

3750-60-40      **Review of trade secrecy claim.**

(A) Determination of sufficiency.

When the commission receives a petition filed pursuant to rule 3750-60-60 of the Administrative Code or if the commission initiates a determination of the validity of a trade secrecy claim for chemical identity, and the commission has made a determination, as required in paragraph (D)(1) of rule 3750-60-30 of the Administrative Code, then the commission shall determine whether the claimant has presented sufficient support for its claim of trade secrecy in its substantiation. The commission must make such a determination within thirty days of receipt of the petition. A claim of trade secrecy for chemical identity will be considered sufficient if, assuming all the information presented in the substantiation is true, this supporting information could support a valid claim of trade secrecy. A claim is sufficient if it meets the criteria set forth in rule 3750-60-50 of the Administrative Code.

(1) Sufficient claim.

- (a) If the claim meets the criteria of sufficiency set forth in rule 3750-60-50 of the Administrative Code, the commission shall notify the claimant in writing, by certified mail (return receipt requested), that it has thirty days from the date of receipt of the notice to submit supplemental information in writing in accordance with rule 3750-60-27 of the Administrative Code, to support the truth of the facts asserted in the substantiation. The commission will not accept any supplemental information, in response to this notice, submitted after the thirty day period has expired.
- (b) The notice required by this rule shall include the address as set forth in rule 3750-60-95 of the Administrative Code to which supplemental information must be sent. The notice may specifically request supplemental information in particular areas relating to the claimant's claim. The notice must also inform the claimant of his right to claim any trade secret or confidential business information as confidential, and shall include a reference to rule 3750-60-27 of the Administrative Code as the source for the proper procedure for claiming trade secrecy for trade secret or confidential business information submitted in the supplemental information requested by the commission.

(2) Insufficient claim.

- (a) If the claim does not meet the criteria of sufficiency set forth in rule 3750-60-50 of the Administrative Code, the commission shall notify the claimant in writing of this fact by certified mail (return receipt requested). Upon receipt of this notice, the claimant may either file an appeal of the matter to the environmental board of review under rule 3750-60-83 of the

Administrative Code, or, for good cause shown, submit additional material in support of its claim of trade secrecy to the commission under rule 3750-60-43 of the Administrative Code.

- (b) The notice required by this section shall include the reasons for the commission's decision that the claimant's claim is insufficient, and shall inform the claimant of its rights within thirty days of receiving notice to file an appeal with the environmental board of review or to amend its original substantiation for good cause shown. This notice shall include the address of the environmental board of review, and the address as set forth in rule 3750-60-95 of the Administrative Code to which the amendment for good cause shown should be sent. This notice shall also include a reference to rule 3750-60-83 of the Administrative Code as the source on the proper procedure for filing an appeal or rule 3750-60-43 of the Administrative Code for amending the original substantiation.
  - (c) The claimant may file an appeal of a determination of insufficiency with the environmental board of review within thirty days of receipt of the notice of insufficiency in accordance with the procedures set forth in section 3745.04 of the Revised Code.
- (B) Determination of trade secrecy. Once a claim has been determined to be sufficient under paragraph (A)(1) of this rule, the commission must decide whether the claim is entitled to trade secrecy protection.
- (1) Valid trade secret claim.
    - (a) If the commission determines that the information submitted in support of the trade secrecy claim is true and that the chemical identity is a trade secret, the petitioner shall be notified by certified mail (return receipt requested) of the commission's determination and may bring an action within thirty days of receipt of this notice pursuant to rule 3750-60-85 of the Administrative Code.
    - (b) The notice required under this section shall include the reasons for the commission's determination that the chemical identity is a trade secret and shall inform the petitioner of its right to seek review. The claimant shall be notified of the commission's decision by regular mail.
    - (c) The petitioner may file an appeal of the determination of trade secret with the environmental board of review within thirty days of receiving notice of its right in accordance with procedures set forth in the section 3745.04 of the Revised Code.
  - (2) Invalid trade secret claim.

- (a) If the commission decides that the information submitted in support of the trade secret claim is not true and that the chemical identity is not a trade secret, the commission shall notify the claimant by certified mail (return receipt requested) of the commission's determination and claimant's right to appeal to the environmental board of review in accordance with rule 3750-60-85 of the Administrative Code within thirty days of receipt of this notice.
- (b) The notice required by this rule shall include the reasons for commission's determination that the chemical identity is not a trade secret and shall inform the claimant of its right to seek review. The petitioner shall be notified of the commission's decision by regular mail.
- (c) The claimant may file an appeal of a determination of invalidity with the environmental board of review within thirty days of receipt of the notice of invalidity in accordance with the procedures set forth in section 3745.04 of the Revised 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)  
Prior effective dates: None