**Attachment A3**

**42 CFR Parts 85 and 85a**

[Code of Federal Regulations]

[Title 42, Volume 1]

[Revised as of October 1, 2003]

From the U.S. Government Printing Office via GPO Access

[CITE: 42CFR85]

[Page 555-560]

TITLE 42--PUBLIC HEALTH

CHAPTER I--PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN

SERVICES

PART 85--REQUESTS FOR HEALTH HAZARD EVALUATIONS

Sec.

85.1 Applicability.

85.2 Definitions.

85.3 Procedures for requesting health hazard evaluations.

85.3-1 Contents of a request for health hazard evaluations.

85.4 Acting on requests.

85.5 Authority for investigations.

85.6 Advance notice of visits.

85.7 Conduct of investigations.

85.8 Provision of suitable space for employee interviews and

examinations; identification of employees.

85.9 Representatives of employers and employees; employee requests.

85.10 Imminent dangers.

85.11 Notification of determination to employers, affected employees,

and Department of Labor.

85.12 Subsequent requests for health hazard evaluations.

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.

Sec. 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.

[[Page 556]]

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]

Sec. 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 Sec. 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.

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]

Sec. 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 Sec. 85.3-1(e)) in the place

of employment where the substance or physical agent is normally found.

[45 FR 2653, Jan. 14, 1980]

[[Page 557]]

Sec. 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 Sec. 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]

Sec. 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 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.

[45 FR 2653, Jan. 14, 1980]

Sec. 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.

[[Page 558]]

(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.

[45 FR 2653, Jan. 14, 1980]

Sec. 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.

Sec. 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 Sec. 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 Sec. 85.3-1(e)(2) 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 OSH Act or section 501(a)(11) of the FMSH

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 or measurements of physical agents (including

measurement of employee exposure by the attachment of personal sampling

devices to employees with their consent), 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.

[[Page 559]]

(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]

Sec. 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.

Sec. 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 Sec. 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.

Sec. 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.

[37 FR 23640, Nov. 7, 1972, as amended at 45 FR 2653, Jan. 14, 1980]

[[Page 560]]

Sec. 85.11 Notification of determination to employers, affected

employees and Department of Labor.

(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 of 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.

(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) or physical agent(s) which is the subject of the health

hazard evaluation.

(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.

[37 FR 23640, Nov. 7, 1972, as amended at 45 FR 2653, Jan. 14, 1980]

Sec. 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.

[45 FR 2654, Jan. 14, 1980]

WAIS Document Retrieval[Code of Federal Regulations]

[Title 42, Volume 1]

[Revised as of October 1, 2003]

From the U.S. Government Printing Office via GPO Access

[CITE: 42CFR85]

[Page 560-565]

TITLE 42--PUBLIC HEALTH

CHAPTER I--PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN

T 85a--OCCUPATIONAL SAFETY AND HEALTH INVESTIGATIONS OF PLACES OF EMPLOYMENT

c.

Applicability.

investigations of places of employment.

mployment.

and

s of investigations of places of employment.

SERVICES

PAR

Se

85a.1

85a.2 Definitions.

85a.3 Authority for

85a.4 Procedures for initiating investigations of places of e

85a.5 Conduct of investigations of places of employment.

85a.6 Provision of suitable space for employee interviews

examinations.

85a.7 Imminent dangers.

85a.8 Reporting of result

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

Page 561]]

c. 85a.1 Applicability.

83 Stat. 803; 30 U.S.C. 957.

[[

Se

(a) Except as otherwise provided in paragraph (b) of this section,

the

to those activities

1 FR 45002, Oct. 14, 1976, as amended at 45 FR 2654, Jan. 14, 1980]

c. 85a.2 Definitions.

the provisions of this part apply to investigations of places of

employment which are conducted by NIOSH under sections 20 and 8 of

Occupational Safety and Health Act of 1970 and sections 501 and 103 of

the Federal Mine Safety and Health Act of 1977.

(b) The provisions of this part do not apply

covered by part 85 of this chapter.

[4

Se

Any term defined in the Occupational Safety and Health Act of 1970

(29

one of the ten

l

ent of an individual or

exercise free power of choice without undue inducement or any element of

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

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.).

(b) Assistant Regional Director means any

Occupational Safety and Health Administration Assistant Regiona

Directors for Occupational Safety and Health.

(c) Informed consent means the knowing cons

his legally authorized representative, so situated as to be able to

force, fraud, deceit, duress, or other form of constraint or coercion.

Th

e basic elements of information necessary to such consent include:

iption of any benefits reasonably to be expected;

eous for the subject;

; and

investigation any time without

of the OSH Act and section 501 of the FMSH

of a prospective subject to such subject's participation in the

ices.

any

ment with NIOSH or is serving

tions.

