

## Environmental Protection Agency

## § 704.3

or any rule promulgated under sections 4, 5, or 6, or an order issued under section 5, shall include sufficient information to permit the recipient to identify:

(1) The specific provision of TSCA or of the rule or order under TSCA alleged to have been violated.

(2) The activity alleged to constitute a violation.

(3) The person or persons responsible for the alleged violation.

(4) The location of the alleged violation.

(5) The date or dates of the alleged violation as closely as the citizen is able to specify them.

(6) The full name, address, and telephone number of the citizen giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of the Administrator to perform any act or duty which is not discretionary shall:

(1) Identify the specific provision of TSCA which requires an act or creates a duty.

(2) Describe with reasonable specificity the action taken or not taken by the Administrator which is alleged to constitute a failure to perform the act or duty.

(3) State the full name, address, and telephone number of the citizen giving the notice.

(c) *Identification of Counsel.* The notice shall state the name, address, and telephone number of the Legal Counsel, if any, representing the citizen giving the notice.

### PART 704—REPORTING AND RECORDKEEPING REQUIREMENTS

#### Subpart A—General Reporting and Recordkeeping Provisions for Section 8(a) Information-Gathering Rules

Sec.

704.1 Scope.

704.3 Definitions.

704.5 Exemptions.

704.7 Confidential business information claims.

704.9 Where to send reports.

704.11 Recordkeeping.

704.13 Compliance and enforcement.

#### Subpart B—Chemical-Specific Reporting and Recordkeeping Rules

704.25 11-Aminoundecanoic acid.

704.33 P-tert-butylbenzoic acid (P-TBBA), p-tert-butyltoluene (P-TBT) and p-tert-butylbenzaldehyde (P-TBB).

704.43 Chlorinated naphthalenes.

704.45 Chlorinated terphenyl.

704.95 Phosphonic acid, [1,2-ethanediylbis[nitrilobis-(methylene)]]tetrakis-(EDTMPA) and its salts.

704.102 Hexachloronorborene.

704.104 Hexafluoropropylene oxide.

704.175 4,4'-methylenebis(2-chloroaniline) (MBOCA).

AUTHORITY: 15 U.S.C. 2607(a).

#### Subpart A—General Reporting and Recordkeeping Provisions for Section 8(a) Information-Gathering Rules

##### § 704.1 Scope.

(a) This part specifies reporting and recordkeeping procedures under section 8(a) of the Toxic Substances Control Act (TSCA) for manufacturers, importers, and processors of chemical substances and mixtures (hereafter collectively referred to as substances) that are identified in subpart B of this part. The reporting and recordkeeping provisions in subpart A of this part apply throughout this part unless revised in any other subpart.

(b) Subpart B of this part sets out chemical-specific reporting and recordkeeping requirements under section 8(a) of TSCA.

[53 FR 51715, Dec. 22, 1988, as amended at 60 FR 31920, June 19, 1995]

##### § 704.3 Definitions.

All definitions as set forth in section 3 of TSCA apply in this part. In addition, the following definitions are provided for the purposes of this part.

*Annual* means the corporate fiscal year.

*Article* means a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical

### § 704.3

### 40 CFR Ch. I (7-1-07 Edition)

substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

*Byproduct* means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

*CAS Number* means Chemical Abstracts Service Registry Number.

*Coproduct* means a chemical substance produced for a commercial purpose during the manufacture, processing, use, or disposal of another chemical substance or mixture.

*Customer* means any person to whom a manufacturer, importer, or processor directly distributes any quantity of a chemical substance, mixture, mixture containing the substance or mixture, or article containing the substance or mixture, whether or not a sale is involved.

*Domestic* means within the geographical boundaries of the 50 United States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

*Enclosed process* means a manufacturing or processing operation that is designed and operated so that there is no intentional release into the environment of any substance present in the operation. An operation with fugitive, inadvertent, or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to and environmental contamination from the releases.

*EPA* means the United States Environmental Protection Agency.

*Import* means to import for commercial purposes.

