

Transportation, paragraph (b) of § 782.8 of Regulations Part 782, Exemption from Maximum Hours Provisions for Certain Employees of Motor Carriers, is hereby revised. Pending authoritative decisions by the courts that the Secretary of Transportation does not have power to establish qualifications and maximum hours of service of employees of contract mail haulers, the Department of Labor will no longer assert that such employees are not within the overtime exemption provided by section 13(b)(1) of the Fair Labor Standards Act for overtime work performed after June 14, 1972.

This position is adopted without prejudice to the rights of individual employees under section 16(b) of the Fair Labor Standards Act.

This amendment is the legal consequence of the action of the Secretary of Transportation in assuming jurisdiction of these employees pursuant to section 204 of the Motor Carrier Act of 1935, and is procedural in nature. Accordingly, under the administrative pro-

cedures of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to the amendment are impractical, unnecessary, and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date. This amendment shall be effective upon publication in the FEDERAL REGISTER (11-7-72). As revised, § 782.8(b) reads as follows:

§ 782.8 Special classes of carriers.

(b) Prior to June 14, 1972, when the Department of Transportation published a notice in the FEDERAL REGISTER (37 F.R. 11781) asserting its power to establish qualifications and maximum hours of service of employees of contract mail haulers, thereby reversing the long-standing position of the Interstate Commerce Commission, the Administrator of the Wage and Hour Division had taken the position that employees engaged in

the transportation of mail under contract with the Postal Service were not within the exemption provided by section 13(b)(1) of the Fair Labor Standards Act. As the result of the notice of June 14, 1972, the Administrator will no longer assert that employees of contract mail carriers are not within the 13(b)(1) exemption for overtime work performed after June 14, 1972, pending authoritative court decisions to the contrary. This position is adopted without prejudice to the rights of individual employees under section 16(b) of the Fair Labor Standards Act.

(52 Stat. 1060 as amended; 29 U.S.C. 201 et seq.)

Signed at Washington, D.C., this 2d day of November 1972.

HORACE E. MENASCO,
Administrator, Wage and Hour
Division, U.S. Department of Labor.

[FR Doc.72-19059 Filed 11-6-72;8:50 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter X—Federal Insurance Administration, Department of Housing and Urban Development

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
Florida	Broward	Fort Lauderdale	I 12 011 1050 05 through I 12 011 1050 08	Department of Community Affairs, 300 Office Plaza, Tallahassee, Fla. 32301.	Department of Engineering, City of Fort Lauderdale, 100 North Andrews Ave., Fort Lauderdale, FL 33302.	Nov. 20, 1970. Emergency. Nov. 3, 1972. Regular.
Do	do	Hollywood	I 12 011 1420 01 through I 12 011 1420 03	do	Engineering Office, Hollywood City Hall, Hollywood, Fla. 33022.	June 9, 1971. Emergency. Nov. 3, 1972. Regular.
Do	do	Lighthouse Point	I 12 011 1826 01	do	City Hall, City of Lighthouse Point, Post Office Box 5100, 2200 Northeast 38th St., Lighthouse Point, FL 33064.	Feb. 28, 1972. Emergency. Nov. 3, 1972. Regular.
Illinois	Cook	Elk Grove Village.				Nov. 3, 1972. Emergency.
Massachusetts	Suffolk	Winthrop				Do.
New Jersey	Essex	Newark				Do.
Pennsylvania	Allegheny	McKees Rocks Borough.				Do.
Do	Dauphin	Lower Paxton Township.				Do.
Do	do	Lower Swatara Township.				Do.
Do	Delaware	Chester Heights Borough.				Do.
Do	Luzerne	Forty Fort Borough.				Do.
Do	do	Wyoming Borough.				Do.
Do	Union	Lewisburg Borough.				Do.
Texas	Harris	Water Control and Improvement District No. 93.				Do.
Do	Bexar	Live Oak				Do.
Wisconsin	Ozaukee	Mequon	I 55 089 3002 01 through I 55 089 3002 04	Department of Natural Resources, Post Office Box 450, Madison, WI 53701.	Department of Public Works, City of Mequon, 11333 North Cedarburg Rd. 60 W., Mequon, WI 53092.	July 2, 1971. Emergency. Nov. 3, 1972. Regular.
				Wisconsin Insurance Department, 212 North Bassett St., Madison, WI 53703.		

