

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

GENERAL INDUSTRY AND CONSTRUCTION SAFETY AND HEALTH STANDARD

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 14, 16, 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014, 408.1016, 408.1019, 408.1021, and 408.1024, and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, and 2011-4, MCL 330.3101, 445.2001, 445.2011, 445.2025, and 445.2030)

PART 470. EMPLOYEE MEDICAL RECORDS AND TRADE SECRETS

R 325.3451 Scope, applicability, adoption, and availability of standards.

Rule 1. (1) These rules apply to all employers covered in the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, who make, maintain, contract for, or have access to, employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) These rules apply to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety or health rules.

(3) These rules apply to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house, contractual, or fee-for-service basis. An employer shall ensure that the preservation and access requirements of these rules are complied with, regardless of the manner in which records are made or maintained.

(4) The following federal Occupational Safety and Health Administration (OSHA) regulations are adopted by reference in these rules:

(a) 29 CFR 1910.1020 "Access to employee exposure and medical records," as amended June 8, 2011.

(b) 29 CFR 1910.1020, appendix A "Sample authorization letter for the release of employee medical record information to a designated representative (non-mandatory)," as amended June 20, 1996.

(c) 29 CFR 1910.1020, appendix B "Availability of NIOSH registry of toxic effects of chemical substances (RTECS) (non-mandatory)," as amended June 20, 1996.

(5) A reference to 29 CFR 1910.1200 means Occupational Health Standard Part 430. "Hazard Communication."

(6) The adopted federal regulations have the same force and effect as a rule promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(7) The OSHA regulations adopted in these rules are available from the United States Department of Labor, Occupational Safety and Health Administration website, www.osha.gov, at no charge, as of the time of adoption of these rules.

(8) The regulations adopted in these rules are available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143.

(9) The regulations adopted in these rules may be obtained from the publisher or the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143, at the cost charged in this rule, plus \$20.00 for shipping and handling.

(10) The following Michigan Occupational Safety and Health Administration (MIOSHA) standard is referenced in these rules: Occupational Health Standard Part 430. "Hazard Communication," R 325.77001 to R 325.77004. Up to 5 copies of this standard may be obtained at no charge from the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at the following website: www.michigan.gov/mioshastandards. For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

History: 1983 AACS; 2018 AACS.

R 325.3451a Rescinded.

History: 2014 AACS; 2018 AACS.

R 325.3452 Rescinded.

History: 1983 AACS; 1993 AACS; 1998-2000 AACS; 2014 AACS; 2018 AACS.

R 325.3453 Rescinded.

History: 1983 AACS; 1993 AACS; 1998-2000 AACS; 2014 AACS; AACS.

R 325.3454 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3455 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3456 Rescinded.

History: 1983 AACS; 1993 AACS; 2018 AACS.

R 325.3457 Rescinded.

History: 1983 AACS; 1993 AACS; 2014 AACS; 2018 AACS.

R 325.3458 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3459 Rescinded.

History: 1983 AACS; 1993 AACS; 2018 AACS.

R 325.3460 Rescinded.

History: 1983 AACS; 1993 AACS; 2018 AACS.

R 325.3461 Rescinded.

History: 1983 AACS; 1993 AACS; 2018 AACS.

R 325.3462 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3463 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3464 Rescinded.

History: 1983 AACS; 1993 AACS; 2018 AACS.

R 325.3465 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3466 Rescinded.

History: 1983 AACS; 2014 AACS; 2018 AACS.

R 325.3467 Rescinded.

History: 1983 AACS; 1993 AACS; 2018 AACS.

R 325.3468 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3469 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3470 Rescinded.

History: 1983 AACS; 2018 AACS.

R 325.3471 Access to records by the department.

Rule 21. (1) An employer shall, upon request, and without derogation of any rights under the constitution and the act that the employer chooses to exercise, assure the prompt access of representatives of the department to employee exposure and medical records and to analyses based on exposure or medical records.

(2) If a representative of the department seeks access to personally identifiable employee medical information by presenting to the employer a written access order signed by the director, the employer shall prominently post a copy of the written access order for not less than 15 working days.

History: 1983 AACS; 1993 AACS.

R 325.3472 Trade secrets; employee requests, procedures; discrimination complaints.

Rule 22. (1) Except as provided in subrule (3) of this rule, an employer may delete, from records that are requested by a health professional, employee, or designated representative, a trade secret, as defined by section 6(7) of the act, which discloses manufacturing processes or which discloses the percentage of a chemical substance in a

mixture, if the employer notifies the health professional, employee, or designated representative, in writing, that the trade secret information has been deleted.

(2) If deletion of trade secret information by an employer pursuant to the provisions of subrule (1) of this rule substantially impairs the evaluation of a place where, or a time when, exposure of an employee to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information that is sufficient to permit the employee or designated representative to identify where and when exposure occurred.

(3) An employer may withhold a specific chemical name and identity, the exact percentage (concentration) of the substance in a mixture, and other specific identification of a toxic substance from a disclosable record if all of the following provisions are satisfied:

(a) The claim that the information withheld is a trade secret can be supported pursuant to the provisions of section 14d of the act.

(b) All other available information on the properties and toxic effects of the substances is disclosed.

(c) The employer informs the requesting party that the specific chemical identity and percentage composition are withheld as a trade secret.

