

## § 720.1

## 40 CFR Ch. I (7-1-03 Edition)

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AUTHORITY: 15 U.S.C. 2604, 2607, and 2613.

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### Subpart A—General Provisions

#### § 720.1 Scope.

This part establishes procedures for the reporting of new chemical substances by manufacturers and import-

ers under section 5 of the Toxic Substances Control Act, 15 U.S.C. 2604. This part applies to microorganisms only to the extent provided by part 725 of this chapter. The rule defines the persons and chemical substances subject to the reporting requirements, prescribes the contents of section 5 notices, and establishes procedures for submitting notices. The rule also establishes EPA policy regarding claims of confidentiality for, and public disclosure of, various categories of information submitted in connection with section 5 notices.

[48 FR 21742, May 13, 1983, as amended at 58 FR 34204, June 23, 1993; 62 FR 17932, April 11, 1997]

#### § 720.3 Definitions.

(a)(1) For the purposes of this part, the terms *cosmetic*, *device*, *drug*, *food*, and *food additive* have the meanings contained in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*, and the regulations issued under it. In addition, the term “food” includes poultry and poultry products, as defined in the Poultry Products Inspection Act, 21 U.S.C. 453 *et seq.*; meats and meat food products, as defined in the Federal Meat Inspection Act, 21 U.S.C. 60 *et seq.*; and eggs and egg products, as defined in the Egg Products Inspection Act, 21 U.S.C. 1033 *et seq.*

(2) The term *pesticide* has the meaning contained in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* and the regulations issued under it.

(3) The terms *byproduct material*, *source material*, and *special nuclear material* have the meanings contained in the Atomic Energy Act of 1954, 42 U.S.C. 2014 *et seq.* and the regulations issued under it.

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

(c) *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 may

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occur as described in § 720.36(g)(5), except that fluids and particles are not considered articles regardless of shape or design.

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

(e) *Chemical substance* means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical, except that "chemical substance" does not include:

- (1) Any mixture.
- (2) Any pesticide when manufactured, processed, or distributed in commerce for use as a pesticide.
- (3) Tobacco or any tobacco product.
- (4) Any source material, special nuclear material, or byproduct material.
- (5) Any pistol, firearm, revolver, shells, or cartridges.
- (6) Any food, food additive, drug, cosmetic, or device, when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

(f) *Commerce* means trade, traffic, transportation, or other commerce (1) between a place in a State and any place outside of such State, or (2) which affects trade, traffic, transportation, or commerce between a place in a State and any place outside of such State.

(g) *Customs territory of the United States* means the 50 States, Puerto Rico, and the District of Columbia.

(h) *Director* means the Director of the EPA Office of Pollution Prevention and Toxics.

(i) *Distribute in commerce* means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold after introduction into commerce.

(j) *EPA* means the U.S. Environmental Protection Agency.

(k) *Health and safety study* or *study* means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupa-

tional exposure to a chemical substance or mixture, toxicological, clinical, and ecological, or other studies of a chemical substance or mixture, and any test performed under the Act. Chemical identity is always part of a health and safety study.

(1) Not only is information which arises as a result of a formal, disciplined study included, but other information relating to the effects of a chemical substance or mixture on health or the environment is also included. Any data that bear on the effects of a chemical substance on health or the environment would be included.

(2) Examples include:

(i) Long- and short-term tests of mutagenicity, carcinogenicity, or teratogenicity; data on behavioral disorders; dermatotoxicity; pharmacological effects; mammalian absorption, distribution, metabolism, and excretion; cumulative, additive, and synergistic effects; acute, subchronic, and chronic effects; and structure/activity analyses.

(ii) Tests for ecological or other environmental effects on invertebrates, fish, or other animals, and plants, including: Acute toxicity tests, chronic toxicity tests, critical life stage tests, behavioral tests, algal growth tests, seed germination tests, plant growth or damage tests, microbial function tests, bioconcentration or bioaccumulation tests, and model ecosystem (microcosm) studies.

(iii) Assessments of human and environmental exposure, including workplace exposure, and impacts of a particular chemical substance or mixture on the environment, including surveys, tests, and studies of: Biological, photochemical, and chemical degradation; air, water, and soil transport; biomagnification and bioconcentration; and chemical and physical properties, e.g., boiling point, vapor pressure, evaporation rates from soil and water, octanol/water partition coefficient, and water solubility.

(iv) Monitoring data, when they have been aggregated and analyzed to measure the exposure of humans or the environment to a chemical substance or mixture.

(v) Any assessments of risk to health and the environment resulting from

the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance.

(l) *Importer* means any person who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20; or

(4) 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. (See "principal importer.")

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

(n) *Intermediate* means any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of another chemical substance(s) or mixture(s), or that is intentionally present for the purpose of altering the rates of such chemical reactions.

(o) *Inventory* means the list of chemical substances manufactured or processed in the United States that EPA compiled and keeps current under section 8(b) of the Act.

(p) *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.

(q) *Manufacture* means to produce or manufacture in the United States or import into the customs territory of the United States.

