

**Substantiating claims of trade secrecy.**

- (A) Claims of trade secrecy pertaining to those additional extremely hazardous substances listed in paragraph (B) of rule 3750-20-30 of the Administrative Code or those additional hazardous chemicals identified in paragraph (B) of rule 3750-30-25 of the Administrative Code shall be set forth on the report or other filing otherwise required under sections 3750.04, 3750.05, 3750.07, and 3750.08 of the Revised Code and must be substantiated by providing the specific answers including, where applicable, specific facts, to each of the following questions with the submission to which the trade secrecy pertains. The claimant must answer these questions on a form entitled "Substantiation To Accompany Claims Of Trade Secrecy" as set forth in rule 3750-60-23 of the Administrative Code.
- (B) The substantiation shall contain an explanation as to why the information should be protected as trade secret information and shall include a specific description of the substantiation factors listed below.
- (1) Describe the specific measures the claimant has taken to safeguard the confidentiality of the chemical identity claimed as a trade secret, and indicate whether these measures will continue in the future.
  - (2) Has the claimant disclosed the information claimed as trade secret to any other person (other than an officer or employee of the United States or a state or local government, or claimant's 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 the claimant had disclosed the specific chemical identity. For each, indicate whether the claimant asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.
- (C) In order to show the validity of a trade secrecy claim, the claimant must identify the specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors by addressing each of the following:
- (1) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in which it is used. (If the claimant uses the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used).
  - (2) Has the claimant's 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 the claimant's competitors (of which the claimant is aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy.

- (3) If this use of the chemical claimed as trade secret is unknown outside the claimant's company, explain how the claimant's competitors could deduce this use from disclosure of the chemical identity on submissions required by sections 3750.04, 3850.05, 3750.07, and 3750.08 of the Revised Code.
  - (4) Explain why the claimant's use of the chemical claimed as a trade secret would be valuable information to the claimant's competitors.
  - (5) Indicate the nature of the harm to the claimant's competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial.
  - (6) To what extent is the chemical claimed as trade secret available to the public or the claimant's competitors in products, articles, or environmental releases.
  - (7) 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 contain the chemical (e.g., whether the chemical is in pure form or is mixed with other substances).
- (D) The answers to the substantiation questions listed in paragraphs (B) and (C) of this rule are to be submitted on the form identified in rule 3750-60-23 of the Administrative Code which shall be included with the claimant's trade secret claim.
- (E) The claimant, owner, operator or senior official with management responsibility shall sign the certification at the end of the substantiation form contained in rule 3750-60-23 of the Administrative Code. The certification in both the sanitized and unsanitized versions of the substantiation must bear an original signature.

Effective: June 30, 1993

Original signed by: Kenneth A. Schultz, Acting Chairman, State  
Emergency Response Commission  
Certification

June 11, 1993  
Date

Promulgated under: R.C. Chapter 119  
Rule amplifies: R.C. Section 3750.09  
Rule authorized by: R.C. sections 3750.02(B)(1)(i),  
3750.02(B)(2)(d), 3750(B)(5), and 3750.02(B)(14)  
Prior effective dates: None