

TRADE SECRETS

When crafting the EPCRA statutes, a balance was struck between the interests of the business community to keep confidential certain chemical processes and special chemical mixtures and the need for responders and emergency planners to have the necessary information to do their jobs. Also, there was the potential need for the public and/or the medical professionals who might need information to effectively diagnose and treat affected members of the public to have access to certain information. It was quite a balancing act. Ironically, claims by facilities using the trade secret exemption are very rare. Most chemical processes at most facilities are quite standardized and widespread around the country.

EPCRA Sections 321-330 set out discrete but important components of the EPCRA program that address policy or program implementation issues.

To protect business interests, EPCRA Section 322 provides a trade secrecy mechanism to allow compliance without divulging business-sensitive information. This mechanism has some limits. EPCRA also gives authority to the community to access information concerning the use and release of hazardous chemicals in their areas (EPCRA Section 324; 40 CFR Section 370.30).

Trade Secret issues are closely coordinated through the Office of State Fire Marshal, Emergency Planning and Response Section, Community Right to Know Unit. Any questions regarding Trade Secrets must be directed to the OSFM.