(r) *Manufacture or import for commercial purposes* means:

(1) To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer or importer, and includes, among other things, "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) The term also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Byproducts and impurities without separate commercial value are nonetheless produced for the purpose of obtaining a commercial advantage, since they are part of the manufacture of a chemical substance for commercial purposes.

(s) *Manufacture solely for export* means to manufacture or import for commercial purposes a chemical substance solely for export from the United States under the following restrictions on activities in the United States:

(1) Distribution in commerce is limited to purposes of export or processing solely for export as defined in § 721.3 of this chapter.

(2) The manufacturer or importer, and any person to whom the substance is distributed for purposes of export or processing solely for export (as defined in § 721.3 of this chapter), may not use the substance except in small quantities solely for research and development in accordance with § 720.36.

(t) *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. A person who contracts with a manufacturer to manufacture or produce a chemical substance is also a manufacturer if (1) the manufacturer manufactures or produces the substance exclusively for that person, and (2) that person specifies the identity of the substance and controls the total amount produced and the basic technology for the plant process.

(u) *Mixture* means any combination of two or more chemical substances if the

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combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except "mixture" does include (1) any combination which occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined, and if all of the chemical substances comprising the combination are not new chemical substances, and (2) hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water, so long as the nonhydrated form is itself not a new chemical substance.

(v) *New chemical substance* means any chemical substance which is not included on the Inventory.

(w) *Nonisolated 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 chemical substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

(x) *Person* means any natural person, 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.

(y) *Possession or control* means in possession or control of the submitter, or of any subsidiary, partnership in which the submitter 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 submitter in the research, development, test marketing, or commercial marketing of the chemical substance in question. (A parent company owns or controls another company if the parent owns or controls 50 percent or more of the other company's voting stock. A

parent company owns or controls any partnership in which it is a general partner). Information is included within this definition if it is:

(1) In files maintained by submitter's employees who are:

(i) Associated with research, development, test marketing, or commercial marketing of the chemical substance in question.

(ii) Reasonably likely to have such data.

(2) Maintained in the files of other agents of the submitter who are associated with research, development, test marketing, or commercial marketing of the chemical substance in question in the course of their employment as such agents.

(z) *Principal importer* means the first importer who, knowing that a new chemical substance will be imported rather than manufactured domestically, specifies the identity of the chemical substance and the total amount to be imported. Only persons who are incorporated, licensed, or doing business in the United States may be principal importers.

(aa) *Process* means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture.

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

(cc) *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.

(dd) *State* means any State of the United States and the District of Columbia, the Commonwealth of Puerto

Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

(ee) *Technically qualified individual* means a person or persons (1) who, because of education, training, or experience, or a combination of these factors, is capable of understanding the health and environmental risks associated with the chemical substance which is used under his or her supervision, (2) who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research to minimize such risks, and (3) who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting a research and development activity.

(ff) *Test data* means data from a formal or informal test or experiment, including information concerning the objectives, experimental methods and materials, protocols, results, data analyses, recorded observations, monitoring data, measurements, and conclusions from a test or experiment.

(gg) *Test marketing* means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, or article containing that chemical substance or mixture, 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.

(hh) *United States*, when used in the geographic sense, means all of the States.

[48 FR 21742, May 13, 1983, as amended at 51 FR 15101, Apr. 22, 1986]

### Subpart B—Applicability

#### § 720.22 Persons who must report.

(a)(1) Any person who intends to manufacture a new chemical substance in the United States for commercial purposes must submit a notice unless the substance is excluded under § 720.30.

(2) If a person contracts with a manufacturer to manufacture or produce a new chemical substance, and (i) the manufacturer manufactures or produces the substance exclusively for that person, and (ii) that person specifies the identity of the substance, and controls the total amount produced and the basic technology for the plant process, that person must submit the notice. If it is unclear who must report, EPA should be contacted to determine who must submit the notice.

(3) Only manufacturers that are incorporated, licensed, or doing business in the United States may submit a notice.

(b)(1) Any person who intends to import a new chemical substance into the United States for commercial purposes must submit a notice, unless the substance is excluded under § 720.30 or unless the substance is imported as part of an article.

(2) When several persons are involved in an import transaction, the notice must be submitted by the principal importer. If no one person fits the principal importer definition in a particular transaction, the importer should contact EPA to determine who must submit the notice for that transaction.

#### § 720.25 Determining whether a chemical substance is on the Inventory.

(a) A new chemical substance is any chemical substance that is not currently listed on the Inventory.

(b)(1) A chemical substance is listed in the public portion of the Inventory by a specific chemical name (either a Chemical Abstracts (CA) Index Name or a CA Preferred Name) and a Chemical Abstracts Service (CAS) Registry Number if its identity is not confidential. If its identity is confidential, it is listed in the public portion of the Inventory by a TSCA Accession Number and a generic chemical name that masks the specific substance identity. The confidential substance is listed by its specific chemical name only in the confidential portion of the Inventory, which is not available to the public. A person who intends to manufacture or import a chemical substance not listed by specific chemical name in the public portion of the Inventory may ask EPA