

purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages;

(3) Must allow the exposed miner, the miner's designated representative, or the health professional to disclose the trade secret chemical identity to MSHA;

(4) May provide that the exposed miner, the miner's designated representative, or the health professional inform the operator who provided the trade secret chemical identity prior to or at the same time as its disclosure to MSHA; and

(5) May not include requirements for the posting of a penalty bond.

(b) Nothing in this subpart precludes the parties from pursuing non-contractual remedies to the extent permitted by law.

**§ 47.86 Denial of a written request for disclosure.**

To deny a written request for disclosure of the identity of a trade secret chemical, the operator must—

- (a) Put the denial in writing,
  - (1) Including evidence to substantiate the claim that the chemical's identity is a trade secret,
  - (2) Stating the specific reasons why the request is being denied, and
  - (3) Explaining how alternative information will satisfy the specific medical or occupational health need without revealing the chemical's identity.

(b) Provide the denial to the health professional, miner, or designated representative within 30 days of the request.

**§ 47.87 Review of denial.**

(a) The health professional, miner, or designated representative may refer the written denial to MSHA for review. The request for review must include a copy of—

- (1) The request for disclosure of the identity of the trade secret chemical,
- (2) The confidentiality agreement, and
- (3) The operator's written denial.

(b) If MSHA determines that the identity of the trade secret chemical should have been disclosed, the operator will be subject to citation by MSHA.

(c) If MSHA determines that the confidentiality agreement would not sufficiently protect against unauthorized disclosure of the trade secret, MSHA may impose additional conditions to ensure that the occupational health services are provided without an undue risk of harm to the operator.

(d) If the operator contests a citation for a failure to release the identity of a trade secret chemical, the matter will be adjudicated by the Federal Mine Safety and Health Review Commission. The Administrative Law Judge may review the citation and supporting documentation "in camera" or issue appropriate orders to protect the trade secret.

**Subpart J—Exemptions**

**§ 47.91 Exemptions from the HazCom standard.**

A hazardous chemical is exempt from this part under the conditions described in Table 47.91 as follows:

TABLE 47.91.—CHEMICALS AND PRODUCTS EXEMPT FROM THIS HAZCOM STANDARD

Exemption	Conditions for exemption
Article .....	If, under normal conditions of use, it— (1) Releases no more than insignificant amounts of a hazardous chemical, and (2) Poses no physical or health risk to exposed miners.
Biological hazards .....	All biological hazards, such as poisonous plants, insects, and micro-organisms.
Consumer product or hazardous substance regulated by CPSC.	(1) If the miner uses it for the purpose the manufacturer intended; and (2) Such use does not expose the miner more often and for longer periods than <i>ordinary consumer use</i> .