

(I) THE HEALTH PROFESSIONAL WHOSE REQUEST FOR INFORMATION IS DENIED UNDER SUBSECTION (H) OF THIS SECTION MAY REFER THE REQUEST AND THE WRITTEN DENIAL OF THE REQUEST TO THE COMMISSIONER FOR CONSIDERATION.

(J) (1) AFTER AN EMPLOYER OR MANUFACTURER CLAIMS A TRADE SECRET UNDER SUBSECTION (B) OF THIS SECTION OR WHEN A HEALTH PROFESSIONAL REFERS A DENIAL TO THE COMMISSIONER UNDER SUBSECTION (I) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER THE EVIDENCE TO DETERMINE IF:

(I) THE MANUFACTURER OR EMPLOYER HAS CARRIED THE BURDEN OF PROVIDING THAT THE CLAIM THAT THE SPECIFIC CHEMICAL IDENTITY IS A TRADE SECRET;

(II) THE HEALTH PROFESSIONAL HAS SUPPORTED THE CLAIM THAT THERE IS A MEDICAL OR OCCUPATIONAL HEALTH NEED FOR THE INFORMATION; AND

(III) THE HEALTH PROFESSIONAL HAS DEMONSTRATED ADEQUATE MEANS TO PROTECT THE CONFIDENTIALITY.

(2) IF THE COMMISSIONER DETERMINES THAT THE SPECIFIC CHEMICAL IDENTITY OF A HAZARDOUS CHEMICAL IS NOT A BONA FIDE TRADE SECRET, OR THAT IT IS A TRADE SECRET BUT THE REQUESTING HEALTH PROFESSIONAL HAS A LEGITIMATE MEDICAL OR OCCUPATIONAL HEALTH NEED FOR THE INFORMATION, HAS EXECUTED A WRITTEN CONFIDENTIALITY AGREEMENT, AND HAS SHOWN ADEQUATE MEANS TO PROTECT THE CONFIDENTIALITY OF THE INFORMATION, THE MANUFACTURER OR EMPLOYER WILL BE SUBJECT TO CITATION BY THE COMMISSIONER.

(3) IF A MANUFACTURER OR EMPLOYER DEMONSTRATES TO THE COMMISSIONER THAT THE EXECUTION OF A CONFIDENTIALITY AGREEMENT WOULD NOT PROVIDE SUFFICIENT PROTECTION AGAINST THE POTENTIAL HARM FROM THE UNAUTHORIZED DISCLOSURE OF A TRADE SECRET SPECIFIC CHEMICAL IDENTITY, THE COMMISSIONER MAY ISSUE AN ORDER OR IMPOSE ADDITIONAL LIMITATIONS OR CONDITIONS UPON THE DISCLOSURE OF THE REQUESTED CHEMICAL INFORMATION AS MAY BE APPROPRIATE TO ASSURE THAT THE OCCUPATIONAL HEALTH SERVICES ARE PROVIDED WITHOUT AN UNDUE RISK OF HARM TO THE CHEMICAL MANUFACTURER OR EMPLOYER.

(4) FOLLOWING THE ISSUANCE OF A CITATION OR ANY PROTECTIVE ORDER, THE MANUFACTURER OR EMPLOYER MAY APPEAL THE COMMISSIONER'S DETERMINATION IN ACCORDANCE WITH §§ 37 AND 38 OF THIS SUBTITLE. IN ANY PROCEEDING ARISING UNDER THIS SECTION, THE BURDEN OF PROVING A CLAIM OF TRADE SECRET SHALL BE ON THE EMPLOYER OR MANUFACTURER ASSERTING THE CLAIM.

(K) NOTWITHSTANDING THE EXISTENCE OF A TRADE SECRET CLAIM, A MANUFACTURER OR EMPLOYER SHALL, UPON REQUEST, DISCLOSE TO THE COMMISSIONER ANY INFORMATION WHICH THIS SECTION REQUIRES THE MANUFACTURER OR EMPLOYER TO MAKE AVAILABLE. IF THERE IS A TRADE SECRET CLAIM, THAT CLAIM SHALL BE MADE NO LATER THAN AT THE TIME THE INFORMATION IS PROVIDED TO THE COMMISSIONER SO THAT SUITABLE