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: October 30, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-18913 Filed 11-6-72;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Florida	Broward	Fort Lauderdale	H 12 011 1050 05 through H 12 011 1050 08	Department of Community Affairs, 309 Office Plaza, Tallahassee, Fla. 32301.	Department of Engineering, City of Fort Lauderdale, 100 North Andrews Ave., Fort Lauderdale, FL 33302.	Nov. 20, 1970.
Do	do	Hollywood	H 12 011 1420 01 through H 12 011 1420 03	State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Engineering Office, Hollywood City Hall, Hollywood, Fla. 33022.	June 9, 1971.
Do	do	Lighthouse Point	H 12 011 1826 01	do	City Hall, City of Lighthouse Point, Post Office Box 5100, 2200 North East 38th St., Lighthouse Point, FL 33064.	Feb. 26, 1972.
Illinois	Cook	Elk Grove Village				Nov. 3, 1972.
Massachusetts	Suffolk	Winthrop				Do.
New Jersey	Essex	Newark				Do.
Pennsylvania	Allegheny	McKees Rocks Borough				Do.
Do	Dauphin	Lower Paxton Township				Do.
Do	do	Lower Swatara Township				Do.
Do	Delaware	Chester Heights Borough				Do.
Do	Luzerne	Forty Fort Borough				Do.
Do	do	Wyoming Borough				Do.
Do	Union	Lewisburg Borough				Do.
Texas	Harris	Water Control and Improvement District No. 93				Do.
Do	Bexar	Live Oak				Do.
Wisconsin	Ozaukee	Mequon	H 55 089 3002 01 through H 55 089 3002 04	Department of Natural Resources, Post Office Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53703.	Department of Public Works, City of Mequon, 11333 North Cedarburg Rd. 60 W., Mequon, Wis. 53092.	July 2, 1971.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: October 30, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-18914 Filed 11-6-72;8:45 am]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 85—REQUESTS FOR HEALTH HAZARD EVALUATIONS

On March 17, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 5634) which prescribed the conditions and procedures

for conducting health hazard evaluations pursuant to section 20(a)(6) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(6)). That section directs the Secretary of Health, Education, and Welfare to determine, following a written request by any employer or authorized representative of employees, whether any substance normally found in a place of employment has potentially toxic effects in such concentrations as used or found and further provides that such determinations shall be submitted to the appropriate employer and affected employees.

Interested persons were invited to submit, within 30 days, written comments, suggestions, or objections regarding the proposed regulations.

In addition, on June 20, 1972, the proposed regulations and the issues raised by the public comments concerning them were discussed with the National Advisory Committee on Occupational Safety and Health established by section 7 of the Occupational Safety and Health Act. All public comments, as well as the views expressed by the members of the Committee, have been taken into consideration with the result that a number

of changes, as discussed below, have been made in the regulations which were proposed. All comments in response to the rules as proposed and the transcript of the Committee proceedings on June 20 are available for public inspection at the National Institute for Occupational Safety and Health, Room 10-05, 5600 Fishers Lane, Rockville, MD.

1. *Applicability.* A statement has been added to the applicability section to indicate that Part 85 is not intended to preclude the use of other channels of communication with the National Institute for Occupational Safety and Health (NIOSH) to obtain information and assistance concerning toxic substances.

2. *Definitions.* Definitions of the terms "investigation" and "health hazard evaluation" have been added and these terms have been used throughout Part 85 in an effort to distinguish the physical inspection of a place of employment by NIOSH in conducting a health hazard evaluation, from the compliance inspection conducted by the Department of Labor. The definition of "toxic effects" has been revised to exclude those which produce acute discomfort.

