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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

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trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(5) Section 311 claims shall be sent to the address specified in § 350.16 of this regulation.

(d) Method of asserting claims of trade secrecy for information submitted under section 312.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 312.

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

(i) An unsanitized copy of the Tier II emergency and hazardous chemical inventory form under section 312. (The Tier I emergency and hazardous chemical inventory form does not require the reporting of specific chemical identity and therefore no trade secrecy claims may be made with respect to that form.) The submitter shall clearly indicate the specific chemical identity claimed as trade secret by checking the box marked "trade secret" next to the claimed chemical identity.

(ii) A sanitized copy of the Tier II emergency and hazardous chemical inventory form. This copy shall be identical to the document in paragraph (d)(2)(i) of this section except that the submitter shall delete the chemical identity or identities claimed as trade secret and include instead the generic class or category of the chemical claimed as trade secret. The method of choosing generic class or category is set forth in paragraph (f) of this section. The sanitized copy shall be sent by the submitter to the State emergency response commission, local emergency planning committee or the local fire department, whichever entity requested the 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 312 claims shall be sent to the address specified in § 350.16 of this regulation.

(e) Method of asserting claims of trade secrecy for information submitted under section 313.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 313.

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

(i) An unsanitized copy of the toxic release inventory form under section 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

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emergency planning committee and local fire department) only the sanitized or public copy of the submission and substantiation.

§ 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.

(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