|  |
| --- |
| Process Safety Management Program |
| **Title:** Compliance Guidelines for Trade Secrets  **Document #:** PSM-SY-UN-003 **Issued:** 06/25/2014 |
| **Responsible Dept.:** EHS **Version:** New  **Approved By:** PSM Focus Group **Page:** 1 of 2 |

**1.0 Purpose:** This document summarizes the method The Pennsylvania State University uses to comply with the requirements relating to the Trade Secret (Confidential Business Information) Element of the Process Safety Management (PSM) Program.

**2.0 Scope:** The intent of this element is to make all necessary information available to those persons involved in developing or managing the various elements of the PSM Program without regard to possible Trade Secret or Confidential Business Information status of such information.

**3.0 Guidelines:** Penn State will make necessary information, without regard to possible trade secret status of such information, available to the persons involved in the following PSM related activities:

1. Compiling information for the Process Safety Information (PSI)
2. Assisting in the development of the Process Hazard Analysis (PHA)
3. Development of the Standard Operating Procedures (SOPs)
4. Any Incident Investigation
5. Development of and participation in the emergency response plan (ERP); and,
6. Participation in PSM Compliance Audits

As appropriate, Penn State will require those persons to whom the information is being made available and considered confidential, to sign a confidentiality agreement not to disclose the aforementioned information. The agreement should follow the applicable existing University procedures and requirements for Non-Disclosure Agreements.

For specific information to be considered trade secret or confidential business information, the individual or department making the claim must provide supporting data to substantiate the statement by providing the following data:

1. Describe the specific measures taken to safeguard the confidentiality of the claimed trade secret information and indicated whether these measures will continue in the future
2. Have you disclosed the information claimed as trade secret to any other person (other than an officer or employee of the United States or a State or local government or a Penn State employee)
   1. If disclosed to a government agency or Penn State employee, was the information claimed as confidential and appropriate actions taken to maintain the confidentiality (e.g. regulatory claims asserted, confidential disclosure agreement, etc.)
3. Describe why this information is claimed as a trade secret and why it would be valuable to competitors or outside groups
4. Indicate the nature of the harm to the competitive position that would likely result from disclosure of the trade secret information

A copy of the trade secret substantiation claim will be maintained by the Process Safety Program Manager (PSPM).

**4.0 Definitions:** The following definitions provide guidance regarding common issues surrounding the Trade Secret Element.

*Secrecy* - The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business knows it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others (ref. 29CFR1910.1200 Appendix E).

*Trade Secret -* means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

Note: As of the recent revision date of this Compliance Guideline, The Pennsylvania State University has no information relating to the covered processes that has been deemed or protected as a Trade Secret or Confidential Business Information. This document is intended to establish the guidelines in how this type of information would be handled in the event confidential information was identified. If this situation was to occur, the Management of Change (PSM Element #14) process would require the development of a Trade Secret procedure.