

Chapter 7. EPCRA Section 323: Provision of Information to Health Professionals, Doctors, and Nurses

EPCRA Section 323 consists of three provisions regarding access to chemical identity information by health professionals. These provisions require the facility owner or operator to disclose the chemical identity, including trade secret chemical identity, to a health professional for diagnosis and treatment in the following situations:

- Non-emergency diagnosis or treatment.
- Emergency situations.
- Preventive research studies and treatment measures.

These three situations are explained below following the italicized text from the statute. The health professional is required to sign a statement regarding his or her need for the chemical identity, and a confidentiality agreement prior to disclosure, **except** in emergency situations. These two documents may be completed later in emergency situations.

7.1 Non-Emergency Diagnosis or Treatment

EPCRA Section 323(a): Diagnosis or treatment by health professional

An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

- (1) the information is needed for purposes of diagnosis or treatment of an individual,*
- (2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and*
- (3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.*

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

Any health professional performing diagnosis or treatment, not solely doctors or nurses, is permitted access to a trade secret chemical identity in a non-emergency situation.

To gain access, the health professional should write a statement of need, such as “the chemical identity is needed for diagnosis or treatment of an individual or individuals who have been exposed to the chemical of concern.” In addition, the health professional must also state that knowledge of the specific chemical identity will assist in diagnosis or treatment of the exposed individual(s).

The authority to withhold the specific chemical identity provided in EPCRA Section 322 (*Trade Secrets*) does not apply in this situation. The facility owner or operator must provide this information upon receiving the statement of need.

7.2 Medical Emergency Situations

EPCRA Section 323(b): Medical emergency

An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

- (1) a medical emergency exists,*
- (2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and*
- (3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.*

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 322 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

The second provision of Section 323 addresses providing information to any health professional (e.g., treating physician or nurse) during medical emergencies. The statute requires the facility owner or operator to provide a copy of the MSDS (SDS) and Tier II inventory form, including the specific chemical identity, if known, to the requesting medical personnel.

The treating physician or nurse must determine that:

- A medical emergency exists.
- The specific identity of the chemical of concern is necessary for or will assist in emergency or first-aid diagnosis or treatment.

- The individual or individuals being diagnosed or treated have been exposed to the chemical of concern.

The statute does not require the treating physician or nurse to submit a written confidentiality agreement or statement of need prior to receiving the trade secret chemical identity. The owner or operator disclosing such information may, however, require a written confidentiality agreement and statement of need as soon as circumstances permit.

The authority to withhold the specific chemical identity provided in EPCRA Section 322 (*Trade Secrets*) does not apply in this situation. The facility owner or operator **must** provide this information upon receiving the statement of need.

7.3 Preventive Research Studies and Treatment Measures

EPCRA Section 323(c) Preventive measures by local health professionals

(1) Provision of information

An owner or operator of a facility subject to the requirements of section 311, 312, or 313 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d). Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

This provision allows local health professional access to information on chemicals to facilitate epidemiological and toxicological research and to render medical treatment for the effects of chemical exposures.

The health professional, such as a physician, toxicologist, or epidemiologist, may be a local government employee or under contract with a local government. They should submit a written statement of need and a confidentiality agreement.

The authority to withhold the specific chemical identity provided in EPCRA Section 322 does not apply in this situation. The facility owner or operator must provide this information when they get the statement of need.

7.4 Written Statement of Need

EPCRA Section 323(c) Preventive measures by local health professionals

(2) Written statement of need

The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

- (A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.*
- (B) To conduct or assess sampling to determine exposure levels of various population groups.*
- (C) To conduct periodic medical surveillance of exposed population groups.*
- (D) To provide medical treatment to exposed individuals or population groups.*
- (E) To conduct studies to determine the health effects of exposure.*
- (F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.*

According to the statute, the confidentiality agreement should show that the health professional will not use the information for any purpose other than the health needs asserted in the statement of need.

EPCRA Section 323(d): Confidentiality agreement

Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.