

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1903

[Docket No. W-300]

Use of Personal Sampling Devices During Inspection

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: In today's Federal Register, OSHA revises 29 CFR 1903.7(b) by adding an interpretative note to make clear that the term "employ other reasonable investigative techniques" as used in the regulation includes but is not limited to the attachment of personal sampling devices to employees in order to monitor their exposures. In this document, OSHA proposes to amend § 1903.7 by issuing a legislative rule to expressly authorize its compliance officers to use personal sampling devices and to attach such devices to employees during the conduct of workplace inspections. The proposed rule would remove any questions concerning the agency's authority to use personal sampling devices as an aid in its workplace inspections.

DATES: Comments on the issues raised by the use of personal sampling devices must be postmarked by April 13, 1982.

ADDRESS: Comments are to be sent to: Docket Officer, Docket No. W-300, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-8212, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Office of Information, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3637, Washington, D.C. 20210 (202-523-8151).

SUPPLEMENTARY INFORMATION: The discussion in the interpretative and procedural rule of Part II of today's Federal Register sets forth the history of 29 CFR 1903.7(b) and the reasons for the issuance of the interpretative and procedural rule which appears therein. In this document, the agency announces its intention to amend the regulation to expressly authorize compliance officers to monitor employees' exposures by attaching personal sampling devices to their persons during OSHA inspections. The public is invited to submit comments on the issues involved in the use of such devices, and particularly on the issue of whether the placement of the device on an employee may under

certain circumstances constitute an inherent hazard which subjects the employee to potential accident and injury. With respect to the safety issue, all courts that have considered the issue have concluded that the attachment of a personal sampler to an employee is a reasonable investigative technique that presents minimal risk, if any. Indeed, the Secretary is unaware of any accident or injury caused by the use of such devices during the more than ten-year enforcement history of the Act, encompassing widespread use of personal samplers by many employers as well as by the Secretary. Moreover, the use of personal sampling devices is considered by the Secretary to be at least as safe as other sampling techniques of equivalent efficiency.

Interested persons are invited to submit written data, views and arguments with respect to this proposal and all issues involved therein. These comments must be postmarked on or before April 13, 1982, and submitted in quadruplicate to: Docket Officer, Docket No. W-300, Room S-8212, 200 Constitution Avenue NW., Washington, D.C. 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions received will be made part of the record of this proceeding and will be considered in formulating the final rule.

Regulatory Impact Analysis

The economic analysis under Executive Order 12291, which appears in connection with the interpretative and procedural rule in Part II of today's Federal Register is equally applicable to this proposal and is incorporated herein. Additionally, in accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 et seq.)), OSHA has carefully assessed the impact of the amendment upon small entities. Initially, the agency notes that to the extent that any costs occur, they would directly relate to the number of workers sampled. As proportionately more workers would be sampled in larger establishments, the costs per unit of output of the amendment are expected to be the same for both smaller and larger establishments. Moreover, no additional costs result from the amendment since it has always been and continues to be OSHA practice to use personal sampling devices whenever possible and whenever there is no judicial ruling to the contrary. Accordingly, OSHA hereby certifies that

this proposed rule does not have a significant economic impact on a substantial number of small entities.

The Regulatory Impact Assessment has identified several benefits which are realized as a result of the promulgation of the amendment. As has been noted in connection with the interpretative and procedural rule, the use of personal sampling devices attached to employees not only increases the effectiveness of OSHA inspections but also minimizes potential reduction in employee productivity. The use of personal sampling devices attached to employees is therefore the most cost effective means of promoting occupational safety and health.

Authority: This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, D.C. 20210.

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

Accordingly, pursuant to section 6(a) and 8(g)(2) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(a) and 657(g)(2), and the Secretary of Labor's Order 8-76, 41 FR 25059, it is proposed to amend part 1903 of Title 29 of the Code of Federal Regulations as set forth below.

It is proposed to revise 29 CFR 1903.7(b) to read as follows:

§ 1903.7 Conduct of inspections.

(b) Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See § 1903.9 on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

(29 U.S.C. 657(a), 657(g); 5 U.S.C. 553)

Signed at Washington, D.C. this 4th day of February 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

(FR Doc. 82-3466 Filed 2-11-82; 8:45 am)

DEPARTMENT CODE 4510-20-01

3M 007448