

|->

Title 22@ Social Security

|->

Division 4.5@ Environmental Health Standards for the Management of Hazardous Waste

|->

Chapter 55@ Safer Consumer Products

|->

Article 9@ Trade Secret Protection

|->

Section 69509@ Assertion of a Claim of Trade Secret Protection

69509 Assertion of a Claim of Trade Secret Protection

(a)

Substantiation Requirements. A person who asserts a claim of trade secret protection with respect to information submitted to the Department under this chapter will receive a written request from the Department to furnish the Department with all of the following supporting information: (1) The identity of the person asserting the claim; (2) A brief description of the nature of the information for which trade secret protection is being claimed; (3) The extent to which the information is known by employees or others involved within the facility or business of the person, and whether or not those individuals are bound by non-disclosure agreements; (4) The extent to which the information is known outside of the facility or business of the person, and whether or not individuals with such knowledge are bound by non-disclosure agreements; (5) The measures taken to restrict access to and safeguard the information, and whether or not the person plans to continue utilizing such measures; (6) The estimated value of the information to the person and the person's competitors; (7) The estimated amount of effort and/or money expended by the person in developing the information; (8) The estimated ease or difficulty with which the information can be properly acquired or duplicated by others, including for any chemical claimed as trade secret, an explanation of why the chemical identity is not readily discoverable through reverse engineering; (9) Copies of, or references to, any pertinent trade

secret or other confidentiality determinations previously made by the Department or other public agencies; (10) A description of the nature and extent of harm that could be caused if the information were made public, including an explanation of the causal relationship between disclosure and the harmful effects claimed; (11) The signature of the person's general counsel or other executive with knowledge of the preparation of the substantiating information, certifying as required by section 69501.3 and based upon the knowledge and belief of the signatory that: (A) The substantiating information is true, accurate, and complete; (B) The information for which trade secret protection is claimed is not otherwise publicly available; and (C) There is a reasonable basis to assert trade secret protection for the information so claimed; and (12) Contact information for the individual to be contacted if any of the claimed information is requested to be disclosed under the California Public Records Act (commencing with Government Code section 6250).

(1)

The identity of the person asserting the claim;

(2)

A brief description of the nature of the information for which trade secret protection is being claimed;

(3)

The extent to which the information is known by employees or others involved within the facility or business of the person, and whether or not those individuals are bound by non-disclosure agreements;

(4)

The extent to which the information is known outside of the facility or business of the person, and whether or not individuals with such knowledge are bound by non-disclosure agreements;

(5)

The measures taken to restrict access to and safeguard the information, and whether or not the person plans to continue utilizing such measures;

(6)

The estimated value of the information to the person and the person's competitors;

(7)

The estimated amount of effort and/or money expended by the person in developing the information;

(8)

The estimated ease or difficulty with which the information can be properly acquired or duplicated by others, including for any chemical claimed as trade secret, an explanation of why the chemical identity is not readily discoverable through reverse engineering;

(9)

Copies of, or references to, any pertinent trade secret or other confidentiality determinations previously made by the Department or other public agencies;

(10)

A description of the nature and extent of harm that could be caused if the information were made public, including an explanation of the causal relationship between disclosure and the harmful effects claimed;

(11)

The signature of the person's general counsel or other executive with knowledge of the preparation of the substantiating information, certifying as required by section 69501.3 and based upon the knowledge and belief of the signatory that: (A) The substantiating information is true, accurate, and complete; (B) The information for which trade secret protection is claimed is not otherwise publicly available; and (C)

There is a reasonable basis to assert trade secret protection for the information so claimed; and

(A)

The substantiating information is true, accurate, and complete;

(B)

The information for which trade secret protection is claimed is not otherwise publicly available; and

(C)

There is a reasonable basis to assert trade secret protection for the information so claimed; and

(12)

Contact information for the individual to be contacted if any of the claimed information is requested to be disclosed under the California Public Records Act (commencing with Government Code section 6250).

(b)

Streamlining of Submittal. The substantiating information required under subsections (a)(1) through (a)(10) shall be provided for each individual trade secret claim, although such information may be incorporated by reference to apply to multiple claims, as appropriate. The requirements of subsections (a)(11) and (a)(12) may be met once for all claims submitted at one time.

(c)

Documentation. A person who asserts a claim of trade secret protection shall also at the time of submission provide the Department with both of the following: (1) Except where expressly prohibited by federal law, or by a nondisclosure agreement whose relevant text is provided to the Department, a complete copy of the documentation being submitted, which shall include the information for which

trade secret protection is claimed; and (2) A redacted copy of the documentation being submitted, which shall exclude the information for which trade secret protection is claimed.

(1)

Except where expressly prohibited by federal law, or by a nondisclosure agreement whose relevant text is provided to the Department, a complete copy of the documentation being submitted, which shall include the information for which trade secret protection is claimed; and

(2)

A redacted copy of the documentation being submitted, which shall exclude the information for which trade secret protection is claimed.

(d)

Marking of Documents. A person who asserts a claim of trade secret protection shall make such assertion at the time of submission by marking the words "Trade Secret" conspicuously on each page containing the information for which trade secret protection is claimed. If no claim of trade secret protection is made at the time of submission, the Department may make the submitted information available in full to the public without further notice.

(e)

Provision of Separate Copies. If the documentation supporting a claim of trade secret protection contains information that is itself subject to a claim of trade secret protection, such supporting documentation shall be separately supplied in both complete and redacted form as required by subsection (c), and marked as required by subsection (d), but shall not itself require further supporting documentation. Such documentation shall be separate from documentation used to comply with other provisions of this chapter.

(f)

Hazard Trait Submissions. Except as specified in subsection (g), trade secret protection may not be claimed for any hazard trait submission or for any chemical identity information associated with a hazard trait submission.

(g)

Chemical Identity Masking When a Patent is Pending. (1) The precise identity of a chemical that is the subject of a hazard trait submission may be temporarily masked only if that chemical is an alternative considered or proposed in an Alternatives Analysis, and a patent application is pending for the chemical or its contemplated use in the product. Such masking shall be authorized only until the information subject to the trade secret claim is made public through any means, including through publication of the patent application, a foreign counterpart, or an issued patent. The person claiming the trade secret shall notify the Department in writing within thirty (30) days after the information is made public. (2) Any person temporarily masking the precise identity of a chemical under paragraph (1) shall provide the Department with a non-confidential description of the nature of the chemical that is as specific as possible, consistent with the claim of trade secret protection.

(1)

The precise identity of a chemical that is the subject of a hazard trait submission may be temporarily masked only if that chemical is an alternative considered or proposed in an Alternatives Analysis, and a patent application is pending for the chemical or its contemplated use in the product. Such masking shall be authorized only until the information subject to the trade secret claim is made public through any means, including through publication of the patent application, a foreign counterpart, or an issued patent. The person claiming the trade secret shall notify the Department in

writing within thirty (30) days after the information is made public.

(2)

Any person temporarily masking the precise identity of a chemical under paragraph (1) shall provide the Department with a non-confidential description of the nature of the chemical that is as specific as possible, consistent with the claim of trade secret protection.