*Import for commercial purposes* means to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer, and includes the importation of any amount of a chemical substance or mixture. If a chemical substance or mixture containing impurities is imported for commercial purposes, then those impuri-

ties also are imported for commercial purposes.

*Import in bulk form* means to import a chemical substance (other than as part of a mixture or article) in any quantity, in cans, bottles, drums, barrels, packages, tanks, bags, or other containers, if the chemical substance is intended to be removed from the container and the substance has an end use or commercial purpose separate from the container.

*Importer* means (1) any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States, and includes:

(i) The person primarily liable for the payment of any duties on the merchandise, or

(ii) An authorized agent acting on his behalf (as defined in 19 CFR 1.11).

(2) Importer also includes, as appropriate:

(i) The consignee.

(ii) The importer of record.

(iii) The actual owner if an actual owner's declaration and superseding bond have been filed in accordance with 19 CFR 141.20.

(iv) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with subpart C of 19 CFR part 144.

(3) For the purposes of this definition, the customs territory of the United States consists of the 50 States, Puerto Rico, and the District of Columbia.

*Impurity* means a chemical substance which is unintentionally present with another chemical substance.

*Intermediate* means any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.

*Known to or reasonably ascertainable by* means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

*Manufacture* means to manufacture for commercial purposes.

## Environmental Protection Agency

## § 704.3

*Manufacture for commercial purposes* means: (1) To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things, such "manufacture" of any amount of a chemical substance or mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

*Manufacturer* means a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.

*Non-isolated intermediate* means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture. Mechanical or gravity transfer through a closed system is not considered to be intentional removal, but storage or transfer to shipping containers "isolates" the substance by removing it from process equipment in which it is manufactured.

*Own or control* means ownership of 50 percent or more of a company's voting stock or other equity rights, or the power to control the management and

policies of that company. A company may own or control one or more sites. A company may be owned or controlled by a foreign or domestic parent company.

*Parent company* is a company that owns or controls another company.

*Person* includes any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

*Possession or control* means in the possession or control of any person, or of any subsidiary, partnership in which the person is a general partner, parent company, or any company or partnership which the parent company owns or controls, if the subsidiary, parent company, or other company or partnership is associated with the person in the research, development, test marketing, or commercial marketing of the substance in question. Information is in the possession or control of a person if it is:

(1) In the person's own files including files maintained by employees of the person in the course of their employment.

(2) In commercially available data bases to which the person has purchased access.

(3) Maintained in the files in the course of employment by other agents of the person who are associated with research, development, test marketing, or commercial marketing of the chemical substance in question.

*Process* means to process for commercial purposes.

*Process for commercial purposes* means the preparation of a chemical substance or mixture after its manufacture for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included in this definition. If a chemical substance or mixture containing impurities is processed for commercial purposes, then the impurities also are processed for commercial purposes.

*Processor* means any person who processes a chemical substance or mixture.

*Production volume* means the quantity of a substance which is produced by a manufacturer, as measured in kilograms or pounds.

*Propose to manufacture, import, or process* means that a person has made a firm management decision to commit financial resources for the manufacture, import, or processing of a specified chemical substance or mixture.

*Site* means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one plant on a single site. The site for a person who imports a substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction and may in some cases be the organization's headquarters office in the United States.

*Small manufacturer or importer* means a manufacturer or importer that meets either of the following standards:

(1) *First standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.

(2) *Second standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales

values and for determining new sales values when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide FEDERAL REGISTER notification when changing the total annual sales values.

*Small quantities solely for research and development* (or "small quantities solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product") means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that are not greater than reasonably necessary for such purposes.

*Substance* means either a chemical substance or mixture unless otherwise indicated.

*Test marketing* means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, article containing that chemical substance or mixture, or a mixture containing that substance, by a manufacturer or processor, to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture, or article in commerce.

*Total annual sales* means the total annual revenue (in dollars) generated by the sale of all products of a company. Total annual sales must include the total annual sales revenue of all sites owned or controlled by that company and the total annual sales revenue of that company's subsidiaries and foreign or domestic parent company, if any.

*TSCA* means the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.

[53 FR 51715, Dec. 22, 1988]