3. *Procedures for requesting evaluations.* The main thrust of the comments on the procedures for requesting evaluations went to the question of who should be considered an "authorized representative of employees". The comments ranged from a suggestion that any individual employee should be allowed to make the request, to the contention that the authorized representatives should be limited to those who represent the employees for purposes of collective bargaining. The final regulations provide that an authorized representative may be either: (1) A representative for purposes of collective bargaining; (2) an employee of the employer who has written authorization from two or more employees employed in the work place where the substance is normally found, to represent them for purposes of the Act; or (3) where three or less employees are employed in the work place where the substance is normally found, any one of such employees. Objections to the Institute's withholding the identity of requesters have been considered and rejected. Such protection is, in our judgment, necessary to assure utilization of this procedure by employees. The option to withhold the requester's identity has been extended to those who have authorized the requester to represent them. Copies of these written authorizations must accompany the request.

4. *Authority for investigation.* The section has been amended to make clear that the duty to conduct a health hazard evaluation and the authority to investigate and inspect for purposes of conducting that evaluation extend only to the place of employment with respect to which the request has been made, which under the definition of "place of employment" can be the entire factory or a single work place.

5. *Advance notice of visits.* NIOSH experience over the last several months has

revealed that failure to give advance notice can interfere with a thorough and effective plant visit and thus impede the health hazard evaluation. The very process to which the request is directed may not be in operation on the day of the visit and the problem becomes even more serious when the place of employment is not readily accessible. Furthermore, the employer and, in the case of employee requests, the employees may wish to have a particular representative accompany the NIOSH officer. The surprise visit would conflict with this desire. The Institute, after considering all comments on this matter, has concluded that the evil which this surprise visit is intended to avoid—the misrepresentation of actual production conditions—can be avoided by exercise of the authority under section 8 to conduct private interviews with appropriate employees. Thus, the Institute's decision to give employers advance notice must be read in the light of the authority of NIOSH to question employees privately.

Accordingly, the section on advance notice (§ 85.6) has been completely revised to provide that advance notices of visits to the place of employment may be given to expedite a thorough and effective investigation. Advance notice will not be given when, in the judgment of the NIOSH officer, giving such notice would adversely affect the validity and effectiveness of an investigation. In the case of employee requests, advance notice will be given by the Institute to the requester, the representative of the employees for purposes of collective bargaining if such representative is other than the requester, and to the employer. Where the request is from the employer, advance notice will be given to such employer and, upon the request of the employer, to an authorized representative of employees.

6. *Conduct of investigations.* The major change in section 85.7 concerns trade secret information. This provision has been expanded to set forth the procedure where the Institute questions the designation by an employer of certain information as trade secret information. Where the Institute questions the identification, the employer will be given written notice of the Institute's intention to remove the trade secret designation from such information. The employer may within that period request reconsideration and provide additional information in support of the trade secret designation. If, after reconsideration, the decision of NIOSH is to remove the designation, the employer shall then be notified. Since the decision does not become effective until 15 days after the date of the written notice, the employer has the opportunity to take appropriate steps to retain the trade secret designation.

7. *Representatives of employers and employees; employee requests.* This section of the regulations has been revised to provide that in the case of employee requests, a representative authorized by the employees shall be given an opportunity to accompany the NIOSH officer

during the initial physical inspection of the workplace. Since NIOSH experience in the conduct of this program indicates that visits subsequent to the initial inspection are principally for the purpose of environmental sampling and medical examinations, the presence of the representative of employees will not be routinely requested during these aspects of the investigation.

8. *Imminent dangers.* In response to a number of comments, the term "serious hazard" has been deleted and the statutory phrase "imminent danger" has been substituted therefor.

9. *Notification of determination to employers, affected employees and Department of Labor.* The method of notifying affected employees of the determination was the subject of a substantial number of comments. Section 85.11 requires that the employer post a copy of the determination at or near the work places of the affected employees. However, no posting is required if the employer requests NIOSH to mail copies to the affected employees and furnishes the Institute with a list of the names and mailing addresses of the employees determined by NIOSH to be exposed to the substance which is the subject of the health hazard evaluation.

Effective date. These regulations shall be effective 30 days after their publication in the FEDERAL REGISTER.

Dated: October 16, 1972.

VERNON E. WILSON,
Administrator, Health Services
and Mental Health Administration.

