14 CFR Part 39

[Docket No. 79-WE-33-AD; Amdt. 39-3663]

McDonnell Douglas DC-9 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective to all persons an amendment adopting an airworthiness directive (AD) which was previously made effective to all known operators of McDonnell Douglas Model DC-9 series airplanes by telegraphic message T79WE-20 dated December 1, 1979. This AD was required because of cracks discovered in the aft pressure bulkhead door which could result in cabin decompression and degraded flight and powerplant control functions.

DATES: Effective January 21, 1980, and was effective earlier for all recipients of telegraphic AD T79WE-20 dated December 1, 1979.

Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1-750 (54-60).

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue SW., Washington, DC 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: An emergency airworthiness directive was adopted December 1, 1979, and made effective immediately upon receipt of telegrams to all known U.S. operators of DC-9 series airplanes. The AD was necessary because of reports of cracks in the aft pressure bulkhead door which could result in cabin depressurization and degraded flight and powerplant control functions. The AD requires visual inspections of the aft pressure bulkhead door on airplanes equipped with non-ventral aft pressure bulkhead door P/N 5910367.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impractical and contrary to the public interest, and good cause existed to make the AD effective immediately as to all known operators of the McDonnell Douglas DC-9 series airplanes. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

McDonnell Douglas: Applicable to all Model DC-9 series aircraft equipped with non-ventral aft pressure bulkhead door, P/N 5910367, certificated in all categories.

Compliance required as indicated.

To detect cracks in the aft pressure bulkhead door, accomplish the following:

Within the next 25 landings, but not later than 72 elapsed hours, after the effective date of this AD, unless already accomplished in accordance with telegraphic AD T79WE-20 dated December 1, 1979, inspect the aft pressure bulkhead door as follows:

(a) Remove the door from the bulkhead.

(b) Remove all liner and insulation from the forward and aft sides of the door.

(c) Conduct a close visual inspection to detect cracks in the entire door structure including the web and doublers, paying particular attention to the areas adjacent to the inboard ends of the guide pin fittings (P/N 3913926).

(d) If cracks are found:

(1) Repair per FAA approved data and replace the insulation and liner removed in paragraph (b), or;

(2) The aircraft may be operated without cabin pressurization with a placard installed in the cockpit, in full view of the pilots stating: "Pressurized flight is prohibited".

(e) If no cracks are found, replace the insulation and liner removed in paragraph (b).

(f) Reinstall the door in the bulkhead.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplanes unpressurized to a base where the inspections or crack repair can be performed.

(h) Within five working days after the inspection required by paragraph (c) of this AD, report the results of the inspection to the Chief, Aircraft Engineering Division, FAA Western Region. (Reporting approved by the Office of Management and Budget under OMB No. 04-R0174.)

This amendment becomes effective January 21, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Issued in Los Angeles, California on January 4, 1980.

W. R. Frehse,

Acting Director, FAA Western Region.

[FR Doc. 80-873 Filed 1-11-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-SO-91]

Alteration of Transition Area, Statesville, N.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates an extension in the Statesville, North Carolina, transition area. This action provides controlled airspace required to protect instrument flight operations at the Statesville Municipal Airport.

EFFECTIVE DATE: February 11, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: It is necessary to designate an extension in the Statesville, North Carolina, transition area, described in § 71.181 (44 FR 442), to provide required airspace protection for aircraft executing the existing VOR/DME RWY 10 standard instrument approach procedure at the Statesville Municipal Airport. Due to altitude changes in the procedure, designation of an extension is required from the basic radius area to the point at which arriving aircraft descend below 1,500 feet above the surface.

In the interest of safety, it is found that notice and public procedure hereon are impracticable and contrary to the public interest.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., February 11, 1980, by adding the following:

Statesville, North Carolina

"* * * within 3.5 miles each side of the Barretts Mountain VORTAC 115° radial, extending from the 7-mile radius area to 10 miles southeast of the VORTAC * * *"

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga., on January 3, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-1128 Filed 1-11-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 80-13]

Non-Rubber Footwear, Certain Castor Oil Products, Scissors and Shears, and Cotton Yarn From Brazil; Declaration of Net Amount of Bounty or Grant and Suspension of Liquidation

Correction

In FR Doc. 80-253, appearing at page 1013 in the issue for Friday, January 4, 1980, the T.D. number which appears in brackets in the first column, and which now reads "[T.D. 80-12]" should read as set forth above.

