

§ 350.7

313 with the information claimed as trade secret clearly identified. To do this, the submitter shall check the box on the form indicating that the chemical identity is being claimed as trade secret. The submitter shall enter the generic class or category that is structurally descriptive of the chemical, as specified in paragraph (f) of this section.

(ii) A sanitized copy of the toxic release inventory form. This copy shall be identical to the document in paragraph (e)(2)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret. This copy shall also be submitted to the State official or officials designated to receive this information.

(iii) A sanitized and unsanitized substantiation in accordance with §350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with §350.7(d).

(4) Section 313 claims shall be sent to the address specified in §350.16 of this regulation.

(f) Method of choosing generic class or category for sections 303, 311, 312 and 313. A facility owner or operator claiming chemical identity as trade secret should choose a generic class or category for the chemical that is structurally descriptive of the chemical.

(g) If a specific chemical identity is submitted under Title III to EPA, or to a State emergency response commission, designated State agency, local emergency planning committee or local fire department, without asserting a trade secrecy claim, the chemical identity shall be considered to have been voluntarily disclosed, and non-trade secret.

(h) A submitter making a trade secrecy claim under this section shall submit to entities other than EPA (e.g., a designated State agency, local emergency planning committee and local fire department) only the sanitized or public copy of the submission and substantiation.

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

§ 350.7 Substantiating claims of trade secrecy.

(a) Claims of trade secrecy must be substantiated by providing a specific answer including, where applicable, specific facts, to each of the following questions with the submission to which the trade secrecy claim pertains. Submitters must answer these questions on the form entitled "Substantiation to Accompany Claims of Trade Secrecy" in §350.27 of this subpart.

(1) Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret, and indicate whether these measures will continue in the future.

(2) Have you disclosed the information claimed as trade secret to any other person (other than a member of a local emergency planning committee, officer or employee of the United States or a State or local government, or your employee) who is not bound by a confidentiality agreement to refrain from disclosing this trade secret information to others?

(3) List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

(4) In order to show the validity of a trade secrecy claim, you must identify your specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in which it is used. (If you use the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy.

Environmental Protection Agency

§ 350.7

(iii) If this use of the chemical claimed as trade secret is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

(iv) Explain why your use of the chemical claimed as trade secret would be valuable information to your competitors.

(5) Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial.

(6)(i) To what extent is the chemical claimed as trade secret available to the public or your competitors in products, articles, or environmental releases?

(ii) Describe the factors which influence the cost of determining the identity of the chemical claimed as trade secret by chemical analysis of the product, article, or waste which contains the chemical (e.g., whether the chemical is in pure form or is mixed with other substances).

(b) The answers to the substantiation questions listed in paragraph (a) of this section are to be submitted on the form in §350.27 of this subpart, and included with a submitter's trade secret claim.

(c) An owner, operator or senior official with management responsibility shall sign the certification at the end of the form contained in §350.27. The certification in both the sanitized and unsanitized versions of the substantiation must bear an original signature.

(d) *Claims of confidentiality in the substantiation.* (1) The submitter may claim as confidential any trade secret or confidential business information contained in the substantiation. Such claims for material in the substantiation are not limited to claims of trade secrecy for specific chemical identity, but may also include claims of confidentiality for any confidential business information. To claim this material as confidential, the submitter shall clearly designate those portions of the substantiation to be claimed as confidential by marking those portions "Confidential," or "Trade Secret." Information not so marked will be treat-

ed as public and may be disclosed without notice to the submitter.

(2) An owner, operator, or senior official with management responsibility shall sign the certification stating that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. This certification is combined on the substantiation form in §350.27 with the certification described in paragraph (c) of this section.

(3) The submitter shall submit to EPA two copies of the substantiation, one of which shall be the unsanitized version, and the other shall be the sanitized version.

(i) The unsanitized copy shall contain all of the information claimed as trade secret or business confidential, marked as indicated in paragraph (d)(1) of this section.

(ii) The second copy shall be identical to the unsanitized substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the substantiation is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or category of the chemical claimed as trade secret. This sanitized copy shall be submitted to the State emergency response commission, a designated State agency, the local emergency planning committee and the local fire department, as appropriate, and made publicly available.

(e) *Supplemental information.* (1) EPA may request supplemental information from the submitter in support of its trade secret claim, pursuant to §350.11(a)(1). EPA may specify the kind of information to be submitted, or the submitter may submit any additional detailed information which further supports the truth of the information previously supplied to EPA in its initial substantiation, under this section.

(2) The submitter may claim as confidential any trade secret or confidential business information contained in the supplemental information. To claim this material as confidential, the

§ 350.9

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

submitter shall clearly designate those portions of the supplemental information to be claimed as confidential by marking those portions "Confidential," or "Trade Secret." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(3) If portions of the supplementary information are claimed confidential, an owner, operator, or senior official with management responsibility of the submitter shall certify that those portions of the supplemental information claimed as confidential would, if disclosed, reveal the chemical identity being claimed as confidential or would reveal other confidential business or trade secret information.

(4) If supplemental information is requested by EPA and the submitter claims portions of it as trade secret or confidential, then the submitter shall submit to EPA two copies of the supplemental information, an unsanitized and a sanitized version.

(i) The unsanitized version shall contain all of the information claimed as trade secret or business confidential, marked as indicated above in paragraph (e)(2) of this section.

(ii) The second copy shall be identical to the unsanitized substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the supplemental information is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or category of the chemical claimed as trade secret.

§ 350.9 Initial action by EPA.

(a) When a claim of trade secrecy, made in accordance with § 350.5 of this part, is received by EPA, that information is treated as confidential until a contrary determination is made.

(b) A determination as to the validity of a trade secrecy claim shall be initiated upon receipt by EPA of a petition under § 350.15 or may be initiated at any time by EPA if EPA desires to determine whether chemical identity information claimed as trade secret is entitled to trade secret treatment,

even though no request for release of the information has been received.

(c) If EPA initiates a determination as to the validity of a trade secrecy claim, the procedures set forth in §§ 350.11, 350.15, and 350.17 shall be followed in making the determination.

(d) When EPA receives a petition requesting disclosure of trade secret chemical identity or if EPA decides to initiate a determination of the validity of a trade secrecy claim for chemical identity, EPA shall first make a determination that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy for that chemical identity at that facility.

(1) If EPA determines that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and the same facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy, then EPA shall review the submitter's claim according to § 350.11.

(2) If such a prior determination held that the submitter's claim for that chemical identity is invalid, and such determination was not challenged by appeal to the General Counsel, or by review in the District Court, or, if challenged, was upheld, EPA shall notify the submitter by certified mail (return receipt requested) that the chemical identity claimed as trade secret is the subject of a prior, final Agency determination concerning the same facility in which it was held that such a claim was invalid. In this notification EPA shall include notice of intent to disclose chemical identity within 10 days pursuant to § 350.18(c) of this subpart. EPA shall also notify the petitioner by regular mail of the action taken pursuant to this section.

§ 350.11 Review of claim.

(a) *Determination of sufficiency.* When EPA receives a petition submitted pursuant to § 350.15, or if EPA initiates a determination of the validity of a trade secrecy claim for chemical identity, and EPA has made a determination, as required in paragraph (d)(1) of § 350.9,