

## Environmental Protection Agency

## § 350.13

receipt of the notice. The submitter shall be notified of EPA's decision by regular mail.

(2) If EPA decides that the information submitted in support of the trade secrecy claim is not true and that the chemical identity is not a trade secret:

(i) The submitter shall be notified by certified mail (return receipt requested) of EPA's determination and may appeal to the General Counsel within 30 days of receipt of such notice, in accordance with the procedures set forth in §350.17. The notice required by this paragraph shall include the reasons why EPA has determined that the chemical identity is not a trade secret and shall inform the submitter of its appeal rights to EPA's General Counsel. The notice shall include the address to which an appeal should be sent and the procedure for filing an appeal, as set forth in §350.17(a) of this subpart. The petitioner shall be notified of EPA's decision by regular mail.

(ii) The General Counsel shall notify the submitter by certified mail (return receipt requested) of its decision on appeal pursuant to the requirements in §350.17. The notice required by this paragraph shall include the reasons for EPA's determination. If the General Counsel affirms the decision that the chemical identity is not a trade secret, then the submitter shall have 30 days from the date it receives notice of the General Counsel's decision to bring an action in U.S. District Court. If the General Counsel decides that the chemical identity is a trade secret, then EPA shall follow the procedure set forth in paragraph (b)(1) of this section.

### § 350.13 Sufficiency of assertions.

(a) A substantiation submitted under §350.7 will be determined to be insufficient to support a claim of trade secrecy unless the answers to the questions in the substantiation submitted under §350.7 support all of the following conclusions. This substantiation must include, where applicable, specific facts.

(1) The submitter has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an em-

ployee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures. To support this conclusion, the facts asserted must show all of the following:

(i) The submitter has taken reasonable measures to prevent unauthorized disclosure of the specific chemical identity and will continue to take such measures.

(ii) The submitter has not disclosed the specific chemical identity to any person who is not bound by an agreement to refrain from disclosing the information.

(iii) The submitter has not previously disclosed the specific chemical identity to a local, State, or Federal government entity without asserting a confidentiality claim.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person. To support this conclusion, the facts asserted must show all of the following:

(i) *Either*: (A) Competitors do not know or the submitter is not aware that competitors know that the chemical whose identity is being claimed trade secret can be used in the fashion that the submitter uses it, and competitors cannot easily duplicate the specific use of this chemical through their own research and development activities; or

(B) Competitors are not aware or the submitter does not know whether competitors are aware that the submitter is using this chemical in this fashion.

(ii) The fact that the submitter manufactures, imports or otherwise uses this chemical in a particular fashion is not contained in any publication or other information source (of which the submitter is aware) available to competitors or the public.

(iii) The non-confidential version of the submission under this title does not contain sufficient information to enable competitors to determine the

## § 350.15

specific chemical identity withheld therefrom.

(iv) The information referred to in paragraph (a)(3)(i)(A) of this section, is of value to competitors.

(v) Competitors are likely to use this information to the economic detriment of the submitter and are not precluded from doing so by a United States patent.

(vi) The resulting harm to submitter's competitive position would be substantial.

(4) The chemical identity is not readily discoverable through reverse engineering. To support this conclusion, the facts asserted must show that competitors cannot readily discover the specific chemical identity by analysis of the submitter's products or environmental releases.

(b) The sufficiency of the trade secrecy claim shall be decided entirely upon the information submitted under § 350.7, or § 350.11(a)(2)(ii).

### **§ 350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.**

(a) The public may request the disclosure of chemical identity claimed as trade secret by submitting a written petition to the address specified in § 350.16.

(b) The petition shall include:

(1) The name, address, and telephone number of the petitioner;

(2) The name and address of the company claiming the chemical identity as trade secret; and

(3) A copy of the submission in which the submitter claimed chemical identity as trade secret, with a specific indication as to which chemical identity the petitioner seeks disclosed.

(c) EPA shall acknowledge, by letter to the petitioner, the receipt of the petition.

(d) Incomplete petitions. If the information contained in the petition is not sufficient to allow EPA to identify which chemical identity the petitioner is seeking to have released, EPA shall notify the petitioner that the petition cannot be further processed until additional information is furnished. EPA will make every reasonable effort to assist a petitioner in providing sufficient information for EPA to identify

## 40 CFR Ch. I (7-1-08 Edition)

the chemical identity the petitioner is seeking to have released.

(e) EPA shall make a determination on a petition requesting disclosure, in accordance with § 350.11 and § 350.17, within nine months of receipt of such petition.

### **§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.**

The address and location to send all claims of trade secrecy under sections 303(d)(2) and (d)(3), 311, 312, and 313 of Title III and all public petitions requesting disclosure of chemical identities claimed as trade secret are posted on the following EPA Program Web sites, <http://www.epa.gov/ceppo> and <http://www.epa.gov/tri>. Any subsequent changes to the address and location will be announced in FEDERAL REGISTER Notices as these changes occur. Also, the changes will be posted on these Web sites. Submitters may also contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or (703) 412-9810, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/> to obtain this information.

[68 FR 64724, Nov. 14, 2003]

### **§ 350.17 Appeals.**

(a) *Procedure for filing appeal.* A submitter may appeal an EPA determination under § 350.11(a)(2)(i) or (b)(2)(i), by filing an appeal with the General Counsel. The appeal shall be addressed to: The Office of General Counsel, U.S. Environmental Protection Agency, Mailcode 2310A, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

The appeal shall contain the following:

(1) A letter requesting review of the appealed decision; and

(2) A copy of the letter containing EPA's decision upon which appeal is requested.

(b) Appeal of determination of insufficient claim.

(1) Where a submitter appeals a determination by EPA under § 350.11(a)(2)(i) that the trade secrecy claim presents insufficient support for a finding of trade secrecy, the General Counsel shall make one of the following determinations: