

certifying similar reports under other environmental regulatory requirements.

Specific chemical identity means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance. Where the trade name is reported in lieu of the specific chemical identity, the trade name will be treated as the specific chemical identity for purposes of this part.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

Submitter means a person filing a required report or making a claim of trade secrecy to EPA under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III.

Substantiation means the written answers submitted to EPA by a submitter to the specific questions set forth in this regulation in support of a claim that chemical identity is a trade secret.

Title III means Title III of the Superfund Amendments and Reauthorization Act of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986.

Trade secrecy claim is a submittal under sections 303 (d)(2) or (d)(3), 311, 312 or 313 of Title III in which a chemical identity is claimed as trade secret, and is accompanied by a substantiation in support of the claim of trade secrecy for chemical identity.

Trade secret means any confidential formula, pattern, process, device, information or compilation of information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it. EPA intends to be guided by the Restatement of Torts, Section 757, Comment b.

Unsanitized means a version of a document from which information claimed as trade secret or confidential has not been withheld or omitted.

Working day is any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days; all other days are.

[53 FR 28801, July 29, 1988, as amended at 55 FR 30644, July 26, 1990]

§350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR part 2.

(a) *Applicability of subpart.* Sections 350.1 through 350.27 establish rules governing assertion of trade secrecy claims for chemical identity information collected under the authority of sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, and for trade secrecy or business confidentiality claims for information submitted in a substantiation under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III. This subpart also establishes rules governing petitions from the public requesting the disclosure of chemical identity claimed as trade secret, and determinations by EPA of whether this information is entitled to trade secret treatment. Claims for confidentiality of the location of a hazardous chemical under section 312(d)(2)(F) of Title III are not subject to the requirements of this subpart.

(b) *Priority where provisions conflict.* Where information subject to the requirements of this subpart is also collected under another statutory authority, the confidentiality provisions of that authority shall be used to claim that information as trade secret or confidential when submitting it to EPA under that statutory authority.

(c) *Interaction with 40 CFR part 2, EPA's Freedom of Information Act procedures.* (1) No trade secrecy or business confidentiality claims other than those allowed in this subpart are permitted for information collected under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III.

(2) Except as provided in §350.25 of this subpart, request for access to chemical identities withheld as trade secret under this regulation is solely through this regulation and procedures hereunder, not through EPA's Freedom

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of Information Act procedures set forth at 40 CFR part 2.

(3) Request for access to information other than chemical identity submitted to EPA under this regulation is through EPA's Freedom of Information Act regulations at 40 CFR part 2.

§ 350.5 Assertion of claims of trade secrecy.

(a) A claim of trade secrecy may be made only for the specific chemical identity of an extremely hazardous substance under sections 303 (d)(2) and (d)(3), a hazardous chemical under sections 311 and 312, and a toxic chemical under section 313.

(b) Method of asserting claims of trade secrecy for information submitted under sections 303 (d)(2) and (d)(3).

(1) In submitting information to the local emergency planning committee under sections 303 (d)(2) or (d)(3), the submitter may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 303.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) A copy of the information which is being submitted under sections 303 (d)(2) or (d)(3) to the local emergency planning committee, with the chemical identity or identities claimed trade secret deleted, and the generic class or category of the chemical identity or identities inserted in its place. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized and unsanitized substantiation in accordance with §350.7 for each 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 303 claims shall be sent to the address specified in §350.16 of this regulation.

(c) Method of asserting claims of trade secrecy for information submitted under section 311.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 311 on the material safe-

ty data sheet or chemical list under section 311.

(2) To assert a claim for a chemical identity on a material safety data sheet under section 311, the submitter shall submit to EPA the following:

(i) One copy of the material safety data sheet which is being submitted to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public. In place of the specific chemical identity claimed as trade secret, the generic class or category of the chemical claimed as trade secret shall be inserted. The method of choosing generic class or category is set forth in paragraph (f) of this section.

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

(3) To assert a claim for a chemical identity on a list under section 311, the submitter shall submit to EPA the following:

(i) An unsanitized copy of the chemical list under section 311. The submitter shall clearly indicate the specific chemical identity claimed as trade secret, and shall label it "*Trade Secret.*" The generic class or category of the chemical claimed as trade secret shall be inserted directly below the claimed chemical identity. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized copy of the chemical list under section 311. This copy shall be identical to the document in paragraph (c)(3)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret, leaving in place the generic class or category of the chemical claimed as trade secret. This copy shall be sent by the submitter to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public.

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

(4) If the submitter wishes to claim information in the substantiation as