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 14

[Order No. 870-79]

Administrative Claims Under the Federal Tort Claims Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is revising certain of its regulations concerning the handling of claims that have been filed with agencies of the Government. The purpose of the revision is to clarify the procedures to be used when the same claim is submitted to more than one agency at a time or when claims affect more than one agency. This order confirms the authority of agencies to agree that one agency may adjust, determine, compromise, and settle a claim involving more than one agency on behalf of all affected agencies and establishes procedures relating thereto.

EFFECTIVE DATE: January 14, 1980.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, (202) 724-6810.

By virtue of the authority vested in me by 28 U.S.C. 2672, Title 28 of the Code of Federal Regulations is amended by deleting § 14.2 and inserting in lieu thereof a revised § 14.2, as follows:

§ 14.2 Administrative claim; when presented.

(a) For purposes of the provisions of section 2672 of Title 28, United States Code, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident.

(b)(1) A claim shall be presented to the Federal agency whose activities gave rise to the claim. When a claim is presented to any other Federal agency, that agency shall transfer it forthwith to the appropriate agency, if the proper agency can be identified from the claim, and advise the claimant of the transfer. If transfer is not feasible the claim shall be returned to the claimant. The fact of transfer shall not, in itself, preclude further transfer, return of the claim to the claimant or other appropriate disposition of the claim.

(2) When more than one Federal agency is or may be involved in the events giving rise to the claim, an agency with which a claim is filed shall contact all other affected agencies in order to designate the single agency which will thereafter investigate and decide the merits of the claim. In the event that an agreed upon designation cannot be made by the affected agencies, the Department of Justice will be consulted and will thereafter designate an agency to investigate and decide the merits of the claim. Once a determination has been made, the primary agency shall notify the claimant that all future correspondence concerning the claim shall be directed to that Federal agency. All involved Federal agencies can agree either to conduct their own administrative reviews and to coordinate the results or to have the investigations conducted by the primary Federal agency, but, in either event, the primary Federal agency will be responsible for the final determination of the claim.

(3) A claimant presenting a claim arising from an incident to more than one agency should identify each agency to which the claim is submitted at the time each claim is presented. Where a claim arising from an incident is presented to more than one Federal agency without any indication that more than one agency is involved, and any one of the concerned Federal agencies takes final action on that claim, the final action thus taken is conclusive on the claims presented to the other agencies in regard to the time required for filing suit set forth in 28 U.S.C. § 2401(b). However, if a second involved Federal agency subsequently desires to take further action with a view towards settling the claim the second Federal agency may treat the matter as a request for reconsideration of the final denial under 28 CFR § 14.9(b), unless suit has been filed in the interim, and so advise the claimant.

(4) If, after an agency final denial, the claimant files a claim arising out of the same incident with a different Federal agency, the new submission of the claim will not toll the requirement of 28 U.S.C. § 2401(b) that suit must be filed within six months of the final denial by the first agency, unless the second agency specifically and explicitly treats the second submission as a request for reconsideration under 28 CFR § 14.9(b) and so advises the claimant.

(c) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

Dated: December 31, 1979.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-1159 Filed 1-11-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute for Occupational Safety and Health

42 CFR Parts 85 and 85a

Implementation of Federal Mine Safety and Health Act of 1977; Amendments to NIOSH Research Regulations

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, PHS, HEW.

ACTION: Final rule.

SUMMARY: This rule amends several existing regulations to include NIOSH procedures for (1) conducting health hazard evaluations requested by employers or employees in the mining industry, and (2) conducting health research investigations in the mining industry. Recent legislation to improve safety and health in the mining industry gave NIOSH new responsibilities for mine health research similar to those already carried out by NIOSH for general industry. These amendments implement the new responsibilities and provide industry, mine operators, and labor groups with information on how NIOSH conducts its research activities. By amending the existing procedural regulations covering NIOSH research activities in general industry to include the mine health research activities, NIOSH has eliminated the need for separate regulations.

