

Publications

Changes to Ohio EPA's Trade Secret Rule Coming June 2023

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The Ohio Environmental Protection Agency (EPA) **recently adopted changes** to Ohio Admin. Code 3745-49-03, the "Trade Secret Rule," that will go into effect on **June 1st, 2023**. The Trade Secret Rule covers the procedures for claiming trade secret confidentiality for information submitted to Ohio EPA, and how Ohio EPA treats that information. The revised Trade Secret Rule makes clear that Ohio EPA will not make decisions about the validity of a trade secret claim, rather, the agency will only verify that the trade secret claimant followed the proper procedure for making a claim. If the proper procedure is followed, Ohio EPA will hold the information as trade secret confidential and not disclose it unless a court decides the claim is invalid. If the proper procedure is not followed within a reasonable time after the information is submitted, however, the information will be considered public record.

The revised Trade Secret Rule makes several key changes, including:

1. Removing the trade secret claimant's burden of proving to Ohio EPA that the information qualifies as trade secret confidential.
2. Stating that Ohio EPA will hold information as trade secret confidential if a claimant makes a valid submission by providing:
 1. An unredacted copy of the submission;
 2. A proposed public copy of the submission;
 3. A statement that describes each item claimed to be a trade secret and identifies the location of each item in the submission; and
 4. A sworn or affirmed statement of reasons why each item of information redacted from the proposed public copy meets Ohio's definition of "trade secret" under **C. 1333.61(D)**.
3. Removing Ohio EPA's ability to disclose trade secret information without the claimant's consent to state or federal agencies, or in camera administrative or judicial proceedings.
4. Stating that the trade secret claimant bears the burden of defending their claim if it is challenged in court—Ohio EPA will

retain the records as trade secret confidential while the claim is being challenged, and then in a manner consistent with the court's decision.

Businesses seeking to qualify for trade secret confidentiality when submitting information to Ohio EPA should carefully review the revised Trade Secret Rule and ensure they follow the proper procedure for making a valid submission.

If you have questions about making a trade secret claim under the revised Trade Secret Rule, please contact Kristin Watt, Anthony Giuliani, Brooke Zentmeyer, or your Vorys attorney.