

3750-60-50 **Sufficiency of assertions.**

- (A) A substantiation submitted under rule 3750-60-20 of the Administrative Code will be determined to be insufficient to support a claim for trade secrecy, unless the answers to the questions in the substantiation submitted under paragraphs (B) and (C) of rule 3750-60-20 of the Administrative Code support all the following conclusions. This substantiation must include, where applicable, specific facts.
- (1) The claimant has not disclosed the information to any other person, other than an officer or employee of the United States or a state or local government or an employee or other person who is bound by a confidentiality agreement, and the claimant has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures. To support this assertion, the facts established in the substantiation must support all of the following:
 - (a) The claimant has taken reasonable measures to prevent unauthorized disclosure of the specific chemical identity and will continue to take such measures.
 - (b) The claimant has not disclosed the specific chemical identity to any person who is not bound by an agreement to refrain from disclosing the information.
 - (c) The claimant 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 the claimant. To support this assertion, the facts must support all of the following:
 - (a) Competitors do not know or the claimant is not aware that competitors know that the chemical whose identity is being claimed trade secret can be used in the fashion that the claimant uses it and competitors cannot easily duplicate the specific use of this chemical through their own research and development activities; or competitors are not aware or the claimant does not know whether competitors are aware that the claimant is using this chemical in this fashion.
 - (b) The fact that the claimant manufactures, imports or otherwise uses this chemical in a particular fashion is not contained in any publication or other

information source (of which the claimant is aware) available to competitors or the public.

- (c) The sanitized version of the submission under this rule does not contain sufficient information to enable competitors to determine the specific chemical identity withheld therefrom.
 - (d) The information claimed as a trade secret is of value to competitors.
 - (e) Competitors are likely to use the trade secret information to the economic detriment of the claimant and are not precluded from doing so by a United States patent.
 - (f) The resulting harm to claimant'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 claimant's product or environmental releases.
- (B) The sufficiency of the trade secret claim shall be decided entirely upon the information submitted under rules 3750-60-20 or 3750-60-43 of the Administrative Code.

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)
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