

CHAPTER 317. TRADE SECRETS

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Cross References

This chapter cited in 34 Pa. Code § 301.3 (relating to jurisdiction/exemptions); 34 Pa. Code § 307.2 (relating to contents of MSDSs); 34 Pa. Code § 309.1 (relating to labeling); 34 Pa. Code § 309.6 (relating to general conditions applying to labels); and 34 Pa. Code § 321.8 (relating to judicial review and enforcement).

§ 317.1. Purpose and scope.

This chapter implements the requirements relating to trade secret claims, under section 11 of the act (35 P. S. § 7311).

§ 317.2. Trade secret claims.

(a) *Withholding of chemical name.* An importer, employer, manufacturer or supplier may withhold the chemical name or other specific identification of a chemical as a trade secret, if the following conditions are met:

- (1) The claim that the information withheld is a trade secret can be supported by the importer, employer, manufacturer or supplier making the claim.
- (2) The MSDS discloses the information concerning the properties and effects of the hazardous substance or hazardous mixture.
- (3) The label and MSDS show the following:
 - (i) The specific chemical identity is being withheld as a trade secret.
 - (ii) A trade secret for a special hazardous substance is being claimed.
- (4) The specific chemical identity is made available to health professional under § 317.3 (relating to disclosure to health professionals).
- (5) The importer, employer, manufacturer or supplier making the trade secret claim files a notice of the claim with the Department. This notice may not require the person making the claim to disclose the information which is claimed to be a trade secret. An MSDS containing a notation that the information is a trade secret is sufficient notice for this paragraph.

(b) *Review of trade secret claims.*

- (1) An aggrieved person or employe representative may request a review of a trade secret claim, but an appeal from the decision of the Department does not give the person the right of access to information considered confidential in paragraph (4). The request shall contain the following:
 - (i) The name and address of the person requesting review.

(ii) A description of the type of work or business engaged in by the requestor.

(iii) The name and address of the entity whose trade secret is sought to be reviewed.

(iv) A certification that the requestor is not a competitor of the entity from whom the trade secret review is requested. The certification shall include the following language: "I hereby certify that, to the best of my knowledge, I nor any member of my immediate family am now, nor plan to be, a competitor or representative, employe or agent of a competitor of the entity from whom I am making this request." This certification shall be signed and dated by the requestor.

(v) Other information which is supportive of the requestor's claim that the information sought is not a trade secret.

(2) Within 30 days of the receipt of the aggrieved person's or employe representative's written request or, upon its initiative, the Department will notify the person claiming the trade secret to file an application and supporting evidence. The application shall be on a form supplied by the Department.

(3) Reviews of trade secret claims under this section shall give regard to similar decisions by other Federal or Commonwealth agencies or Pennsylvania courts, or both.

(4) Proceedings shall be in conformity with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and shall be closed to persons except the employer, supplier, manufacturer or importer and the Department.

(i) Trade secret applications, pleadings, hearing transcripts, documents and other records filed with the Department or a court under a review of trade secret claims or appeals thereof shall be confidential and may not be disclosed to the public.

(ii) The notice of claim filed with the Department and a petition for review or other pleading filed with the courts which do not reveal either the trade secret or information claimed as confidential shall be considered as public records.

(iii) Records that reveal either the trade secret or information claimed as confidential shall be sealed and held as confidential by the Department or, upon request, returned to the employer, supplier, manufacturer or importer at the close of proceedings hereunder.

(5) If the Department finds that the information in question is not a trade secret as defined by the act and this part, it will order disclosure of the information. The order is a final adjudication appealable to the Commonwealth Court. An appeal shall act as a stay to an order of the Department or a court which requires disclosure.

Cross References

This section cited in 34 Pa. Code § 317.2 (relating to trade secret claims).

§ 317.3. Disclosure to health professionals.

- (a) *Treating physicians and nurses.*
- (1) *Nonemergency situation.*
- (i) An employer, manufacturer, importer or supplier shall disclose the chemical identification or other information claimed as a trade secret to a treating physician or nurse if:
- (A) The request is in writing.
- (B) The information is needed for medical diagnosis or medical treatment of an exposed person.
- (ii) An employer, manufacturer, importer or supplier may require the treating physician or nurse to sign a confidentiality agreement before disclosing the trade secret.
- (2) *Emergency situation.*
- (i) An employer, manufacturer, importer or supplier shall immediately disclose the trade secret to the treating physician or nurse in the case of a medical emergency.
- (ii) An employer, manufacturer, importer or supplier may require a confidential agreement when circumstances permit.
- (iii) As used in this section, an emergency is a situation which poses a risk of endangering the health or safety of an exposed person and which calls for prompt action to eliminate or reduce the risk.
- (b) *Other health professionals.*
- (1) Upon the request of a health professional who is not a treating physician or nurse, an employer, supplier, manufacturer or importer shall disclose information which is claimed as a trade secret under the same conditions and subject to the same requirements as contained in the OSHA Hazard Communication Standard, 29 CFR 1910.1200(i)(3), (4) and (7) (relating to hazard communication.)
- (2) A health professional whose request for information is denied under this section may file a complaint or charge with the Department.
- (3) If the Department concludes that the information is not a *bona fide* trade secret, or that it is a trade secret but the requesting health professional has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement and has shown adequate means to protect the confidentiality of the information, the Department may find the employer, supplier, manufacturer or importer in violation of the act and order them to disclose the requested information to the health professional.
- (c) *Confidentiality agreement.* The confidentiality agreement under sections 11(c) and (d) of the act (35 P. S. § 7311(c) and (d)):
- (1) May not include requirements for the posting of a penalty bond.

(2) May restrict the use of the information to the medical or other occupational health services to the exposed person.

(3) May prohibit the disclosure of the information to anyone who has not entered into a similar agreement with the consent of the person claiming the trade secret.

(4) May provide for appropriate legal remedies in the event of a breach of the agreement.

§ 317.4. Penalties for disclosure of confidential information.

(a) An officer or employe of the Commonwealth, contractor to the Commonwealth, physician or employe of a county health department, local fire department or local police department who has access to confidential information and who willingly or knowingly discloses the confidential information to a person not authorized to receive it shall, upon conviction thereof, be guilty of a misdemeanor of the third degree.

(b) The person or institution which discloses the confidential information is liable for damages to the full extent of those damages.

(c) Violation of this section is *prima facie* evidence of trespass under Commonwealth common law.

§ 317.5. Protection of confidential information certified by Federal officials.

Information certified by appropriate officials of the Federal government as “necessarily kept secret” for national defense purposes shall be accorded the full protection against disclosure, as specified by the officials or under Federal statutes.

§ 317.6. Construction of chapter.

This chapter shall be construed in conjunction with an adjudication by other forums that the trade secret claim is a trade secret. In considering claims for trade secrets, the Department will give consideration to a trade secret designation made by another appropriate entity, such as a government agency, board or commission, court or other legal entity empowered to make determinations.

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