(d) The specific chemical identity and percentage composition are made available, upon request, to health professionals, employees, and designated representatives pursuant to the applicable provisions of R 325.3472a.

History: 1983 AACCS; 1993 AACCS; 2014 AACCS.

R 325.3472a Trade secrets; disclosure in medical emergency and nonemergency.

Rule 22a. (1) If a treating physician or nurse determines that a medical emergency exists and the specific chemical identity or specific percentage of composition of a toxic substance is necessary for emergency or first aid treatment, an employer shall immediately disclose the specific chemical identity or percentage composition of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The employer may require a written statement of need and confidentiality agreement, pursuant to the provisions of subrules (2) and (3) of this rule, as soon as circumstances permit.

(2) In nonemergency situations, an employer shall, upon request, disclose a specific chemical identity or percentage composition, otherwise permitted to be withheld pursuant to the provisions of R 325.3472(4), to a health professional, employee, or designated representative if all of the following provisions are met:

(a) The request is in writing.

(b) The request describes, with reasonable detail, 1 or more of the following occupational health needs for the information:

(i) To assess the hazards of the chemicals to which employees will be exposed.

(ii) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels.

(iii) To conduct preassignment or periodic medical surveillance of exposed employees.

(iv) To provide medical treatment to exposed employees.

(v) To select or assess appropriate personal protective equipment for exposed employees.

(vi) To design or assess engineering controls or other protective measures for exposed employees.

(vii) To conduct studies to determine the health effects of exposure.

(c) The request explains, in detail, why the disclosure of the specific chemical identity or percentage composition is essential and why the disclosure of the following information would not enable the health professional, employee, or designated representative to provide the occupational health services described in subrule (2)(b) of this rule:

(i) The properties and effects of the chemical.

(ii) Measures for controlling workers' exposure to the chemical.

(iii) Methods of monitoring and analyzing worker exposure to the chemical.

(iv) Methods of diagnosing and treating harmful exposures to the chemical.

(d) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information.

(e) The health professional, employee, or designated representative and the employer or contractor of the services of the health professional or designated representative agree, in a written confidentiality agreement, that the health professional, employee, or designated representative will not use the trade secret information for any purpose other than the health need asserted and agree not to release the information under any circumstances other than to the department, as provided in subrule (7) of this rule, except as authorized by the terms of the agreement or by the employer.

(3) The confidentiality agreement that is authorized by subrule (2) of this rule may do either of the following:

(a) Restrict the use of the information to the health purposes indicated in the written statement of need.

(b) Provide for appropriate legal remedies for a breach of the agreement, including stipulation of a reasonable estimate of likely damages. The agreement shall not include requirements for the posting of a penalty bond.

(4) Nothing in these rules is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(5) If the health professional, employee, or designated representative who receives the trade secret information decides that there is a need to disclose it to the department, then the employer who provided the information shall be informed by the health professional before, or at the same time as, the disclosure.

(6) If an employer denies a written request for disclosure of a specific chemical identity or percentage composition, then the denial shall be in compliance with all of the following provisions:

(a) Be provided to the health professional, employee, or designated representative within 30 days of the request.

(b) Be in writing.

(c) Include evidence to support the claim that the specific chemical identity or percentage composition is a trade secret according to the provisions of section 14d of the act.

(d) State the specific reasons why the request is being denied.

(e) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity or percentage composition.

(7) The health professional, employee, or designated representative whose request for information is denied pursuant to the provisions of subrule (2) of this rule, may refer the request and the written denial of the request to the department for consideration.

(8) If a health professional, employee, or designated representative refers a denial to the department pursuant to subrule (2) of this rule, the department shall consider the evidence to determine which of the following are true:

(a) The employer has supported the claim that the specific chemical identity or percentage composition is a trade secret.

(b) The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information.

(c) The health professional, employee, or designated representative has demonstrated adequate means to maintain confidentiality.

(9) With regard to an investigation, both of the following provisions apply:

(a) If the department determines that the specific chemical identity or percentage composition requested pursuant to the provisions of subrule (2) of this rule is not a bona fide trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means for complying with the terms of such agreement, then the employer will be subject to citation by the department.

(b) If an employer demonstrates to the department that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the authorized disclosure of a trade secret specific chemical identity or percentage composition, then the department may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.

(10) Notwithstanding the existence of a trade secret claim, an employer shall, upon request, disclose to the director any information that these rules require the employer to make available. If there is a trade secret claim, the claim shall be made not later than at the time the information is provided to the director so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(11) Nothing in these rules shall be construed as requiring, under any circumstances, the disclosure of process or percentage of mixture information that is a trade secret.

History: 1993 AACS; 2014 AACS.

R 325.3473 Rescinded.

History: 1983 AACS; 1993 AACS; 2018 AACS.

R 325.3474 Availability of rules and appendices to employees.

Rule 24. An employer shall make readily available to employees a copy of these rules and their appendices and shall distribute to employees any other informational materials concerning these rules which are made available to the employer by the department or the director.

History: 1983 AACS.

R 325.3475 Rescinded.

History: 1983 AACS; 2014 AACS; 2018 AACS.

R 325.3476 Rescinded.

History: 1983 AACS; 1993 AACS; 1998 AACS; 2014 AACS.