

§ 710.55

must report during each submission period for each chemical substance described in § 710.45 that the person manufactured (including imported) during the preceding calendar year (i.e., the “reporting year”).

§ 710.55 Duplicative reporting.

(a) *With regard to section 8(a) rules.* Any person subject to the requirements of this part who previously has complied with reporting requirements of a rule under section 8(a) of the Act by submitting the information described in § 710.52 for a chemical substance described in § 710.45 to EPA, and has done so within 1 year of the start of a submission period described in § 710.53, is not required to report again on the manufacture of that substance at that site during that submission period.

(b) *With regard to importers.* This part requires that only one report be submitted on each import transaction involving a chemical substance described in § 710.45. When two or more persons are involved in a particular import transaction and each person meets the Agency’s definition of “importer” as set forth in §§ 710.3 and 704.3 of this chapter, they may determine among themselves who should submit the required report; if no report is submitted as required under this part, EPA will hold each such person liable for failure to report.

§ 710.57 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this subpart must maintain records that document any information reported to EPA. Records relevant to reporting during a submission period must be retained for a period of 5 years beginning with the effective date of that submission period.

§ 710.58 Confidentiality.

(a) Any person submitting information under this subpart may assert a business confidentiality claim for the information at the time it is submitted. These claims will apply only to the information submitted with the claim. New confidentiality claims, if necessary, must be asserted with regard to information submitted during the next submission period. Guidance

40 CFR Ch. I (7–1–03 Edition)

for asserting confidentiality claims is provided in the instruction booklet identified in § 710.59. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in part 2 of this chapter.

(b) Chemical identity. A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that substance under this subpart. The following steps must be taken to assert a claim of confidentiality for the identity of a reportable chemical substance:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official.

(i) What harmful effects to your competitive position, if any, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured (including imported) for a commercial purpose available to the public, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have been taken to prevent undesired disclosure of the

Environmental Protection Agency

§ 710.59

fact that the chemical substance is being manufactured (including imported) for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured (including imported) for commercial purposes been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture (including import) in any form, e.g., as product, effluent, emission? If so, what measures have been taken to guard against the discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(x) For what purpose do you manufacture (including import) the substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(2) If any of the information contained in the answers to the questions listed in paragraph (b)(1) of this section is asserted to contain confidential business information, the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as "confidential business information," "proprietary," or "trade secret."

(c) Site identity. A submitter may assert a claim of confidentiality for a site only if the linkage of the site with a reportable chemical is confidential and not publicly available. The following steps must be taken to assert a claim of confidentiality for a site identity:

(1) The submitter must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) Has site information been linked with a chemical identity in any other Federal, state or local reporting scheme? For example, is the chemical

identity linked to a facility in a filing under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 311, namely through a Material Safety Data Sheet (MSDS)? If so, identify all such schemes. Was the linkage claimed as confidential in any of these instances?

(ii) What harmful effect, if any, to your competitive position do you think would result from the identity of the site and the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(2) If any of the information contained in the answers to the questions listed in paragraph (c)(1) of this section is asserted to contain confidential business information, the submitter must clearly identify the information that is claimed confidential by marking the specific information on each page with a label such as "confidential business information," "proprietary," or "trade secret."

(d) If no claim of confidentiality is indicated on the reporting form submitted to EPA under this subpart, or if confidentiality claim substantiation required under paragraphs (c) and (d) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter.

§ 710.59 Availability of reporting form and instructions.

(a) *Use the proper EPA form.* You must use the EPA form identified as "Form U" to submit written information in response to the requirements of this subpart. Copies of Form U are available from EPA at the address set forth in paragraph (c) of this section and from the EPA Internet Home Page at <http://www.epa.gov/oppt/iur>.

(b) *Follow the reporting instructions.* Guidance for completing the reporting form and preparing an electronic (magnetic media) report will be made available prior to each submission period.

(c) *Obtain the reporting package and copies of the form.* EPA will send a reporting package (consisting of a copy