.

lth

iner as defined in the FMSH Act.

or

Page 562]]

c. 85a.3 Authority for investigations of places of employment.

(1) A fair explanation of the procedures to be followed, and their

purposes, including identification of any procedures which are

experimental;

(2) A description of any attendant discomforts and risks reasonably

to be expected;

(3) A descr

(4) A disclosure of any appropriate alternative procedures that

might be advantag

(5) An offer to answer any inquiries concerning the procedures

(6) An instruction that the person is free to withdraw his consent

and to discontinue participation in the

prejudice to the subject.

(d) Investigation means research projects, experiments,

demonstrations, studies, and similar activities of NIOSH which are

conducted under section 20

Act.

(e) Legally authorized representative means an individual or

judicial or other body authorized under applicable law to consent on

behalf

particular activity or procedure.

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

Health of the Center for Disease Control, Public Health Service,

Department of Health and Human Serv

(g) NIOSH authorized representative means a person authorized by

NIOSH to conduct investigations of places of employment, including

person that is fulfilling a contract agree

as an expert or consultant to NIOSH pursuant to the Act.

(h) NIOSH Regional Office means any one of the ten Department of

Health and Human Services Regional Offices, the addresses of which are

specified in Sec. 5.31 of title 45, Code of Federal Regula

(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 Hea

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 m

(m) Employer has the same meaning as stated in the OSH Act and f

the purposes of this part includes operator as defined in the FMSH ACT.

[41 FR 45002, Oct. 14, 1976, as amended at 45 FR 2654, Jan. 14, 1980]

[[

Se

(a) NIOSH authorized representatives who have been issued official

ions

and 8 of the OSH Act, sections 501 and 103 of the FMSH Act, and this

the

NIOSH credentials are authorized by the Director, NIOSH, under sect

20

part. To enter without delay any place of employment for the purpose of

conducting investigations of all pertinent processes, conditions,

structures, machines, apparatus, devices, equipment, and materials

within the place of employment; and to conduct medical examinations,

anthropometric measurements and functional tests of employees within

place of employment as may be directly related to the specific

investigation being conducted. Such investigations will be conducted in

yment

,

th

only by NIOSH authorized

c. 85a.4 Procedures for initiating investigations of places of

a reasonable manner, during regular working hours or at other reasonable

times and within reasonable limits. In connection with any

investigations, such NIOSH authorized representatives may question

privately any employer, owner, operator, agent, or employee from the

place of employment; and review, abstract, or duplicate emplo

records, medical records, records required by the Act and regulations

and other related records. In those instances where systems of records

subject to review, abstraction or duplication are of a confidential

nature, such as medical records, and are abstracted or duplicated, NIOSH

will maintain such systems in accordance with the Privacy Act of 1974 (5

U.S.C. 552a) and the implementing regulation of the Department of Heal

and Human Services (45 CFR part 5b).

(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

representatives who have obtained the appropriate security clearance and

authorization.

[41 FR 45002, Oct. 14, 1976, as amended at 45 FR 2654, Jan. 14, 1980]

Se

employment.

n,

entatives will contact an official representative

the place of employment prior to any site visits and will provide the

of

Act

the judgment

ons

M, and the

authorized representatives, giving such notice

ed

sit.

ves will

(a) Except as otherwise provided in paragraph (b) of this sectio

NIOSH authorized repres

of

details of why an investigation of the place of employment is being

conducted. Prior to the initiation of a site visit of a place of

employment, representatives of the following organizations will be

advised of the site visit and the reason for its conduct:

(1) The appropriate State agency designated under section 18(b)

the OSH Act, or if no State agency has been designated under the OSH

and in the case of the FMSH Act, the State agency which, in

of NIOSH, would benefit the most from the investigation's findings;

(2) If there is a local union at the place of employment, the local

president, business manager or other appropriate individual;

(3) The appropriate Assistant Regional Director, when investigati

are conducted under the OSH Act;

(4) The appropriate MSHA District Office; the Director, BO

Assistant Director for Mining, BOM, when investigations are conducted

under the FMSH Act.

(b) Advance notice of site visits will not be given to the place of

employment or local union at the place of employment when, in the

judgment of the NIOSH

would adversely affect the validity and effectiveness of an

investigation. Those individuals and organizations specified in

Sec. 85a.4(a)(1), (a)(3) and (a)(4) will be notified prior to the

initiation of such a site visit. After the site visit has been

initiated, and, as soon as possible thereafter, the NIOSH authoriz

representatives will contact those individuals specified in

Sec. 85a.4(a)(2) concerning the nature and details of the site vi

(c) In those instances where site visits are not necessary to the

conduct of an investigation, the NIOSH authorized representati

contact an official representative of the place of employment either

verbally or through a written communication and provide the details of

why an investigation of the place of employment is being conducted. If

appropriate, the NIOSH authorized representatives will contact

[[Page 563]]

those individuals stipulated in paragraphs (a)(1), (a)(2), (a)(3), and

section about the nature and details of the

vestigation.