EFFECTIVE DATE: February 13, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Mary L. Flint, Regulations Specialist, National Institute for Occupational Safety and Health, 5600 Fishers Lane, Room 8-11, Rockville, MD 20857, Phone: (301) 443-3745.

SUPPLEMENTARY INFORMATION: The Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. 95-164) amended the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91-173) and redesignated it the Federal Mine Safety and Health Act of 1977 (referred to as the FMSH Act). The FMSH Act also repealed the Federal Metal and Nonmetallic Mine Safety Act (Pub. L. 89-577), thereby bringing all mining operations under a single law. The FMSH Act granted responsibility for mine health research to the National Institute for Occupational Safety and Heath (NIOSH). These health research responsibilities for the mining industry are similar to those already carried out by NIOSH under the Occupational Safety and Health Act.

On December 5, 1978, NIOSH published a Notice of Proposed Rulemaking in the **Federal Register** (43 FR 56918) to amend several existing regulations that govern NIOSH research activities. Specifically, NIOSH proposed to amend the following regulations to include NIOSH's new mine health research responsibilities: Part 55—Grants for Advancement of Health in Coal Mining, Part 85—Requests for Health Hazard Evaulations, and Part 85a—Occupational Safety and Health Investigations of Places of Employment. The proposed amendments to Part 55 are not being adopted at this time. Instead, they will be included with additional revisions to Part 55 to conform it to 45 CFR Part 74 (HEW's general grants administration regulation) later this year. NIOSH does not plan to award any grants for mining health research, other than for coal mining, before the second or third quarter of fiscal year 1980. Therefore, the delay in adopting the proposed amendments to Part 55 will not adversely affect the program.

Discussion of Comments

A period of 30 days was given for the public to comment on the proposal. Only three organizations responded with comments, all pertaining to Part 85. The comments have been carefully reviewed and it appears that a substantial number of the issues raised concerned topics covered in existing sections of Part 85. Because these sections were not amended, they were not printed as part of the proposal and might not have been read by the public. For example, one comment urged that NIOSH provide for employer identification of trade secrets including those in any photographs taken by NIOSH and for the confidentiality of trade secrets. These provisions are already contained in § 85.7(b). Similarly, two comments contended that NIOSH should give advance notice of a site visit. The NIOSH policy concerning advance notice in the conduct of health hazard evaluations (HHE) is set out in § 85.6. This section authorizes advance notice of visits to the place of employment, and advance notice is, in fact, given except where NIOSH determines that giving notice would adversely affect the validity or effectiveness of the investigation. Finally, in response to certain other comments, § 85.7(a) already provides for the presentation of credentials by the NIOSH officer and for giving management a copy of the HHE request. Section 85.11(b) provides for sending a copy of the determination to the mine operator or other employer.

The remaining comments are summarized below:

Review of Company Records.—In commenting on NIOSH review of records, industry stated that NIOSH should have access only to those records required by the Acts or only to those records required by law unless "legally summoned." Industry comments further stated that NIOSH should review only those company medical records which are relevant to a health hazard evaluation and then only with the consent of the employees.

In the course of conducting the HHE program under the Occupational Safety and Health Act, NIOSH has taken the view that it should have access to any records that are relevant to its investigation irrespective of whether the company is required to keep the records. This position has been supported by the courts (*E.I. du Pont de Nemours & Co.* v. *Finklea*, 442 F. Supp 821 (1977), and *General Motors Corp.* v. *Director, NIOSH*, 459 F. Supp 235 (1978)). There is little doubt that a company's medical records of its employees is relevant to whether something in the workplace is adversely affecting the health of the worker. Finally, NIOSH takes the position that in conducting a health hazard evaluation, it is authorized to review the company's medical records without the consent of individual employees (see *du Pont* v. *Finklea*).

Right of Entry.—The comments by industry stated that NIOSH entry should be subject to the requirements in *Marshall, Secretary of Labor* v. *Barlow's Inc.* 436 U.S. 307 (1978) which held that inspections may be conducted under section 8(a) of the Occupational Safety and Health Act only pursuant to a judicially authorized search warrant or where the employer consents. However, since the mining industry is regulated under another statute (FMSH Act) and the degree of regulation varies from that considered in *Barlow's*, it is questionable whether *Barlow's* applies to mining inspections. A warrantless inspection of a mining facility has been judicially upheld (*Marshall* v. *Stoudt's Ferry Preparation Co.*, 602 F.2d 589 (1979)).

Other comments suggested that NIOSH contractors should not be allowed access to trade secret information. It is the policy of NIOSH that contractors do not have access to company trade secret information without the company's consent (see 42 CFR 85a.5(b)).

One comment contended that it was illegal for NIOSH to permit a nonemployee to accompany the NIOSH Officer. Section 85.9 provides for the accompaniment by a third party who is not an employee in limited circumstances, i.e., where the NIOSH officer finds that the participation is necessary to the conduct of an effective and thorough investigation. This provision is a reasonable exercise of program discretion and has been retained.

General

1. One comment requested that NIOSH reiterate that it has no authority to require compliance with health or safety standards under either Act. It is not necessary to include this statement in the regulation since it is well known that compliance under both Acts is the function of the Department of Labor.

2. Since the definition of "coal or other mine" in the Federal Mine Safety and Health Act includes "strip and auger mines," it is not necessary to expressly include these mines in the definition of "place of employment" in § 85.2. Clearly, NIOSH can conduct health hazard evaluations on appropriate request in "strip and auger" and other mines subject to the Act.

3. It is not appropriate, as one comment suggested, for requests for health hazard evaluations in coal and other mines to be sent to NIOSH through the Mine Safety and Health Administration since the HHE program is administered solely by NIOSH.

4. One comment from industry suggested that no HHE, including private employee interviews, should be conducted by NIOSH if litigation over the subject of the HHE is either in progress or is contemplated. It is not clear from the comment whether it refers to a Government proceeding for the enforcement of a health standard or purely private litigation. Generally, the existence or contemplation of private litigation would have no effect on whether NIOSH would undertake the conduct of an HHE. Under the terms of a recent Interagency Agreement (44 FR 22834), it is the policy for NIOSH and the Occupational Safety and Health Administration to coordinate their field activities for any place of employment where a NIOSH health hazard evaluation has been requested under the Occupational Safety and Health Act.

5. It was suggested, if litigation later arises with regard to the subject matter of the evaluation, that Part 85 provide for employer access to the employee interview records with appropriate protective orders. NIOSH considers the employee interview conducted in the course of an HHE as private and confidential. NIOSH is prohibited by Department regulation from disclosing records of these interviews (see 45 CFR 5.71(a)).

Changes to Proposed Rules

Except for the following minor editorial changes for clarification purposes, the amendments to Parts 85 and 85a are being adopted as proposed:

1. Section 85.2—The definition of "Substance" is revised to include "dust" since, as one comment stated, it may not be obvious to miners that "dust" is intended by NIOSH to be within the scope of the definition.

2. Section 85.3-1(b)—The paragraph is revised to include the name of the place of employment for which the health hazard evaluation is requested.

3. Section 85.5(a)—The paragraph is revised to reflect current practice and to clarify that the NIOSH review of records includes abstracting and duplicating of records related to the investigation. In many instances, problems can be identified only through careful in depth analysis of exposure, medical, or other records. It is not always possible to do this type of analysis at the worksite. It is usually more productive to undertake extensive records analysis in the research laboratory setting.

4. Section 85.11(a)—The substance or physical agent to be investigated is not always specified in the HHE request because it is not known to the person requesting the evaluation. Minor editorial changes to the paragraph are made to clarify this.

The public will be given a further opportunity to comment on NIOSH investigative procedures when Parts 85 and 85a are revised later this year as part of HEW's comprehensive program to review and simplify its regulations ("Operation Common Sense").

Accordingly, Parts 85 and 85a of Title 42, Code of Federal Regulations, are amended as set forth below:

Dated: September 28, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 7, 1980.

Patricia Roberts Harris,

Secretary.

PART 85—REQUESTS FOR HEALTH HAZARD EVALUATIONS

1. The authority is revised to read:

Authority: Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g) and Sec. 508, 83 Stat. 803; 30 U.S.C. 957.

2. Sections 85.1, 85.2, 85.3, 85.4, and 85.5 are revised and a new § 85.3-1 is added. The revised and added provisions read as follows:

§ 85.1 Applicability.

This Part 85 applies to health hazard evaluations requested by any employer or authorized representative of employees under section 20(a)(6) of the Occupational Safety and Health Act of 1970 or section 501(a)(11) of the Federal Mine Safety and Health Act of 1977. This part 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 concerning toxic substances or physical agents.

§ 85.2 Definitions.

Any term defined in the Occupational Safety and Health Act of 1970 or the Federal Mine Safety and Health Act of 1977 and not defined below shall have the meaning given it in the respective Acts. As used in this part:

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

"FMSH Act" means the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, et seq.).

"Authorized representative of employees" means any person or organization meeting the conditions specified in § 85.3-1(e) (1), (2), or (3).

"Employee" has the same meaning as stated in the OSH Act and for the purposes of this part includes "miner" as defined in the FMSH Act.

"Employer" has the same meaning as stated in the OSH Act and for the purposes of this part includes "Operator" as defined in the FMSH Act.

"Health hazard evaluation" means the investigation and the determination of potentially toxic or hazardous effects of: (a) any substance normally used or found in any place of employment to which the OSH Act is applicable, or (b) any substance or physical agent normally used or found in any place of employment to which the FMSH Act is applicable.

"Investigation" means a physical inspection of the place of employment under section 8 of the OSH Act or section 103 of the FMSH Act and includes inspection, sampling, observations, review of pertinent records, and other measurements reasonably necessary to determine whether any substance or physical agent found in the place of employment has potentially toxic or hazardous effects in the concentrations or levels used or found.

"NIOSH" means the National Institute for Occupational Safety and Health, Center for Disease Control, Public Health Service, Department of Health, Education, and Welfare.

"NIOSH officer" means a NIOSH employee who has been authorized by the Director, NIOSH, to conduct investigations according to this part.

"Physical agent" means any condition produced by the environment and/or work processes that can result in hazardous effects as defined in this section. Examples of physical agents are noise, temperature, illumination, vibration, radiation, and pressure.

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

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

"Toxic effects" or "hazardous effects" are those effects which result in short- or long-term disease, bodily injury, affect health adversely, or endanger human life.

§ 85.3 Procedures for requesting health hazard evaluations.

(a) Requests for health hazard evaluations should be addressed to the National Institute for Occupational Safety and Health as follows:

(1) *Requests from general industry*—Hazard Evaluations and Technical Assistance Branch, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, 4676 Columbia Parkway, Cincinnati, OH 45226.

(2) *Requests from mining industry*—Environmental Investigations Branch, Division of Respiratory Disease Studies, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV 26505.

(b) Requests for health hazard evaluations shall be submitted in writing and signed by either (1) the employer in whose place of employment the substance or physical agent is normally found, or (2) an authorized representative of employees (see § 85.3-1(e)) in the place of employment where the substance or physical agent is normally found.

§ 85.3-1 Contents of a request for health hazard evaluation.

Each request for health hazard evaluation shall contain:

(a) The requester's name, address, and telephone number, if any.

(b) The name and address of the place of employment where the substance or physical agent is normally found.

(c) The specific process or type of work which is the source of the substance or physical agent, or in which the substance or physical agent is used.

(d) Details of the conditions or circumstances which prompted the request.

(e) A statement, if the requester is not the employer, that the requester is—

(1) an authorized representative or an officer of the organization representing the employees for purposes of collective bargaining; or

(2) an employee of the employer and is authorized by two or more employees employed in the same place of employment to represent them for purposes of these Acts (each such authorization shall be in writing and a copy submitted with the request for health hazard evaluation); or

(3) one of three or less employees employed in the place of employment where the substance or physical agent is normally found.

(f) A statement indicating whether or not the name(s) of the requester or those persons who have authorized the requester to represent them may be revealed to the employer by NIOSH.

(g) The following supplementary information if known to the requester:

(1) Identity of each substance or physical agent involved;

(2) The trade name, chemical name, and manufacturer of each substance involved;

(3) Whether the substance or its container or the source of the physical agent has a warning label; and

(4) The physical form of the substance or physical agent, number of people exposed, length of exposure (hours per day), and occupations of exposed employees.

