

**353.6604 Confidentiality of trade secrets -- When disclosure is required.**

- (1) If the vendor, service provider, or operator of a high-volume horizontal fracturing treatment claims that the volume of a chemical or relative concentration of chemical is a trade secret, the operator of the horizontal well shall indicate that claim on the chemical disclosure registry form and, as applicable, the vendor, service provider, or operator shall submit a request to the director to designate the information as a trade secret.
- (2) At the time of claiming entitlement to trade secret protection, the vendor, service provider, or operator shall file with the director the following information on a form prescribed by the division. The form shall include:
  - (a) The claimant's name, authorized representative, mailing address, and phone number;
  - (b) The specific information claimed to be entitled to trade secret protection;
  - (c) Whether there has been a previous determination by a court or by a governmental agency that the information is or is not entitled to confidential treatment; and
  - (d) The measures taken by the vendor, service provider, or operator to protect the confidentiality of the information.
- (3) Any information claimed to be a trade secret shall be disclosed by the director only:
  - (a) In accordance with this section and KRS 353.6605 and 353.6606; or
  - (b) If ordered by a court to do so.
- (4) Vendors, service providers, and operators shall identify the volume and relative concentration of any chemicals used in the high-volume horizontal fracturing treatment that are claimed to be a trade secret to the cabinet. The cabinet shall release that information to any health professional who request the information if:
  - (a) The request is in writing;
  - (b) The health professional provides a written statement of the need for the information; and
  - (c) The health professional executes a confidentiality agreement.
- (5) The health professional's written statement of need under subsection (4)(b) of this section shall be a statement that the health professional has a reasonable basis to believe that:
  - (a) The information is needed for purposes of diagnosis or treatment of an individual; and
  - (b) The individual being diagnosed or treated may have been exposed to the chemical concerned.
- (6) The confidentiality agreement shall state:
  - (a) The health professional shall not use the information for purposes other than the health needs asserted in the written statement of need; and
  - (b) The health professional shall otherwise maintain the information as confidential.

- (7) Where a health professional determines that a medical emergency exists, and the amount or mixture of any chemicals claimed to be a trade secret are necessary for emergency treatment, the director shall:
- (a) Immediately direct the vendor, service provider, or operator, as applicable, to disclose the information to the health professional upon verbal acknowledgement by the health professional that:
    - 1. The information shall not be used for purposes other than the health needs asserted; and
    - 2. The health professional shall otherwise maintain the information as confidential; and
  - (b) Request a written statement of need and a confidentiality agreement from all health professionals to whom the information regarding the concentration or mixture of any chemicals claimed to be a trade secret was disclosed, as soon as circumstances permit.
- (8) Information disclosed to a health professional under this section shall not be construed as publicly available by virtue of the disclosure of the information to a health care professional. Release of the information under this section shall not be construed as a waiver of a trade secret claim by the party who has asserted that claim.
- (9) The division shall develop a form for the vendor, service provider, or operator to claim trade secret status under subsections (1) and (2) of this section and a standard confidentiality agreement for medical professionals under subsections (5), (6), and (7) of this section.

**Effective:** June 24, 2015

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