4, 1980]

c. 85a.5 Conduct of investigations of places of employment.

(a)(4) of this

in

[41 FR 45002, Oct. 14, 1976, as amended at 45 FR 2654, Jan. 1

Se

(a)(1) Prior to beginning a site visit, NIOSH authorized

owner,

erator or agent in charge at the place of employment, explain the

specified

oyer,

er, owner,

is trade secret and might be seen or

n 15 of

trade

erator

ultant to NIOSH pursuant to the Act, the employer, owner,

ce

rea

representatives will present their credentials to the employer,

op

nature, purpose and scope of the investigation and the records

in Sec. 85a.3 which they wish to review, abstract or duplicate.

(2) In those instances where site visits are not necessary to the

conduct of an investigation and the initial contact is made verbally,

NIOSH authorized representatives will, at the request of the empl

owner, operator or agent in charge at the place of employment, provide a

written explanation of the nature, purpose and scope of the

investigation and the records specified in Sec. 85a.3 which they wish to

review, abstract or duplicate.

(b)(1) At the commencement of an investigation, the employ

operator or agent in charge at the place of employment shall precisely

identify that information which

obtained by the NIOSH authorized representatives during the

investigation. If the NIOSH authorized representatives have no clear

reason to question such identification, such information will not be

disclosed by NIOSH in accordance with the provisions of sectio

the OSH Act. Generally, NIOSH will not question trade secret

designations; however, if NIOSH at any time does question such

identification, not less than 15 days' notice to the employer, owner,

operator or agent will be given of the intention to remove the

secret designation from such information. The employer, owner, op

or agent 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, will

notify the employer, owner, operator or agent in writing of the decision

which will become effective no sooner than 15 days after the date of

such notice.

(2) In those instances where the NIOSH authorized representative is

a person fulfilling a contact agreement with NIOSH or is serving as an

expert or cons

operator or agent in charge at the place of employment may, after

advising the NIOSH contractor or consultant in writing, elect to

withhold information deemed to be a trade secret from such a NIOSH

authorized representative or prohibit entry into the area of the pla

of employment where such entry will reveal trade secrets. In those

instances, where the subject information is needed or access to the a

of the place of employment is necessary, in the judgment of NIOSH, to

fulfill the goals of the investigation, NIOSH regular employees will

then obtain the information or enter the subject area of the place of

employment.

(c)(1) NIOSH authorized representatives will be in charge of site

visits conducted pursuant to this part.

(2) Where there is a request by the representative of the State

H authorized representatives

rty who is not an employee of the employer is reasonably necessary to

e

ace

feres with a fair and

derly site visit. In all instances, a representative of the employer

tted to accompany the NIOSH authorized representatives

ring the site visit of the place of employment.

information.

nt

s to

tion; to

y

ht

jects Review Board and no employee examination,

ation regulations and policies during a site visit and

agency and/or employees, who were notified pursuant to Sec. 85a.4(a)(1)

or Sec. 85a.4(a)(2) to accompany the NIOS

during the site visit of the place of employment, the NIOSH authorized

representatives will allow this request if they determine that this will

aid the investigation; or where, in the judgment of the NIOSH authorized

representatives, good cause has been shown why accompaniment by a third

pa

the conduct of an effective and thorough site visit, they may permit

such third party to accompany them during the site visit: Provided

however, That access by such person(s) to areas described in

Sec. 85a.5(c)(4) shall be in accordance with the requirements of such

provision and access to areas containing trade secrets shall be with th

consent of the employer, owner, operator or agent in charge at the pl

of employment.

(3) NIOSH authorized representatives are authorized to deny the

right of accompaniment under this paragraph to

[[Page 564]]

any person whose conduct in their judgment inter

or

shall be permi

du

(4) With regard to information classified by an agency of the United

States Government in the interest of national security, only persons

authorized to have access to such information may accompany NIOSH

authorized representatives in areas containing such

(d)(1) NIOSH authorized representatives are authorized: To collect

environmental samples and samples of substances; to measure

environmental conditions and employee exposures (including measureme

of employee exposure by the attachment of personal sampling device

employees with their consent); to take or obtain photographs, motion

pictures or videotapes related to the purpose of the investiga

employ other reasonable investigative techniques, including medical

examinations, anthropometric measurements and standardized and

experimental functional tests of employees with the informed consent of

such employees; to review, abstract, and duplicate such personnel

records as are pertinent to mortality, morbidity, injury, safety, and

other similar studies; and to question and interview privately an

employer, owner, operator, agency, or employee from the place of

employment. The employer, owner, operator, or agency shall have the

opportunity to review photographs, motion pictures, and videotapes taken

or obtained for the purpose of identifying those which contain or mig

reveal a trade secret.