Note.—NIOSH has developed two forms entitled "Request for Health Hazard Evaluation" and "Request for Mining Health Hazard Evaluation" to assist persons in requesting evaluations. The forms are available upon request from the offices listed in § 85.3(a) (1) and (2) or from the Regional Consultant for Occupational Safety and Health in any Regional Office of the Department of Health, Education, and Welfare.

§ 85.4 Acting on requests.

(a) Upon receipt of a request for health hazard evaluation submitted under this part, NIOSH will determine whether or not there is reasonable cause to justify conducting and investigation.

(b) If NIOSH determines that an investigation is justified, a NIOSH officer will inspect the place of employment, collect samples where appropriate, and perform tests necessary to the conduct of a health hazard evaluation, including medical examinations of employees.

(c) If NIOSH determines that an investigation is not justified, the requester will be notified in writing of the decision.

§ 85.5 Authority for investigations.

(a) NIOSH officers who have been issued official NIOSH credentials (Form No. CDC/NIOSH 2.93) are authorized by the Director, NIOSH, under sections 20(a) (6) and 8 of the OSH Act and sections 501(a)(11) and 103 of the FMSH Act: To enter without delay any place of employment for the purpose of conducting investigations of all pertinent processes, conditions, structures, machines, apparatus, devices, equipment, records, and materials within the place of employment; and to conduct medical examinations, anthropometric measurements, and functional tests of employees within the place of employment as may be directly related to the specific health hazard evaluation being conducted. Investigations will be conducted in a reasonable manner, during regular working hours or at other reasonable times and within reasonable limits. In connection with any investigation, the NIOSH officers may question privately any employer, owner, operator, agent, or employee from the place of employment; and review, abstract, and duplicate records required by the Acts and regulations and any other related records.

(b) Areas under investigation which contain information classified by any agency of the United States Government in the interest of national security will be investigated only by NIOSH officers who have obtained the proper security clearance and authorization.

§ 85.7 [Amended]

3. In § 85.7(a), the reference to § 85.3(b)(4)(ii) is deleted and § 85.3-1(e)(2) is substituted therefor.

4. In § 85.7(b), the words "OSH Act or section 501(a)(11) of the FMSH" are inserted between the words"the" and "Act" in the second sentence.

5. In § 85.7(c), the words "or measurements of physical agents" are inserted between the words "substances" and "to" in the first sentence.

§ 85.10 [Amended]

6. In § 85.10, the acronym "OSH" is inserted between the words "the" and "Act" in the last line of the section.

§ 85.11 [Amended]

7. In § 85.11, paragraph (a) is revised to read as follows:

(a) Upon conclusion of an investigation, NIOSH will make a determination concerning the potentially toxic or hazardous effects of each substance or physical agent investigated as a result of the request for health hazard evaluation. At a minimum, the determination will: (1) identify each substance or physical agent involved and describe, where appropriate, the concentrations or levels or the substance or physical agent found in the place of employment and the conditions of use, and (2) state whether each substance or physical agent has potentially toxic or hazardous effects in the concentrations or levels found, as well as the basis for the judgments.

* * * * *

8. In § 85.11(d) the words "or physical agent(s)" are inserted between the words "substance(s)" and "which".

9. In § 85.11, paragraph (e) is revised to read as follows:

* * * * *

(e) Copies of determinations made under the OSH Act will be forwarded to the Department of Labor and the appropriate State agency designated under section 18(b) of the OSH Act. Copies of determinations made under the FMSH Act will be forwarded to the Mine Safety and Health Administration of the Department of Labor; the Bureau of Mines, Department of the Interior; and the State agency which, in the judgment of NIOSH, would benefit the most from the information. If NIOSH determines that any substance or physical agent has potentially toxic or hazardous effects at the concentrations or levels at which it is used or found in a place of employment, and the substance or physical agent is not covered by a safety or health standard established under section 6 of the OSH Act or section 101 of the FMSH Act, NIOSH will immediately submit the determination to the Secretary of Labor, together with all pertinent criteria.

10. Section 85.12 is revised to read as follows:

§ 85.12 Subsequent requests for health hazard evaluations.