Approved: October 30, 1972.

ELLIOT L. RICHARDSON,
Secretary.

Sec.	Applicability.
85.1	Definitions.
85.2	Procedures for requesting health hazard evaluations.
85.3	Acting on requests.
85.4	Authority for investigations.
85.5	Advance notice of visits.
85.6	Conduct of investigations.
85.7	Provision of suitable space for employee interviews and examinations; identification of employees.
85.8	Representatives of employers and employees; employee requests.
85.9	Imminent dangers.
85.10	Notification of determination to employers, affected employees, and Department of Labor.
85.11	Subsequent requests for health hazard evaluations.
85.12	

AUTHORITY: The provisions of this Part 85 issued under the authority of section 8(g), 84 Stat. 1600; 29 U.S.C. 657(g).

§ 85.1 Applicability.

The provisions of this Part 85 are applicable to requests submitted by any employer or authorized representative of employees pursuant to section 20(a)(6) of the Occupational Safety and Health Act of 1970 for a determination of potentially toxic effects of any substance normally used or found in any place of employment to which the Act is applicable. This Part 85 is not intended

to preclude the use of other channels of communication with the National Institute for Occupational Safety and Health to obtain information and technical assistance related to toxic substances.

§ 85.2 Definitions.

Any term defined in the Occupational Safety and Health Act of 1970 and not defined below shall have the meaning given it in the Act. As used in this part:

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.).

(b) "Authorized representative of employees" means any person or organization meeting the conditions specified in § 85.3(b)(4)(i), (ii), or (iii).

(c) "Investigation" includes a physical inspection of the place of employment pursuant to section 8 of the Act and means such inspection, sampling, observations, and other measurements reasonably necessary to determine whether any substance found in the place of employment for which the request is made has potentially toxic effects in such concentrations as used or found.

(d) "Health hazard evaluation" means the investigation and the determination of potentially toxic effects of any substance normally used or found in any place of employment to which the Act is applicable.

(e) "Place of employment" means any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by any employee of an employer.

(f) "NIOSH" means the National Institute for Occupational Safety and Health.

(g) "NIOSH officer" means a person authorized by NIOSH to conduct investigations.

(h) "Substance means any chemical or biological agent which has the potential to produce toxic effects.

(i) "Toxic effects" are those which result in short- or long-term disease, bodily injury, affect health adversely, or endanger the life of man.

§ 85.3 Procedures for requesting health hazard evaluations.

(a) A request for a health hazard evaluation should be addressed to the National Institute for Occupational Safety and Health, Hazard Evaluation Services Branch, U.S. Department of Health, Education, and Welfare, Cincinnati, Ohio 45202.

(b) A request for such an evaluation shall:

(1) Be in writing and signed by (i) the employer in whose place of employment the substance is normally found, or (ii) by an authorized representative of employees who are employed by such employer;

(2) State the requester's name, address, and telephone number, if any; the address of the place of employment where the substance is normally found; the specific workplace or workplaces involved, and the specific process or type of work which is the source of the sub-

stance or in which such substance is used;

(3) Specify with reasonable particularity the nature of the conditions, circumstances, or other grounds on which the request is made;

(4) State, where the requester is other than the employer:

(i) That he is an authorized representative, or an officer, of the organization representing the employees for purposes of collective bargaining; or

(ii) That he is an employee of the employer and is authorized by two or more employees employed in the workplace where the substance is normally found to represent them for purposes of the Act. Each such authorization shall be in writing and included in the request; or

(iii) That he is one of three or less employees employed in the workplace where the substance is normally found.

(5) Indicate whether the requester or those persons who have authorized the requester to represent them desire that NIOSH not reveal their names to the employer.

(c) The request shall, if the information is known to the requester:

(1) Identify the potentially toxic substance or substances involved;

(2) State the trade name, chemical name, and the manufacturer of each such substance;

(3) State whether the substance or the container of such substance has a warning label; and

(4) Specify the physical form of the substance, number of people exposed, length of exposure (hours/day), and occupations of exposed employees.

