

§ 47.85

30 CFR Ch. I (7-1-12 Edition)

(e) The person making the request enters a written confidentiality agreement that he or she will not use the information for any purpose other than the health needs asserted and agrees not to release the information under any circumstances, except as authorized by § 47.85, by the terms of the agreement, or by the operator.

§ 47.85 Confidentiality agreement and remedies.

(a) The confidentiality agreement authorized by § 47.84—

(1) May restrict the use of the trade secret chemical identity to the health 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 |

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

| Exemption | Conditions for exemption |
|--|--|
| Biological hazards | (2) Poses no physical or health risk to exposed miners. 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> . |
| Cosmetics, drugs, food, food additive, color additive, drinks, alcoholic beverages, tobacco and tobacco products, or medical or veterinary device or product, including materials intended for use as ingredients in such products (such as flavors and fragrances). | When intended for personal consumption or use. |
| Radiation | All ionizing or non-ionizing radiation, such as alpha or gamma, microwaves, or x-rays. |
| Wood or wood products, including lumber | If they do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use. For example, wood is not exempt if it is treated with a hazardous chemical or if it will be subsequently cut or sanded. |

§ 47.92 Exemptions from labeling.

A hazardous chemical is exempt from subpart E of this part under the condi-

tions described in Table 47.92 as follows:

TABLE 47.92—HAZARDOUS CHEMICALS EXEMPT FROM LABELING

| Exemption | Conditions for exemption |
|--|--|
| Chemical substance, consumer product, hazardous substance, or pesticide. | When kept in its manufacturer's or supplier's original packaging labeled under other federal labeling requirements. |
| Hazardous substance | When the subject of remedial or removal action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in accordance with EPA regulations. |
| Hazardous waste | When regulated by EPA under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act. |
| Raw material being mined or processed ... | While on mine property, except when the container holds a mixture of the raw material and another hazardous chemical and the mixture is found to be hazardous under § 47.21—Identifying hazardous chemicals. |
| Wood or wood products, including lumber | Wood or wood products are always exempt from labeling. |

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PART 48—TRAINING AND RETRAINING OF MINERS

Subpart A—Training and Retraining of Underground Miners

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