

PART 85—REQUESTS FOR HEALTH HAZARD EVALUATIONS

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

SOURCE: 37 FR 23640, Nov. 7, 1972, unless otherwise noted.

§ 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.

[45 FR 2652, Jan. 14, 1980]

§ 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 and Human Services.

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.

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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.

[45 FR 2652, Jan. 14, 1980]

§ 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.

[45 FR 2653, Jan. 14, 1980]

§ 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 and Human Services.

[45 FR 2653, Jan. 14, 1980]

§ 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 an investigation.

(b) If NIOSH determines that an investigation is justified, a NIOSH officer will inspect the place of employment, collect samples where appropriate, and