NOTE: The National Institute for Occupational Safety and Health has developed a form, entitled "Request for Health Hazard Evaluation," to assist persons in requesting evaluations under this part. Forms are available upon request from NIOSH, Hazard Evaluation Services Branch, Cincinnati, Ohio 45202, or from the NIOSH representative in any Regional Office of the Department of Health, Education, and Welfare.

§ 85.4 Acting on requests.

(a) When a request meeting the requirements of this part has been submitted in accordance therewith and designated employees of NIOSH have concluded that there is reasonable cause to believe that an investigation is warranted, a NIOSH officer will inspect the place of employment, collect samples where appropriate and perform such tests as necessary, including medical examinations of employees, to the conduct of a health hazard evaluation.

(b) If there is no reasonable cause to conclude that an investigation is warranted, the requester shall be notified in writing of such decision.

(c) Investigations shall be conducted in accordance with the requirements of this part.

§ 85.5 Authority for investigations.

(a) Employees of the National Institute for Occupational Safety and Health who have been issued the NIOSH official credentials (consisting of HSM Form

599-2 entitled "Identification Record") are authorized by the Director, NIOSH, for the purposes of section 20(a)(6) of the Act and pursuant to section 8, to enter without delay and at reasonable times any place of employment for which a request has been submitted, to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein as may be directly related to the determination whether any substance normally found in the place of employment for which a request has been submitted has potentially toxic effects in such concentrations as used or found. In connection with any such investigation, such NIOSH employees may question privately any employer, owner, operator, agent, or employee and review records required by the Act and regulations, and other related records.

(b) Areas containing information which is classified by any agency of the U.S. Government in the interest of national security will be inspected only by NIOSH employees who have obtained the appropriate security clearance.

§ 85.6 Advance notice of visits.

(a) Advance notice of visits to the place of employment may be given to expedite a thorough and effective investigation. Advance notice will not be given when, in the judgment of the NIOSH officer, giving such notice would adversely affect the validity and effectiveness of the investigation.

(b) Where a request in accordance with this part has been made by an authorized representative of employees, advance notice in accordance with paragraph (a) of this section will be given by NIOSH to the requester, the representative of the employees for purposes of collective bargaining if such representative is other than the requester, and to the employer.

(c) Where a request in accordance with this part has been made by any employer, advance notice will be given by NIOSH to the employer. Upon the request of the employer, NIOSH will inform the authorized representative of employees of the visit: *Provided*, The employer furnishes NIOSH in writing with the identity of such representative and with such information as is necessary to enable NIOSH promptly to inform such representative of the visit.

§ 85.7 Conduct of investigations.

(a) Prior to beginning an investigation, NIOSH officers shall present their credentials to the owner, operator, or agent in charge at the place of employment, explain the nature, purpose, and scope of the investigation and the records specified in § 85.5 which they wish to review. Where the investigation is the result of a request submitted by an authorized representative of employees, a copy of the request shall be provided to the employer, except where the requester or any person authorizing the requester pursuant to § 85.3(b)(4)(ii) has indicated

that NIOSH not reveal his name to the employer, in which case, a summary of the basis for the request shall be provided to the employer.

(b) At the commencement of an investigation, the employer should precisely identify information which can be obtained in the workplace or workplaces to be inspected as trade secrets. If the NIOSH officer has no clear reason to question such identification, such information shall not be disclosed except in accordance with the provisions of section 20(a)(6) and section 15 of the Act. However, if NIOSH at any time questions such identification by an employer, not less than 15 days' notice to an employer shall be given of the intention to remove the trade secret designation from such information. The employer may within that period submit a request to the Director, NIOSH, to reconsider this intention and may provide additional information in support of the trade secret designation. The Director, NIOSH, shall notify the employer in writing of the decision which will become effective no sooner than 15 days after the date of such notice.

(c) NIOSH officers are authorized to collect environmental samples and samples of substances, to take or obtain photographs related to the purpose of the investigation, employ other reasonable investigative techniques, including medical examinations of employees with the consent of such employees, and to question privately any employer, owner, operator, agent, or employee. The employer shall have the opportunity to review photographs taken or obtained for the purpose of identifying those which contain or might reveal a trade secret.