(2) Prior to the conduct of medical examinations, anthropometric

measurements or functional tests of any employees, the NIOSH authorized

representatives will obtain approval of the procedures to be utilized

from the NIOSH Human Sub

measurement or test will be undertaken without the informed consent of

such employee.

(e) NIOSH authorized representatives will comply with all safety and

health rules and practices at the place of employment and all NIOSH,

Occupational Safety and Health Administration, and Mine Safety and

Health Administr

will 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, owner,

ent.

n. 14, 1980; 49

c. 85a.6 Provision of suitable space for employee interviews and

operator or agent in charge at the place of employment.

(f) The conduct of site visits will be such as to preclude

unreasonable disruption of the operations of the place of employm

[41 FR 45002, Oct. 14, 1976, as amended at 45 FR 2654, Ja

FR 4739, Feb. 8, 1984]

Se

examinations.

An employer, owner, operator or agent in charge at the place of

the place of employment, if such space is

asonably available, to NIOSH to conduct private interviews with, and

rs.

employment shall, on request of the NIOSH authorized representatives,

provide suitable space at

re

medical examinations, anthropometric measurements and functional tests

of employees. NIOSH authorized representatives will consult with the

employer, owner, operator or agent as to the time and place of the

private interviews, medical examination, anthropometric measurements and

functional tests and will schedule same so as to avoid undue disruption

of work at the place of employment. NIOSH will conduct the medical

interviews, measurements, examinations and tests specified under this

part at its own expense.

[41 FR 45002, Oct. 14, 1976]

Sec. 85a.7 Imminent dange

e of, or as a result of, an investigation

der this part, the NIOSH authorized representatives believe there is a

ion of an imminent danger, NIOSH will

mediately advise the employer, owner, operator or agent in charge at

ed in Sec. 85a.4(a)(1), (a)(3), and

)(4).

1 FR 45002, Oct. 16, 1976, as amended at 45 FR 2654, Jan. 14, 1980]

8 Reporting of results of investigations of places of

employment.

Whenever, during the cours

un

reasonable basis for an allegat

im

the place of employment and those employees who appear to be in

immediate danger of such allegation

[[Page 565]]

and will inform the agencies identifi

(a

[4

Sec. 85a.

(a)(1) Specific reports of investigations of each place of

e available by NIOSH to the employer, owner,

erator or agent in charge at the place of employment, with copies to

ort

ing, the

t,

employment under this part, with identification of the place of

employment, will be mad

op

the appropriate officials and Agencies notified pursuant to

Sec. 85a.4(a). Prior to release of such reports, a preliminary rep

will be sent by NIOSH to the employer, owner, operator or agent for

review for trade secret information and technical inaccuracies that may

inadvertently be presented in the report. If requested in writ

data used to compile the reports will be made available by NIOSH to the

employer, owner, operator or agent in charge at the place of employmen

except that data will not be released in a form that is individually

identifiable.

(2) All specific reports of investigations of each place of

employment under this part will be available to the public from the

NIOSH Regional Consultant for Occupational Safety and Health in the

appropriate NIOSH Regional Office.

f each

individuals participating in the

or other person only pursuant to the written

d

in 45

ummary of the findings of the examinations for each employee

al

manners. These findings of a

ed

(3) In certain instances, specific reports of investigations o

place of employment will not be prepared. In such instances, a closing

conference at the place of employment will be conducted by the NIOSH

authorized representatives and those

site visit to discuss the findings of the site visit and appropriate

recommendations.

(b)(1) Any specific findings of individual employee medical

examinations, anthropometric measurements and functional tests will be

released by NIOSH authorized representatives to the company physician,

private physician,

authorization of the employee; otherwise, the specific findings an

other personal records concerning individuals will be maintained in

accordance with 45 CFR part 5b and section 3 of the Privacy Act of 1974

(5 U.S.C. 552a). Notice of all NIOSH systems of records as defined

CFR 5b.1(n) as a result of the investigations of places of employment

pursuant to this part will be published in the Federal Register under

Notices of Systems of Records for the Department of Health and Human

Services.

(2) In cases where an employee shows positive significant medical

findings, the employee and the physician(s) designated by the employee

under Sec. 85a.8(b)(1) will be immediately notified by NIOSH.

(3) A s

will be sent by NIOSH to the individual.

(c) The findings of a total investigation generally will be

disseminated as part of NIOSH criteria documents, NIOSH technic

reports, NIOSH information packets, scientific journals, presentations

at technical meetings, or in other similar

total investigation will be presented in a manner which does not

identify any specific place of employment; however, it should be not

that the specific reports of investigations of each place of employment

under this part are subject to mandatory disclosure, upon request, under

the provisions of the Freedom of Information Act (5 U.S.C. 552).

[41 FR 45002, Oct. 14, 1976]