

Environmental Protection Agency

§ 350.19

the submitter of the determination on appeal in writing, by certified mail (return receipt requested). The notice shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, the basis for the appeal determination, that it constitutes final Agency action concerning the chemical identity trade secrecy claim, and that such final Agency action may be subject to review in U.S. District Court within 30 days of receipt of such notice. The General Counsel shall notify the petitioner by regular mail.

§ 350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.

(a) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of a determination of the General Counsel under § 350.17(b)(3) of this subpart that the trade secrecy claim is insufficient, or under § 350.17(c)(3) of this subpart that chemical identity claimed as trade secret is not entitled to trade secret protection, EPA may furnish notice of intent to disclose the chemical identity claimed as trade secret within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(b) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of an EPA determination under § 350.11(a)(2)(iv)(B), or § 350.11(a)(2)(v) of this regulation, or fails to pursue appeal to the General Counsel within 20 days after being notified of its right to do so under § 350.11(a)(2)(i) or § 350.11(b)(2)(i), EPA may furnish notice of intent to disclose the chemical identity claimed as trade secret within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(c) Where EPA, upon initial review under § 350.9(d), determines that the chemical identity claimed as trade secret in a submittal submitted pursuant to this part is the subject of a prior final Agency determination concerning a claim of trade secrecy for the same

chemical identity for the same facility, in which such claim was held invalid, EPA shall furnish notice of intent to disclose chemical identity within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(d) EPA shall furnish notice of its intent to release chemical identity claimed as trade secret by sending the following notification to submitters, under the circumstances set forth in paragraphs (a), (b), and (c) of this section. The notice shall state that EPA will make the chemical identity available to the petitioner and the public on the tenth working day after the date of the submitter's receipt of written notice (or on such later date as the Office of General Counsel may establish), unless the Office of General Counsel has first been notified of the submitter's commencement of an action in Federal court to obtain judicial review of the determination at issue, and to obtain preliminary injunctive relief against disclosure, or, where applicable, as described in paragraph (b) of this section, of commencement of an appeal to the General Counsel. The notice shall further state that if Federal court action is timely commenced, EPA may nonetheless make the information available to the petitioner and the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or, that if Federal court action or appeal to the General Counsel is timely commenced, EPA may nonetheless make the information available to the petitioner and the public whenever it appears to the General Counsel, after reasonable notice to the submitter, that the submitter is not taking appropriate measures to obtain a speedy resolution of the action.

§ 350.19 Provision of information to States.

(a) Any State may request access to trade secrecy claims, substantiations, supplemental substantiations, and additional information submitted to EPA. EPA shall release this information, even if claimed confidential, to any State requesting access if:

§ 350.21

40 CFR Ch. I (7-1-02 Edition)

- (1) The request is in writing;
- (2) The request is from the Governor of the State; and
- (3) The State agrees to safeguard the information with procedures equivalent to those which EPA uses to safeguard the information.

(b) The Governor of a State which receives access to trade secret information under this section may disclose such information only to State employees.

§ 350.21 Adverse health effects.

The Governor or State emergency response commission shall identify the adverse health effects associated with each of the chemicals claimed as trade secret and shall make this information available to the public. The material safety data sheets submitted to the State emergency response commissions may be used for this purpose.

§ 350.23 Disclosure to authorized representatives.

(a) Under section 322(f) of the Act, EPA possesses the authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to trade secret or confidential treatment under this part. Such authority may be exercised only in accordance with paragraph (b) of this section.

(b)(1) A person under contract or subcontract to EPA or a grantee who performs work for EPA in connection with Title III or regulations which implement Title III may be considered an authorized representative of the United States for purposes of this § 350.23. Subject to the limitations in this § 350.23(b), information to which this section applies may be disclosed to such a person if the EPA program office managing the contract, subcontract, or grant first determines in writing that such disclosure is necessary in order that the contractor, subcontractor or grantee may carry out the work required by the contract, subcontract or grant.

(2) No information shall be disclosed under this § 350.23(b) unless this contract, subcontract, or grant in question provides:

(i) That the contractor, subcontractor or the grantee and the contractor's, subcontractor's, or grantee's employees shall use the information only for the purpose of carrying out the work required by the contract, subcontract, or grant, and shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected submitter or of an EPA legal office, and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor, subcontractor or grantee for the performance of the work required under the contract, subcontract or grant, or upon completion of the contract, subcontract or grant;

(ii) That the contractor, subcontractor or grantee shall obtain a written agreement to honor such terms of the contract or subcontract from each of the contractor's, subcontractor's or grantee's employees who will have access to the information, before such employee is allowed such access; and

(iii) That the contractor, subcontractor or grantee acknowledges and agrees that the contract, subcontract or grant provisions concerning the use and disclosure of confidential business information are included for the benefit of, and shall be enforceable by, both EPA and any covered facility having an interest in information concerning it supplied to the contractor, subcontractor or grantee by EPA under the contract or subcontract or grant.

(3) No information shall be disclosed under this § 350.23(b) until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than 5 working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor or grantee, the contract, subcontract or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the FEDERAL REGISTER or may be sent to individual submitters.