(d) NIOSH officers shall comply with all safety and health rules and practices at the place of employment being investigated, and they shall provide and use appropriate protective clothing and equipment. In situations requiring specialized or unique types of protective equipment, such equipment shall be furnished by the employer.

(e) The conduct of investigations shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

§ 85.8 Provision of suitable space for employee interviews and examinations; identification of employees.

An employer shall, on request of the NIOSH officer, provide suitable space, if such space is reasonably available, to NIOSH to conduct private interviews with, and examinations of, employees. NIOSH officers shall consult with the employer as to the time and place of the medical examination and shall schedule such examinations so as to avoid undue disruption of the operations of the employer's establishment. NIOSH shall conduct, and assume the medical costs of, examinations conducted under this part.

§ 85.9 Representatives of employers and employees; employee requests.

(a) NIOSH officers shall be in charge of investigations. Where the request for

a health hazard evaluation has been made by an authorized representative of employees, a representative of the employer and a representative authorized by his employees who is an employee of the employer shall be given an opportunity to accompany the NIOSH officer during the initial physical inspection of any workplace for the purpose of aiding the investigation by identifying the suspected hazard. The NIOSH officer may permit additional employer representatives and such additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the investigation. However, if in the judgment of the NIOSH officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer is reasonably necessary to the conduct of an effective and thorough investigation of the workplace, such third party may accompany the NIOSH officer during the inspection: *Provided, however,* That access by such persons to areas described in paragraph (d) of this section shall be in accordance with the requirements of such provision, and access to areas described in paragraph (e) of this section shall be with the consent of the employer. A different employer and employee representative may accompany the officer during each different phase of an inspection if this will not interfere with the conduct of the investigation.

(b) NIOSH officers are authorized to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the NIOSH officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters directly related to the health hazard evaluation.

(c) NIOSH officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly physical inspection.

(d) With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany an officer in areas containing such information.

(e) Upon request of an employer, any representative authorized under this § 85.9 by employees in any area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area.

§ 85.10 Imminent dangers.

Whenever, during the course of, or as a result of, an investigation under this part, the NIOSH officer believes that there is a reasonable basis for an allegation of an imminent danger, NIOSH will immediately advise the employer and those employees who appear to be in immediate

danger of such allegation and will inform appropriate representatives of the Department of Labor or the State agency designated under section 18(b) of the Act.

§ 85.11 Notification of determination to employers, affected employees and Department of Labor.

(a) A determination made pursuant to section 20(a)(6) of the Act will, as a minimum: (1) Identify and set forth, where appropriate, the concentrations of the substance(s) found in the place of employment and the conditions of use, and (2) state whether such substance(s) has potentially toxic effects in such concentrations, as well as the basis for such judgments.

(b) Copies of the determination will be mailed to the employer and to the authorized representatives of employees.

(c) Except as hereinafter provided, the employer shall post a copy of the determination for a period of 30 calendar days at or near the workplace(s) of affected employees. The employer shall take steps to insure that the posted determinations are not altered, defaced, or covered by other material during such period. The employer will not be required to post the determination if the employer requests that copies of the determination be mailed to affected employees and furnishes NIOSH with a list of the names and mailing addresses of the employees employed in the workplace(s) designated by the NIOSH Officer. In the latter event, NIOSH will mail such copies to affected employees at the mailing addresses provided by the employer.

(d) For purposes of this section, the term "affected employees" means those employees determined by NIOSH to be exposed to the substance(s) which is the subject of the health hazard evaluation.

(e) Copies of all determinations will be forwarded to the Department of Labor and the appropriate State agency designated under section 18(b) of the Act. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6 of the Act, the Secretary of Health, Education, and Welfare will immediately submit such determination to the Secretary of Labor together with all pertinent criteria.

§ 85.12 Subsequent requests for health hazard evaluations.

Where a request is received for a health hazard evaluation in a place of employment in which an evaluation under this part previously has been made, the Secretary may make a subsequent investigation if, as a result of the passage of time or additional information, he deems such a subsequent investigation consistent with the purpose of the Act.

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