If a request is received for a health hazard evaluation in a place of employment in which an evaluation under this part was made previously, NIOSH may make another investigation if, as a result of the passage of time or additional information, another investigation would be consistent with the purposes of the Acts.

(Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g) and Sec. 508, 83 Stat. 803; 30 U.S.C. 957)

PART 85a—OCCUPATIONAL SAFETY AND HEALTH INVESTIGATIONS OF PLACES OF EMPLOYMENT

1. The authority is revised to read:

Authority: Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g) and Sec. 508, 83 Stat. 803; 30 U.S.C. 957.

2. In § 85a.1, paragraph (a) is revised to read as follows:

§ 85a.1 Applicability.

(a) Except as otherwise provided in paragraph (b) of this section, the provisions of this part apply to investigations of places of employment which are conducted by NIOSH under sections 20 and 8 of the Occupational Safety and Health Act of 1970 and sections 501 and 103 of the Federal Mine Safety and Health Act of 1977.

* * * * *

3. In § 85a.2, the introductory text and paragraphs (a), (d), and (i) are revised and new paragraphs (j), (k), (l), and (m) are added. The revised and added provisions read as follows:

§ 85a.2 Definitions.

Any term defined in the Occupational Safety and Health Act of 1970 or the Federal Mine Safety and Health Act of 1977 and not defined below shall have the meaning given it in the Acts. As used in this part:

(a) "OSH Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and "FMSH Act" means the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

* * * * *

(d) "Investigation" means research projects, experiments, demonstrations, studies, and similar activities of NIOSH which are conducted under section 20 of the OSH Act and section 501 of the FMSH Act.

* * * * *

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

(j) "MSHA District Office" means any one of the Mine Safety and Health Administration's District Offices.

(k) "BOM" means the Bureau of Mines, Department of the Interior.

(l) "Employee" has the same meaning as stated in the OSH Act and for the purposes of this part includes "miner" as defined in the FMSH Act.

(m) "Employer" has the same meaning as stated in the OSH Act and for the purposes of this part includes "operator" as defined in the FMSH Act.

§ 85a.3 [Amended]

4. In § 85a.3, paragraph (a) is revised by deleting the words "for the purpose of section 20 of the Act and this part and pursuant to section 8 of the Act" and substituting the words "under sections 20 and 8 of the OSH Act, sections 501 and 103 of the FMSH Act, and this part".

5. In § 85a.4, paragraphs (a)(1) and (a)(3) are revised, the "and" at the end of paragraph (a)(2) is deleted, and a new paragraph (a)(4) is added. The revised and added provisions read as follows:

§ 85a.4 Procedures for initiating investigations of places of employment.

(a) * * *

(1) The appropriate State agency designated under section 18(b) of the OSH Act, or if no State agency has been designated under the OSH Act and in the case of the FMSH Act, the State agency which, in the judgment of NIOSH, would benefit the most from the investigation's findings;

(2) * * * individual;

(3) The appropriate Assistant Regional Director, when investigations are conducted under the OSH Act;

(4) The appropriate MSHA District Office; the Director, BOM, and the Assistant Director for Mining, BOM, when investigations are conducted under the FMSH Act.

* * * * *

6. In § 85a.4, paragraph (b) is revised by deleting the words "in § 85a.4(a)(1) and (3)" and substituting the words "in § 85a.4(a)(1), (a)(3), and (a)(4)".

7. In § 85a.4, paragraph (c) is revised by deleting the words "and (a)(3)" and substituting the words "(a)(3) and (a)(4)".

§ 85a.5 [Amended]

8. In § 85a.5, paragraph (b)(1) is revised by inserting the acronym "OSH" between the words "the" and "Act" at the end of the second sentence.

9. In § 85a.5, paragraph (e) is revised by deleting the words "NIOSH and Occupational Safety and Health Administration" and substituting the words "NIOSH, Occupational Safety and Health Administration, and Mine Safety and Health Administration".

§ 85a.7 [Amended]

10. Section 85a.7 is revised by deleting the remainder of the section beginning with the words "appropriate Assistant Regional Director . . ." and substituting the words "agencies identified in § 85a.4(a)(1), (a)(3), and (a)(4)."

(Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g) and Sec. 508, 83 Stat. 803; 30 U.S.C. 957)

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