

§ 85.8

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

[37 FR 23640, Nov. 7, 1972, as amended at 45 FR 2653, Jan. 14, 1980; 49 FR 4739, Feb. 8, 1984]

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

An employer shall, in 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

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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 OSH Act.

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