Department determines that good cause does exist to believe that a wrongful violation has occurred, the Department shall so notify the employer or manufacturer in writing and shall schedule a conference with the employer or manufacturer to attempt to eliminate the violation.
 - (d) Conference, conciliation and persuasion. At the conference the Department and the employer or manufacturer shall agree upon a reasonable schedule of measures to be taken by the employer or manufacturer to eliminate the violation by a specified date. Failure of an employer or manufacturer to attend a conference, to reach an agreement with the Department, or to meet the schedule established, may be a basis for concluding that conference, conciliation, and persuasion have failed to eliminate the violation. A compliance schedule may be amended, by agreement of the parties, for good cause shown.
 - (e) When the Department concludes that conference, conciliation, and persuasion have failed to eliminate a violation, the Department may order such remedial action as may be appropriate. The Department may also request the Attorney General to enforce any such order.
- (3) The failure of an employer or manufacturer to eliminate a violation through conference, conciliation, and persuasion shall not in itself constitute prima facie proof that the violation is or was willful or intentional; however, such a failure may together with other evidence be grounds for concluding that the violation is or was willful or intentional. The Department's decision to pursue elimination of a violation by conference, conciliation or persuasion shall not be a bar to a determination that a violation is or was willful or intentional.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

33.08: Exceptions

- (1) The Commissioner may, by regulation, establish exceptions from specific requirements of 310 CMR 33.00 for classes of substances or mixtures. Any such exception shall not relieve any employer from the obligation to comply with other provisions of 310 CMR 33.00 or the regulations of any other agency under M.G.L. c. 111F.
- (2) Exception from filing requirements. The filing requirement set forth in 310 CMR 33.04 shall not apply to toxic or hazardous substances present in a workplace in the following forms and circumstances:
 - (a) consumer goods (goods primarily used or bought for use by individuals for personal, family or household purposes) when used in the workplace, where,
 1. the toxic or hazardous substances contained therein are not listed as carcinogens, mutagens, teratogens, neurotoxins, or extraordinarily hazardous substances as defined by the Department of Public Health, and
 2. they are not required to be labelled under M.G.L. c. 111F, § 7(b), and
 3. the substance is used in the workplace in such a manner that employee exposure is substantially equivalent to exposures resulting from consumer usage.
 - (b) office supplies, including those materials to be found at an employee's desk or similar work station in an office environment (for example, typewriter correction fluid, ink in pens, and glue), and toner used in photographic or other types of office copying machines, where
 1. the substance is present only in amounts and forms substantially equivalent to the amount and forms generally available to consumers, and
 2. the substance is used in the workplace in such a manner that employee exposure is substantially equivalent to exposures resulting from consumer usage.
 - (c) food stuffs.
 - (d) gasoline, oils and other additives in fuel tanks, engines, and other operating systems of passenger vehicles or light duty trucks, where
 1. the substances are present only in amounts and forms substantially equivalent to the amounts and forms generally available to consumers, and
 2. the substances are used in such a manner that employee exposure is substantially equivalent to exposures resulting from consumer usage.
 - (e) fuel oils number 1, 2, 4, 5, and 6, natural gas, kerosene, petroleum, or propane, where used for space heating or power generation purposes, such that employees are not exposed to fumes or combustion by-products, and all required emission control equipment is used.

33.09: Miscellaneous Provisions

- (1) Authority to act in the name of the Commissioner under M.G.L. c. 111F is hereby delegated to the regional environmental engineer for each regional office of the Department with respect to the following matters arising in that region:
 - (a) initiation of investigation of alleged violation,
 - (b) conference, conciliation and persuasion,
 - (c) administrative orders following the failure of conference, conciliation and persuasion,
 - (d) determinations pertaining to the release of MSDS in response to citizen petitions or requests by government agencies.A person aggrieved by an administrative order or a determination pertaining to release of MSDS information made by a regional environmental engineer may request a review by the Commissioner.
- (2) MSDS information filed with the Department may be reviewed by appropriate personnel of the Department of Environmental Quality Engineering for purposes specifically related to their duties.
- (3) Severability. If any provision of 310 CMR 33.00 shall be held invalid for any reason, either on its face or as applied, such invalidity shall not affect the remaining provisions of 310 CMR 33.00.

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(4) Effective date. 310 CMR 33.00 shall take effect 90 days after publication in the Massachusetts Register.

REGULATORY AUTHORITY

310 CMR 33.00: M.G.L. c. 111F.

NON-TEXT PAGE